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Monday
September 17, 1990

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

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
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4. An introduction to the finding aids of the FR/CFR system.

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

WASHINGTON, DC

WHEN: September 21, at 9:00 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.
RESERVATIONS: 202–523–5240.

DALLAS, TX

WHEN: September 25, at 9:00 a.m.
WHERE: Federal Office Building, 1100 Commerce Street, Room 7A23–175, Dallas, TX.
RESERVATIONS: 1–800–366–2998.

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

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1951

Internal Revenue Service Offset

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its Internal Revenue Service (IRS) Offset regulation to clarify and expand the categories of delinquent accounts eligible for IRS Offset. This action will result in additional collections on delinquent accounts. The intended effect is to strengthen the ability of FmHA to collect tax refunds that would otherwise be paid to delinquent borrowers and other debtors.

EFFECTIVE DATE: August 3, 1990.

FOR FURTHER INFORMATION CONTACT: Jeanne Hudec, Financial Analyst, Farmers Home Administration, U.S. Department of Agriculture, room 5503, South Agriculture Building, Washington, DC 20250, telephone (202) 382-8356.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Departmental Regulation 1512-1, which implements Executive Order 12291, and has been determined to be exempt from those requirements because it involves only rules of agency procedure and internal agency management.

It is the policy of this Department to publish for comment rules relating to public property, loans, grants, benefits, or contracts, notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. This action, however, is not published for proposed rule making since it involves only rules of agency procedure and internal agency management, making publication for comment unnecessary.

This document has been reviewed in accordance with 7 CFR part 1940, Subpart G, "Environmental Program." FmHA has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment and, in accordance with the National Environmental Policy Act of 1969, Public Law 91-190, an Environmental Impact Statement is not required.

The programs to which this regulation may apply are listed in the Catalog of Federal Domestic Assistance under the following:

10.404 Emergency Loans
10.405 Farm Labor Housing Loans and Grants
10.406 Farm Operating Loans
10.407 Farm Ownership Loans
10.410 Low Income Housing Loans (Section 502 Rural Housing Loans)
10.411 Rural Housing Site Loans (Section 523 and 524 Site Loans)
10.414 Resource Conservation and Development Loans
10.415 Rural Rental Housing Loans
10.416 Soil and Water Loans (SW Loans)
10.418 Water and Waste Disposal Systems for Rural Communities
10.419 Watershed Protection and Flood Prevention Loans
10.420 Rural Self-Help Housing Technical Assistance (Section 523 Technical Assistance)
10.421 Indian Tribes and Tribal Corporation Loans
10.422 Business and Industrial Loans
10.423 Community Facility Loans
10.428 Economic Emergency Loans
10.433 Housing Preservation Grants
10.434 Nonprofit Corporations Loan and Grant Program
10.435 Agricultural Loan Mediation Program

Programs listed under numbers 10.404, 10.406, 10.407, 10.410, 10.417, 10.421, 10.428, and 10.435 are not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (7 CFR 3015, subpart V, 48 FR 29115, June 24, 1983.)

Programs listed under numbers 10.405, 10.411, 10.414, 10.415, 10.416, 10.418, 10.419, 10.420, 10.422, 10.423, 10.427, 10.433, and 10.434 are subject to the provisions of Executive Order 12372 (7 CFR 3015, subpart V, 48 FR 29112, June 24, 1983; 49 FR 22675, May 31, 1984; 50 FR 14088, April 10, 1985.)

General Information

FmHA clarifies the criteria for eligibility for IRS offset. Current regulations do not allow for the use of IRS offset on accounts that are accelerated, in a collection only status (where all security has been liquidated), or have a transfer or voluntary conveyance pending. These categories of accounts are now eligible for IRS offset under the new regulations. These regulations also state that accounts that have a foreclosure pending and have not yet been referred to the Office of General Counsel (OGC) are eligible for offset.

While delinquent debts owed to FmHA remain unpaid, FmHA must borrow money to operate, which increases the Federal deficit. Increased Government borrowing causes interest rates to rise and reduces the availability of credit in the country. The Debt Collection Act of 1982 (31 U.S.C. 3701, 3711 and 3716-19) and the Attorney General-Comptroller General's joint claims collection standards (4 CFR Parts 101-105) contain specific and detailed requirements which agencies of the Department must follow in order to collect.

List of Subjects in 7 CFR Part 1951

Account servicing, Loan programs—Agriculture, Accounting, Credit, Low and moderate income housing loans—Servicing

Therefore, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1951—SERVICING AND COLLECTIONS

Subpart C—Offsets of Federal Payments to FmHA Borrowers

1. The authority citation for part 1951 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

2. Section 1951.122 is revised to read as follows:

§ 1951.122 Finance Office screening.

The FmHA Finance Office will screen the accounts of all borrowers potentially eligible for IRS Offset. FmHA field offices will further screen these accounts based on the following ineligibility criteria. The Finance Office

will determine the appropriate date for this screening based on IRS deadlines.

(a) *General.* All past due single family housing (SFH) and farmer program (FP) accounts are eligible for IRS Offset unless they meet one or more of the following criteria:

(1) Account has been referred to OGC for foreclosure and, based on the legal opinion required by § 1951.103(c), a collection by offset would jeopardize the litigation under State law. Existence of a foreclosure action pending flag is not a determining factor.

(2) Account has been discharged in bankruptcy or is under the jurisdiction of a bankruptcy court and the debt has not been reaffirmed. Existence of a bankruptcy action pending flag is not a determining factor.

(3) Account has a suspend code.

(4) Account has been assigned to a collection agency. Existence of a collection-only flag is not a determining factor.

(5) Account is past due by less than $25, or if the borrower has multiple loans, the net amount past due is less than $25.

(6) Borrower is a Federal employee and collection is feasible under salary offset.

(7) Borrower was indebted to FmHA prior to entering full time active duty military service and the account is being serviced in accordance with FmHA Instruction 1950–C.

(b) *Single Family Housing Borrowers.* In addition to the criteria set forth in § 1951.122(a), the following criteria are for delinquent SFH borrowers:

(1) Borrower has one loan and it is less than 3 monthly payments delinquent (or, if annual borrower, the equivalent of less than 3 monthly payments for annual payments past due) or more than 9 years delinquent.

(2) Borrower has multiple loans, and the net amount past due is less than 3 monthly payments on the delinquent loans (or the equivalent of 3 monthly payments for annual payment borrowers).

(3) Account is current under a subject to approved adjustment (SAA).

(4) Account is under a moratorium.

(5) Account has an Additional Payment Agreement (APA) in effect and payments under the APA are less than 3 months past due.

(c) *Farmer Program Borrowers.* In addition to the criteria set forth in § 1951.122(a), the following criteria are for delinquent FP borrowers:

(1) Borrower is a partnership or corporation and/or is identified in the accounting system by an employer Identification Number (EIN rather than a Social Security Number (SSN).

(2) Account is less than 90 days past due.

(d) *Servicing Condition Requirements for Farmer Program Borrowers.* The FP accounts remaining after screening from § 1951.122 (a) and (c) are eligible for IRS offset only if either of the following servicing conditions takes place, whichever comes first:

(1) Borrower has received Attachments 3 and 4 of Exhibit A of subpart S of this part or Attachments 9 and 10 of Exhibit A of subpart S of this part; and the borrower did not request an appeal of the decision: any appeal has been concluded: OR

(2) Borrower's account(s) has been accelerated.

(3) Section 1951.123 is amended by revising the second sentence to read as follows:

§ 1951.123 Field office screening.

* * * If the County Office is aware that any account should be removed for any of the reasons set forth in § 1951.122, the County Office will remove the account in accordance with the instructions accompanying the list, "Borrowers Eligible for Offset (prior to 60-day notice)." * * *

4. Section 1951.124 is amended by revising the second through fourth sentences to read as follows:

§ 1951.124 Notice to borrowers.

* * * This letter must be mailed to ensure that borrowers receive their letters no later than October 15. Borrowers will have 60 days from the date of receipt to provide evidence in writing to the County Supervisor that their debt is less than 3 months delinquent or that the debt is not legally enforceable. Borrowers who reduce their debt to less than 3 months past due during this 60-day period will not be offset.

5. Section 1951.125 is revised to read as follows:

§ 1951.125 Processing borrower's requests not to exercise IRS offset.

If a borrower responds to FmHA Form Letter 1951–C–6 within 60 days from the date of receipt, the County Supervisor will review the borrower's reasons for believing that the debt is either less than 3 months delinquent or is not legally enforceable. After such determination, the County Supervisor will advise the borrower if offset will be exercised.

6. Section 1951.126 is revised to read as follows:

§ 1951.126 Final referral to IRS.

All accounts not eliminated will be sent to IRS for offset and Report Code 865, Borrower Accounts Submitted to IRS for Offset Report, sent to each appropriate County Office. Each County Office will review the list on Report Code 865 upon receipt, and each week thereafter. This weekly review will continue until September 1 for the previous year's submission, or until action has been taken on each account (offset or removal). If any of the events listed under § 1951.122 of this subpart occurs, immediately submit Form FmHA 1951–43, "Accounts to be Removed from IRS Offset" in accordance with the FMI for that form. All accounts referred to the IRS for offset will be reported to a credit bureau by the Finance Office.

7. Section 1951.127 is amended by revising the second and third sentences to read as follows:

§ 1951.127 Processing of amounts offset.

* * * The Finance Office may deduct an amount equal to IRS' processing costs from the amount offset to reimburse the Agency for the cost of processing the offset, will credit the borrower's account for the amount required and will notify the appropriate County Office. The County Supervisor will review Report Code 222–C, Weekly Offset Report (Cash Collections IRS Offset), to ensure that any borrower who would have been eliminated from offset due to the provisions of § 1951.122 of this subpart was not subjected to an offset.* * *

8. Sections 1951.128 through 1951.135 are added as follows:

§ 1951.128 Receipt of Finance Office/IRS Offset Reports and Listings.

The Finance Office will provide a copy of the reports or listings in § 1951.129 through § 1951.135 of this subpart to each servicing county. County Supervisors are responsible for ensuring the field offices review each report and respond to the timeframes as indicated.

§ 1951.129 Borrowers Eligible for Offset (Prior to 60-day Notice).

This listing includes borrowers eligible for offset after Finance Office screening. The field office will screen all borrowers in accordance with § 1951.122 of this subpart. Borrowers meeting any of the ineligibility criteria must be eliminated by drawing a line through the borrower's name. When all borrowers have been reviewed for offset eligibility, the original list must be sent to the Chief, Computer Resources Branch, mail code FC–353, in the Finance Office. These lists must be received no later than 1 month after the date of receipt, since the Finance Office will use the information provided to generate letters to borrowers informing them of potential IRS offset. No borrowers may be added

to this list by the field office. A copy of this list should be retained by each field office. If a borrower is ineligible for IRS offset due to any of the exclusion criteria in § 1951.122 and that borrower's account does not reflect that exclusion criteria in the accounting system, the field offices must ensure that the account be updated immediately.

§ 1951.130 Borrowers Sent Due Process Notices for IRS/Credit Bureau Referrals.

This listing includes those borrowers remaining eligible for offset after field office screening and who were sent notices of the intent to offset their tax refund. The notice advises the borrower that they have 60 days from the date of receipt of the letter in which to provide written information to their FmHA County Supervisor to show that offset should not be exercised. A borrower who has provided written notification and it has been determined the he/she meets the criteria under § 1951.122 of this subpart must be eliminated by drawing a line through the borrower's name on the listing. When all borrowers have been reviewed for offset eligibility, the original must be sent to the Chief, Computer Resources Branch, mail code FC-353, in the Finance Office. These lists must be received no later than 2 months after the date of receipt, since the Finance Office will use the information provided on these lists to create the IRS annual certification tape. No borrowers may be added to this list by the field office. A copy of this list should be retained by each field office. If a borrower is ineligible for IRS offset due to any of the exclusion criteria in § 1951.122 and that borrower's account does not reflect that exclusion criteria in the accounting system, the field offices must ensure that the account be updated immediately,

§ 1951.131 Form FmHA 389-833, Borrower Accounts Submitted to IRS for Offset Report, RC 865.

This report lists borrowers remaining eligible for offset after the 60-day notice period and who were referred to IRS for offset. This report should be retained by the field office and referred to when decreasing an amount referred for offset or deleting a borrower from IRS offset using Form FmHA 1951-43.

§ 1951.132 Form FmHA 389-760, Annual Unprocessable Report IRS Offset, RC 822-C.

This report lists those borrowers who were referred to IRS for offset, but were returned by IRS as evidenced by the applicable error code. These borrowers will *not* be offset by IRS. This report should be retained by each field office. It is not necessary to complete Form FmHA 1951-43 for borrowers listed on this report.

§ 1951.133 Form FmHA 389-761, Annual No Match Report IRS Offset, RC 822-D.

This report lists those borrowers who were referred to IRS for offset, but were returned by IRS as evidenced by the applicable error code. These borrowers will *not* be offset by IRS. This report should be retained by each field office. It is not necessary to complete Form FmHA 1951-43 for borrowers listed on this report.

§ 1951.134 Form FmHA 389-764, Weekly Offset Report (Cash Collections) IRS Offset, RC 222-C.

This report lists those borrowers whose income tax refund was offset by IRS and the amount offset. Except for a minimal processing fee that may be deducted, all monies collected from an offset will be applied toward the borrower's delinquent loan(s). If an offset does not repay all of the delinquent amount, the borrower is subject to additional offsets if more than one tax year return is filed.

This report should be retained by each field office and referred to if it has been determined a borrower has been erroneously offset. The field office should use the amount offset from this report when following the instructions outlined in § 1951.127 for refunding the offset to the borrower.

§ 1951.135 Form FmHA 389-763, Weekly Claims Report IRS Offset, RC 222-D.

This report lists those borrowers whose spouses were issued a refund by IRS. These borrowers filed a joint tax return and incurred the debt separately from their spouses who had no legal responsibility for the debt and who had income and withholding and/or estimated tax payments. The report shows the actual amount offset for the borrower only. The spouses' portion of the income tax refund was not offset. It is not necessary to prepare FmHA Form Letter 1951-5 for these borrowers since the borrower's spouse has already received a refund from IRS. Upon receipt of this report, field offices should annotate on RC 222-C (§ 1951-134) the actual amount offset for those borrowers listed in this report. This report should be retained by each field office.

Dated: September 7, 1990.

La Verne Ausman,

Administrator, Farmers Home Administration.

[FR Doc. 90-21901 Filed 9-14-90; 8:45 am]

BILLING CODE 3410-07-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 303

RIN 3064-AB03

Applications, Requests, Submittals, Delegations of Authority, and Notices of Acquisition of Control

AGENCY: Federal Deposit Insurance Corporation ("FDIC").

ACTION: Final rule.

SUMMARY: The FDIC is amending its regulations governing (i) the activities and investments of state savings associations, (ii) notice with respect to the establishment of a subsidiary by an insured savings association as well as the conduct of a new activity by a subsidiary of an insured savings association, and (iii) the divestiture of "junk bonds" by insured savings associations. The amendments (1) allow state savings associations to look at Office of Thrift Supervision Regulatory and Thrift Bulletins, in addition to statutes and regulations, in deciding whether or not FDIC's prior approval is necessary for the savings association to be able to engage in an activity or to make an equity investment; (2) streamline the prior notice requirements when an insured savings association establishes or acquires a series of subsidiaries to hold property acquired in satisfaction of a debt previously contracted; and (3) clarify the operation of the 60-day prior notice requirement state savings associations are required to file if the association plans to conduct activities permissible for a federal savings association but in an amount greater than that permissible for a federal savings association.

EFFECTIVE DATE: September 17, 1990.

FOR FURTHER INFORMATION CONTACT: Pamela E.F. LeCren, Counsel, (202) 898-3730, Legal Division, FDIC, 550 17th Street, NW., Washington, DC 20429; Daniel E. Austin, Review Examiner, (202) 898-6774, or Garfield Gimber, Examination Specialist, (202) 898-6913, Division of Supervision, FDIC, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in § 303.13(d) of this final rule has been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 3064-0104. The estimated average annual

burden associated with the collection of information in this final rule is approximately 5 hours per response.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Assistant Executive Secretary (Administration), room F-400, Federal Deposit Insurance Corporation, Washington, DC 20429, and to the Office of Management and Budget, Paperwork Reduction Project (3064-0104), Washington, DC 20503.

Background

On December 12, 1989 the FDIC's Board of Directors amended part 303 of the FDIC's regulations by adding a new § 303.13 (12 CFR 303.13) (54 FR 53540, December 29, 1989). The amendment, which was adopted as an interim rule, was effective on December 29, 1989, however, the FDIC invited comment on the rule for 60 days thereafter.

Section 303.13 was designed to implement the provisions of section 18(m) and section 28 of the Federal Deposit Insurance Act ("FDI Act", 12 U.S.C. 1828(m), 1831(e)) as added to the FDI Act by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA", Pub. L. No. 101-73). In brief, section 18(m)(1) provides that (with certain exceptions) any insured savings association (state or federal) must notify the FDIC and the Office of Thrift Supervision ("OTS") at least 30 days prior to establishing or acquiring a subsidiary and at least 30 days prior to electing to conduct a new activity through a subsidiary. The notice is to contain such information as the FDIC requires. Section 18(m)(3) provides that the FDIC may prohibit by regulation or order any specific activity, act, or practice conducted by an insured savings association that the FDIC determines will pose a serious threat to either the Bank Insurance Fund ("BIF") or the Savings Association Insurance Fund ("SAIF").

Section 28 deals, in part, with the activities and equity investments of state chartered savings associations and the investment by state or federal savings associations in "junk bonds". Section 28(a) prohibits a state chartered savings association from engaging as principal on or after January 1, 1990 in any activity of a type or an amount that is not permissible for federal savings associations unless the FDIC determines that the activity poses no significant risk to the affected deposit insurance fund and the savings association is, and continues to be, in compliance with the fully phased-in capital standards prescribed for savings associations under section 5(t) of the Home Owners' Loan Act ("HOLA", 12 U.S.C. 1464(t)). Section 28(b) provides that a state savings association that meets the fully phased-in capital standards prescribed in HOLA may engage in any activity permissible for a federal savings association in an amount exceeding the amount permissible for a federal savings association unless the FDIC determines that for the association to do so poses a significant risk to the affected deposit insurance fund.

Section 28(c) prohibits a state savings association from acquiring any equity investment that is not permissible for a federal savings association. Equity investments acquired prior to August 9, 1989 are required to be divested as quickly as prudently possible but in no event later than July 1, 1994. The FDIC can set conditions and restrictions with regard to the divestiture of such investments. Equity investments in service corporations that would otherwise be impermissible for federal savings associations can be made if a state savings association meets the fully phased-in capital requirements and the FDIC finds that the investment will not pose a significant risk to the affected deposit insurance fund based either on the activity to be conducted by the service corporation or the amount to be invested.

Section 28(d) provides that no savings association (state or federal) may directly, or indirectly through a subsidiary, acquire or retain any corporate debt security that is not of investment grade (frequently referred to as "junk bonds"). The prohibition does not apply to the acquisition or retention of such debt by a qualified affiliate of a savings association. Any savings association, or subsidiary thereof, which held corporate debt securities as of August 9, 1989 that were not of investment grade when acquired is required to divest such securities as quickly as can be prudently done but in no event later than July 1, 1994. The FDIC may establish restrictions and/or requirements in connection with the divestiture.

The interim final rule established procedures governing the notices and applications required by sections 18(m) and 28 of the FDI Act. It also required that information be reported to the FDIC, by federal savings associations authorized to conduct activities on a grandfathered basis not generally permissible to federal savings associations; and required insured savings associations to provide the FDIC with certain limited information about their existing subsidiaries and the activities they conducted.

The FDIC received 10 comments on the interim rule as described above. The FDIC is making several revisions to § 303.13 based upon the comments. The comments and the substance of the revisions are discussed below.

Comments and Description of Revisions

Regulatory and Thrift Bulletins

As indicated above, section 28 generally provides that a state savings association is limited in its activities and equity investments to those activities and investments that are "permissible" for federal savings associations. The interim rule as published embellished on that standard by indicating that the activity or equity investment in question must be expressly authorized for all federal savings associations either by statute or OTS regulation in order to be considered "permissible" for a federal savings association. The FDIC received 6 comments urging the FDIC to include official OTS regulatory and thrift bulletins interpreting the statutes and regulations to which federal savings associations are subject in deciding whether something is expressly authorized. According to the OTS which also filed a comment on the interim rule urging the FDIC to recognize these bulletins, the bulletins do not provide any new authority for a federally chartered savings association but merely interpret existing laws and regulations. The commenters thus argued that, not recognizing these bulletins as a source of what is "permissible" for all federal savings associations, will overlook official OTS interpretations of what is generally permissible for federal savings associations. This will not only result in unnecessary applications being filed with the FDIC, but will produce an inequitable difference between federal associations, which can rely on the bulletins and freely conduct the activity or make the equity investment, and state associations that cannot.

In view of the comments, the FDIC is amending § 303.13 by inserting the phrase "or official OTS Regulatory or Thrift Bulletin interpreting such statute or regulation" in § 303.13 (b)(1), (c)(1), (d)(1), and (d)(2).

DPC Subsidiaries

Section 18(m)(1) requires insured savings associations to give the FDIC 30 days notice prior to establishing a subsidiary or conducting any new activity through an existing subsidiary. Section 303.13(f) of the interim rule provides that no insured savings

association may do either without providing the FDIC with the requisite notice and sets forth the information required to be in such notice. Two comments requested that the FDIC amend the interim rule to accommodate a state savings association establishing subsidiaries for the sole purpose of holding property that was acquired in satisfaction of a debt for which the savings association previously contracted ("DPC property"). According to the commenters, it is common in the savings association industry to establish subsidiaries to hold DPC property and for a separate subsidiary to be established for each such piece of DPC property. Given this practice, it is difficult, if not impossible, to provide the FDIC with 30 days notice prior to setting up each DPC subsidiary.

We do not believe that it was the congressional intent to unduly hinder savings association practices in the handling of DPC property. Therefore, in light of the comments, the FDIC is amending § 303.13(f) to allow a savings association to establish one or more DPC subsidiaries and comply with the prior notice requirement in the following manner. An association can file a notice with the FDIC indicating that it intends to establish or acquire one or more subsidiaries that will be engaged solely in the disposition of DPC property. Such notice must be received in the FDIC regional office at least 30 days prior to the first such acquisition or establishment. Once this notice has been filed, the savings association may proceed to establish or acquire subsidiaries whose activities will be so confined provided that each time, within 14 days after doing so, the association notifies the FDIC in writing. The notice must identify the savings association, the date of the association's initial notice indicating its intent to establish DPC subsidiaries, identify the new DPC subsidiary, and state the value of the property being transferred at the time of the transfer. This procedure will, in the FDIC's opinion, satisfy the requirements of section 18(m)(1) for 30 days prior notice and at the same time will remove an unintended hindrance created by the interim rule. Furthermore, it should not compromise any of the FDIC's interests. Any savings association that prior to this amendment being adopted filed a notice with the FDIC pursuant to § 303.13(f) regarding the establishment or acquisition of a DPC subsidiary may consider that notice to satisfy the initial notice requirements of § 303.13(f) as amended.

60-day Prior Notice of Conduct of Activities That are Permissible for a Federal Savings Association but in an Amount Exceeding That Permissible for a Federal Savings Association

Section 303.13(c)(2) of the interim rule provided that any state savings association that intends to initiate activities in an amount that would not be permissible for a federal savings association must file a notice with the FDIC at least 60 days prior to the initiation of the activity in that amount. Unless the savings association was notified to the contrary it could begin those activities at that level 60 days after the FDIC received the notice provided the savings association was, and continued to be, in compliance with the fully phased-in capital requirements of HOLA. Section 303.13(c)(2) also sets forth the information required to be contained in the notice and provided that the regional director could extend the 60-day notice period if the notice as received was incomplete or the notice raised issues that required additional information or time for analysis. Of the 60-day notice period was extended, the savings association could only begin the conduct of the activities that are the subject of the notice upon written notice to that effect from the FDIC.

The OTS commented that § 303.13(c)(2) of the interim rule, insofar as it requires a savings association to wait until it receives notification from the FDIC that it can proceed in the event that the 60-day notice period is extended, unreasonably shifts the consequences of regulatory inaction onto the state savings association that has filed a notice. OTS argues that this result is contrary to the intent of section 28(b) of the FDI Act. Upon careful review of the language in § 303.13(c)(2), the FDIC has determined to amend § 303.13(c)(2). The amendment not only addresses OTS's comment, but also clarifies the FDIC's original intent in adopting § 303.13(c)(2) that section should not be read to create a 60-day window beyond which the FDIC cannot object to the conduct of the activities in question. The intent being rather that the section gave the FDIC 60 days lead time to review a state savings association's planned course of action.

Section 303.13(c)(2) is therefore being amended in the following manner. A state savings association will still be required to file notice with the FDIC at least 60 days prior to initiating permissible activities in an amount impermissible for a federal savings association. The content of the notice remains unchanged and the regional director may still request additional information. The 60-day period will not start to run until the notice is accepted as complete. The final paragraph § 303.13(c)(2), which provided that the 60-day period can be extended, and that if this was done the savings association could not proceed until the FDIC so notified the savings association, has been eliminated. A state savings association that files a 60-day notice may initiate the activities that are the subject of the notice 60 days after the FDIC accepts the initial notice as complete (or 60 days after the initial notice as supplemented at the request of the regional director is accepted as complete) provided that the savings association is in compliance with the fully phased-in capital standards in HOLA and provided that the FDIC has not prior to that date posed an objection to the savings association doing so. The continued conduct of the activities is conditioned upon the savings association's continued compliance with the fully phased-in capital requirements and the FDIC's continued non-objection to the activities. This clarification makes clear that the FDIC is not foreclosed from determining, after the running of the 60 days, that the activities at the level described pose a significant risk to either deposit insurance fund. Once again, state savings associations should also be reminded that section 28 of the FDI Act does not limit any other authority the FDIC has under other provisions of law. The FDIC may, depending upon all the facts and circumstances, object to the conduct on grounds other than that the conduct may pose a significant risk to the insurance fund.

Non-Residential Real Estate Loans

One of the nine comments received asked that the final rule clarify whether or not a savings association is required to divest non-residential real estate loans made prior to August 9, 1989 if those loans exceed the 400% of capital ceiling established by section 5(c)(2)(B) of HOLA (12 U.S.C. 1464(c)(2)(B) for such loans in the case of a federal savings association. As indicated when the interim rule was adopted, non-residential real estate lending, although a permissible activity for a federal savings association, is subject to the restrictions of section 28(a) of the FDI Act. Thus, a state savings association cannot exceed the limit of such activity set by HOLA without the FDIC's prior consent. The question posed by the commenter is essentially whether or not the excess non-residential real estate loans held by an association fall within the coverage of § 303.13(b)(2) of the

interim rule which provides that assets held prior to August 9, 1989 are not subject to divestiture. It is the FDIC's opinion that such loans are not subject to divestiture, therefore, § 303.13(b)(2) is being amended to clarify that this is the case.

Equity Interest in Real Estate

Section 303.13(a)(5) of the interim rule sets forth a definition of the term "equity interest in real estate". Interests in real property acquired in satisfaction of a debt previously contracted for in good faith or acquired in sales under judgments, decrees, or mortgages held by a savings association are not considered to be equity interests in real estate. The exception contained in the rule does not, as written, accord interests in real property acquired under deed in lieu of foreclosure the same treatment. The final rule allows for such equal treatment.

Undercapitalized Institutions Exceeding the Limit on Non-Residential Real Estate Lending

Two comments urged the FDIC to amend the interim rule to allow a state savings association to apply for approval to engage in non-residential real estate lending beyond the 400% of capital ceiling applicable to federal savings associations. Section 303.13(b)(1) as presently worded indicates that no approval to engage in activities covered by paragraph (b)(1) will be granted to a savings association that is not in compliance with the fully phased-in capital requirements, therefore, no such application should be filed by an undercapitalized savings association. Both comments urged the FDIC to allow such applications inasmuch as section 5(c)(2)(B) of HOLA allows the Director of OTS to grant exceptions to the 400% ceiling for federal savings associations.

The FDIC carefully considered these comments but has determined that, as a matter of law, section 28(a) of the FDI Act does not allow the FDIC to allow any undercapitalized savings association to engage in non-residential real estate lending beyond the 400% of capital ceiling. The final rule, therefore, does not reflect any change in this area.

Significant Risk

Two of the comments expressed concern about the explanatory material contained in the preamble to the interim rule which was intended to provide some additional guidance and explanation as to the definition of "significant risk". The concern was that the FDIC should not equate the possibility of loss in connection with an activity or an investment as showing that there is a significant risk to the deposit insurance fund. Neither comment objected to the actual definition of "significant risk" found in § 303.13(a)(9) of the interim rule. ("A significant risk is present whenever it is likely that any insurance fund administered by the FDIC may suffer any loss whatever.") The FDIC has decided not to amend the rule, however, we will try to clarify the FDIC's present intent with respect to the making of a significant risk determination.

As explained in the explanatory material accompanying the interim rule (54 FR 53547), the definition contained in § 303.13(a)(9) comports with the legislative history of the Act which indicated that the amount, or relative, or absolute size of the loss that may result from the conduct of an activity or an equity investment is not probative. What is relevant, rather, is the likelihood that some loss may occur. The preamble further indicated that, "for example, the ownership and operation of a motor hotel or a ski lodge and the related investment(s) in such ventures may be minimal on both an absolute and relative size basis vis-a-vis a particular savings association, however, such activities could still be presumed to present a significant risk to the deposit insurance funds." (54 FR 53547). In way of further elaboration, it is the FDIC's present intent to consider significant risk to exist whenever, in the FDIC's judgment, an activity or equity investment entails risks greater than the activities or investments permitted federal savings associations and/or when engaging in such activities, or making such investments, could reasonably be expected to result in the lowering of a particular savings association's overall condition to an unacceptable level.

Deference to State Granted Powers

The Conference of State Bank Supervisors filed a comment which, among other things, urged the FDIC to defer to the states insofar as the granting of powers is concerned. In short, if a state legislature approves a power for its institutions, then that power should be considered an appropriate power and not one which could pose a significant risk to the fund in the generic sense. The FDIC should only object to the conduct of any given activity on an institutional specific basis.

The FDIC is of the opinion that while a legislature may, for whatever reason, determine that a particular power is appropriate for the institutions in its state, the FDIC has the authority, and the responsibility, to consider whether or not powers granted institutions can pose a risk to the fund. Powers in and of themselves can pose an undue risk to the fund just as much as the particular manner in which a power is exercised can pose a risk. The concept of reviewing corporate powers to determine their appropriateness is not new to the FDI Act. Section 6 of the FDI Act (12 U.S.C. 1816) has long since directed the FDIC to determine whether the corporate powers of an insurance applicant are consistent with the purposes of federal deposit insurance. The FDIC has therefore determined that it would be abrogating its responsibilities under the FDI Act if it would simply determine that a power, in and of itself, cannot pose a significant risk to the fund.

Undue Delay in Processing Applications and Authority to Collect Information on Grandfathered Activities from Certain Federal Savings Associations

The OTS commented that § 303.13(f), which sets out the contents of the subsidiary notice, could unduly hinder the timing of an insured savings association's planned acquisition of a subsidiary as it allows the regional director to ask for additional information. In that event the running of the 30 days would be tolled until the receipt of the requested information. The FDIC carefully considered this comment but decided that the possibility of delay is unavoidable if the FDIC is to properly discharge its responsibilities. It is the FDIC's expectation that the information required to be in the notice should suffice and that requests for additional information will only be forthcoming when the notice is incomplete or the information provided appears to require supplemental explanation or information given the facts of the particular case. It is not anticipated that such requests will be common.

The OTS also questioned the FDIC's authority for the FDIC to adopt § 303.13(g). That section requires any federal savings association authorized by section 5(i)(4) of HOLA (12 U.S.C. 1464(i)(4)) to make any investment, or engage in any activity, not otherwise generally authorized to federal savings associations by section 5 of HOLA to file a notice with the FDIC. The notice must briefly describe the relevant activity or the investment. The FDIC believes that such notice is fully consistent with and authorized by section 18(m)(3) as well as other provisions of the FDI Act. As indicated above, that section authorizes the FDIC to prohibit, by regulation or order, any

specific activity, act or practice by an insured savings association that may pose a serious threat to either insurance fund. This notice provides the FDIC with information that is vital to the agency discharging its oversight responsibilities under the FDI Act in general and specifically under section 18(m)(3).

Commitments to Acquire Equity Investments

The commentary accompanying the interim rule indicated that state savings associations that prior to August 9, 1989 entered into commitments to acquire equity investments at some time thereafter of the type, or in an amount, which is now prohibited to state savings associations by section 28(c) of the FDI Act may not proceed with the acquisition without violating section 28(c). The commentary further indicated that, generally speaking, associations in this circumstance should have a defense to a breach of contract claim on the basis of impossibility of performance. (54 FR 53545). One comment argued that it would not be inconsistent with section 28(c) of the FDI Act to allow state savings associations to honor certain executory and partially performed contracts involving the acquisition of equity investments. Not to do so, it is argued, would force many savings associations into costly litigation when the purpose of section 28(c) is to protect savings associations from loss.

Although we agree that the purpose of section 28(c) is to protect state savings associations from loss, we do not agree that allowing those associations to proceed with fully executory contracts to acquire now prohibited equity investments, only to be required to divest those equity investments as quickly as possible immediately thereafter, will serve the interests of safety and soundness. The language of the statute is clear in its prohibition on the acquistion of certain equity investments after August 9, 1989. It does not allow for any exception other than in the case of a service corporation and then only with the prior consent of the FDIC. There is nothing in the legislative history evidencing any intent that savings associations with executory contracts be allowed to proceed. On the contrary, the legislative history of FIRREA and section 28(c) evidences a clear concern that the states had authorized risky equity investments and that those investment powers contributed heavily to the problems the savings association industry experienced. As to partially performed contracts, it is the FDIC's position that such contracts will need to be reviewed on the facts in order to determine whether it can be said that the equity investment which is the subject of the contract was "acquired" prior to August 9, 1989.

Agency Activities

One comment objected to the use of the phrase "other than as agent on behalf of its customers" in § 303.13 (b)(1) and (c)(1) of the interim rule. Those sections respectively provide that a state savings association may not, unless otherwise permitted by the FDIC, directly engage, other than as agent on behalf of its customers, in an activity that is not expressly authorized by statute or OTS regulation for all federal savings associations, and that any state savings association directly engaged as of December 29, 1989 other than as agent on behalf of its customers in activities expressly authorized by statute or OTS regulations for all federal savings associations but in an amount not so authorized, must file certain notices with the FDIC. According to the commenter, the activities encompassed by the language of the interim rule (and thus which need FDIC's prior approval or require a notice to the FDIC) is broader than that which the statute seems to encompass in sections 28(a) and 28(b). Sections 28 (a) and (b) refer to the conduct of activities "as principal".

As the preamble accompanying the interim rule indicated, the legislative history of section 28 clearly indicates that the reference to "principal" was added to section 28 to make clear that a state savings association could not act as agent on behalf of its customers. (135 Cong. Rec. S10203, daily ed. Aug. 4, 1989, statement of Sen. Riegle). The FDIC is therefore of the opinion that the language used in §§ 303.13 (b)(1) and (c)(1) is no broader than that intended by the statute.

Shortened Form of Notice for Separately Capitalized Subsidiaries and Subsidiaries that Engage in OTS Preapproved Service Corporation Activities

One comment requested that the final rule allow for a shortened form of notice in the case of the establishment or acquisition of a subsidiary by an insured savings association when the association's investment in the subsidiary will be deducted from the association's capital. It was additionally suggested that a shorter notice be required when a savings association's subsidiary will be engaging in an activity for which the OTS does not require piror approval under its service corporation regulations, *i.e.*, a "preapproved" activity. After weighing this comment, the FDIC has determined not to distinguish among types of subsidiaries insofar as the content of the notice is concerned. The FDIC has an interest in obtaining as much information as possible about the planned acquisition or establishment of a subsidiary by a savings association despite the fact that the activity the subsidiary intends to conduct is on the OTS preapproved list for service corporations or will not count toward the association's capital. The FDIC is specifically charged with ensuring that the activities and practices of savings associations do not pose a threat to the insurance fund. The information required by the interim rule is the proper amount of information the FDIC should have if it is to discharge its responsibilities under the statute. Furthermore, in our opinion all of the information called for by the interim rule should be readily available to any savings association and requiring that it be submitted to the FDIC in the notice should not be burdensome. Interestingly, none of the comments objected to providing the notice as structured on the basis that doing so would be burdensome.

Regulatory Flexibility Analysis

Section 303.13 was adopted by the FDIC's Board of Directors without opportunity for public comment and made immediately effective upon publication in the **Federal Register** pursuant to the authority of section 553(b)(B) and section 553(d)(3) of the Administrative Procedure Act ("APA", 5 U.S.C. 553(b)(B), 553(d)(3)). Section 553(b)(B) of the APA allows an agency to dispense with public comment on a substantive rule if the agency for good cause finds opportunity for public comment to be impracticable, unnecessary, or contrary to the public interest. Section 553(d)(3) of the APA allows an agency to waive the required 30 day delayed effective date for a substantive rule for good cause. The FDIC's Board of Directors made the requisite determinations regarding the adoption of § 303.13 (54 FR 53548). As the Regulatory Flexibility Act (5 U.S.C. 601, *et. seq.*) does not require a regulatory flexibility analysis in the case of a rule that is not required to be published for public comment, no such analysis was conducted regarding § 303.13 at its adoption.

Insofar as the Board of Directors did invite comment on the rule, has reviewed the comments, and is adopting several amendments to § 303.13 based upon those comments, the Board has considered whether or not a regulatory flexibility analysis of those amendments

is required. It is the Board of Directors opinion, after doing so, that a formal regulatory flexibility analysis is not necessary as the amendments will not have a significant economic impact on a substantial number of small entities. The amendments clarify when certain applications and notices must be filed with the FDIC. Those application and notice requirements apply equally to large as well as small entities and are, for the most part, required by statute. As the amendments do not add to the information required to be filed, no additional regulatory impact will be generated for any entity subject to the rule. The Board is therefore hereby certifying pursuant to 5 U.S.C. 605 that these amendments, if adopted, will not have a significant economic impact on a substantial number of small entities.

Waiver of Delayed Effective Date

The amendments to § 303.13 are being made effective immediately upon publication in the **Federal Register** upon the authority of section 553(d)(3) of the APA which allows an agency to waive the otherwise mandatory 30-day delayed effective date on a final rule if the rule grants or recognizes an exemption or relieves a restriction. The amendments relieve a number of restrictions found in § 303.13, chief among which is (1) allowing state savings associations to rely upon OTS Regulatory and Thrift Bulletins in determining whether an activity or investment is expressly permissible for federal savings associations (if such is the case certain applications and notices are not required), and (2) eliminating the requirement to file a notice prior to establishing each DPC subsidiary in a series of DPC subsidiaries.

List of Subjects in 12 CFR Part 303:

Administrative practice and procedure, Authority delegations (Government agencies), Bank deposit insurance, Banks, Banking, Insured depository institutions, Savings associations.

In consideration of the foregoing, the FDIC hereby amends part 303 of title 12 of the Code of Federal Regulations as follows:

PART 303—APPLICATIONS, REQUESTS, SUBMITTALS, DELEGATIONS OF AUTHORITY, AND NOTICES OF ACQUISITION OF CONTROL

1. The authority citation for part 303 is revised to read as follows:

Authority: 12 U.S.C. 378, 1813, 1815, 1816, 1817(j), 1818, 1819 ("Seventh" and "Tenth"), 1828, 1828(m), 1831(e); 15 U.S.C. 1607.

§ 303.13 [Amended]

2. Section 303.13(a)(5)(ii) is amended by inserting a comma after the words "good faith" and inserting thereafter "acquired by way of deed in lieu of foreclosure,".

3. Section 303.13 (b)(1), (c)(1)(i), and (d)(1) are amended by inserting a comma after "("OTS")" where it appears in the first sentence of each and inserting thereafter "or an official OTS Regulatory or Thrift Bulletin interpreting such statutes or regulations,".

4. Section 303.13(d)(2)(i) is amended by removing the word "either" in the first sentence thereof, inserting a comma after "OTS" the first time it appears in the first sentence thereof, and inserting thereafter "or an official OTS Regulatory or Thrift Bulletin interpreting such statutes or regulations,".

5. Section 303.13(b)(2) is amended by inserting "(including a nonresidential real estate loan)" after the word "asset" the first time it appears in the first sentence thereof.

6. Section 303.13(c)(2) is revised to read as follows:

§ 303.13 Applications and notices by savings associations.

* * * * *

(c) * * *

(2) *Initiation of activities after December 29, 1989.* Any state savings association that intends to initiate activities of a type and in an amount described in paragraph (c)(1)(i) of this section must file a notice, return receipt requested, with the regional director for the Division of Supervision for the region in which the state savings association's principal office is located at least 60 days prior to the initiation of the level of the activity described in the notice. The notice must contain the same information required by § 303.13(b)(1). The regional director may request such other information as the regional director deems appropriate. A state savings association that files a 60-day notice may initiate the level of activity as described in its notice 60 days after the FDIC accepts the notice as complete, or 60 days after the FDIC accepts as complete the additional information, if any, that has been requested *provided that* the association is in compliance with the fully phased-in capital standards prescribed in section 5(t) of HOLA and *provided that* the FDIC does not, prior to that date, pose an objection to the association doing so. A state savings association may inititate the level of activity described in its notice prior to the expiration of the 60-day period if so notified. The continued conduct of the activities as described in the notice is conditioned upon the association's continued compliance with the fully phased-in capital standards and the FDIC's continued non-objection to those activities.

* * * * *

7. Section 303.13 is amended by adding a new paragraph (f)(4) to read as follows:

§ 303.13 Applications and notices by savings associations.

* * * * *

(f) * * *

(4) Section 303.13(f)(1) notwithstanding, an insured savings assocaition may establish or acquire one or more subsidiaries whose sole purpose is to hold interests in real property acquired by the savings association that fit the description in § 303.13(a)(5)(ii) provided that the savings association files a written notice, return receipt requested, with the regional director for the Division of Supervision for the region in which the savings association's principal office is located indicating that the association intends to establish or acquire one or more subsidiaries that will be engaged solely in the disposition of such property. Notice must be received by the regional director at least 30 days prior to the establishment or acquisition of any such subsidiary. An association that has filed a notice pursuant to this paragraph may thereafter establish or acquire additional such subsidiaries provided that each time within 14 days after doing so the association notifies the regional director in writing. The notice shall identify the savings association, give the date of the initial notice, identify the new subsidiary, and state the value of the property at the time it was transferred to the subsidiary.

* * * * *

§ 303.13 [Amended]

8. Section 303.13 is further amended by inserting at the end thereof the following parenthetical text:

(Approved by the Office of Management and Budget under control number 3064-0104)

By Order of the Board of Directors. Dated at Washington, DC, this 11th day of September 1990.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 90-21885 Filed 9-14-90; 8:45 am]

BILLING CODE 6714-01-M

12 CFR Part 357

RIN 3064-AB08

Determination of Economically Depressed Regions

AGENCY: Federal Deposit Insurance Corporation ("FDIC").

ACTION: Final rule.

SUMMARY: The FDIC is adopting a rule defining "economically depressed regions" for purposes related to FDIC assistance for certain troubled thrift institutions prior to the appointment of a receiver or conservator. The FDIC is required by law to consider proposals for direct financial assistance by Savings Association Insurance Fund members whose offices are located in an "economically depressed region" and which satisfy certain other specified criteria. The purpose of the rule is to designate "economically depressed regions" in order that the FDIC may implement its policy of open thrift assistance. The final rule is identical to an interim rule adopted by the FDIC on March 20, 1990, designating eight individual states as economically depressed regions.

EFFECTIVE DATE: October 17, 1990.

FOR FURTHER INFORMATION CONTACT: Richard A. Brown, Financial Economist, Financial and Industry Analysis Section, Division of Research and Statistics, (202) 898-3927; Daniel M. Gautsch, Chief, Assistance Transactions Section, Division of Supervision, (202) 898-6912; Christine M. Svevar, Legal Division, (202) 898-3727; Federal deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Discussion

A. The Interim Rule

The FDIC has authority under section 13(c) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)) ("FDI Act") to provide financial assistance to prevent the default of an insured depository institution. Under section 13(k)(5) of the FDI Act (12 U.S.C. 1823(k)(5)), the FDIC must consider proposals for eligible Savings Association Insurance Fund ("SAIF") member institutions to receive assistance pursuant to section 13(c) prior to the existence of grounds for the appointment of a conservator or receiver for the institution. Section 13(k)(5) contains nine criteria for such eligibility. One of the criteria is that an institution's offices are located in an "economicallly depressed region." As set forth in the FDIC Policy Statement on Open Thrift Assistance (FIL-27-90 (Apr. 6, 1990)), applicants under section 13(k)(5) generally are required to meet the fourteen criteria under section 13(c) in addition to the statutory criteria of section 13(k)(5). The dual statutory arrangement for open thrift assistance, therefore, in no way precludes qualified institutions whose offices are not located in an "economically depressed region" from proposing and receiving open thrift assistance.

The term "economically depressed region" is defined in section 13(k)(5)(C) to mean "any geographical region which the [FDIC] determines by regulation to be a region within which real estate values have suffered serious decline due to severe economic conditions, such as a decline in energy or agricultural values or prices."

On March 27, 1990, the FDIC issued as an interim rule 12 CFR 357.1 (55 FR 11160), which defined "economically depressed regions" for purposes of section 13(k)(5) of the FDI Act. In determining economically depressed regions, the FDIC considered the following factors:

(1) The ratio of poor quality real estate assets to total assets in the portfolios of banks;

(2) The ratio of poor quality real estate assets to total assets in the portfolios of thrifts; and

(3) Unemployment figures.

The statewide percentages of impaired real estate assets for banks and thrifts and unemployment rates were analyzed with reference to national levels.

Having applied the factors described above, the FDIC's interim rule designated eight individual states as "economically depressed regions" for purposes of section 13(k)(5) of the FDI Act. They are: Alaska, Arizona, Arkansas, Colorado, Louisiana, New Mexico, Oklahoma, and Texas.

In adopting the interim rule, the FDIC also requested comment on all aspects of the rule. The FDIC solicited comment on the interim rule for a 60-day period, which ended May 29, 1990. In particular, the FDIC invited comment on two specific issues:

1. The interim rule designates eight different states as economically depressed regions. Should "region" be subject to a smaller or larger geographical demarcation? If so, on what basis?

2. The FDIC has applied certain economic factors, such as indicators of decreased real estate values and unemployment rates, in its determination of "economically depressed regions." Should the FDIC consider other factors in its determination? If so, what are the appropriate factors which would indicate that a region is economically depressed?

B. Summary of Comments

The FDIC received 27 letters in response to its request for comments on the interim rule. These letters expressed the views of depository institutions, both banks and thrifts, governmental organizations, financial and realty trade groups and certain members of Congress. The majority of letters specifically addressed the issues presented by the FDIC and outlined above. Approximately eleven commentators urged the inclusion of their respective states within the definition of "economically depressed region."

1. Appropriate Region

Approximately eight letters expressed the view that region should be subject to a smaller geographical demarcation than that of the state designation. Four commentators emphasized the discretion of the FDIC to define region in either smaller or broader terms and urged the FDIC to do so by adopting a case-by-case methodology. The reason most often cited in support of a substate designation was the overinclusiveness and underinclusiveness of the state designation. For instance, overinclusiveness occurs as an economically depressed state contains within it many areas which are economically viable, or alternatively, underinclusiveness occurs as an area satisfies the economic criteria employed by the rule but is not located within a state designated as economically depressed. These same factors also supplied the basis for suggestions that the FDIC adopt a rule specifying only the pertinent factors and allowing determinations on a case-by-case basis. Examples of agency programs which utilize a depressed region analysis based on socio-economic factors were cited by some commentators, e.g., Urban Development Action Program of the Department of Housing and Urban Development (HUD).

One commentator expressed full support for the designation of "economically depressed region" in terms of state boundaries because of the unavailability and/or inconsistency of data on the substate level. Another commentator expressed that in order to administer assistance funds to the most depressed economies, the state designation, if not the county, should be used.

2. Economic Factors

Eleven comment letters specifically addressed the propriety of the factors employed by the FDIC to determine "economically depressed region." Approximately nine of these comments noted that the focus of the FDIC's analysis was depressed real estate values. The emphasis of the comments, however, was that the FDIC should consider any and all economic criteria which affect real estate values. The commentators suggested, therefore, additional factors to supplement the FDIC's analysis such as per capita income, percent of families below the poverty level, migration, bankruptcies, construction starts, building permits, average real estate sale prices, and the state's bond rating. Approximately ten other commentators presented specific economic data, including data relative to the additional criteria mentioned above, in order to show that their respective states belong within the economically depressed designation.

C. Discussion of Comments

As pointed out by many of the commentators, the FDIC recognizes that Congress did not require that the FDIC define "economically depressed region" in terms of state boundaries. However, neither does the statute preclude the use of state designations. As a practical matter, there are advantages and disadvantages to any of the various approaches that could be adopted. While the FDIC clearly recognizes that declines in real estate values due to economic conditions cannot be assumed to coincide precisely with state boundaries, we believe that designation in terms of individual states achieves a reasonable balance with respect to the risk that any approach is likely to result in either overly broad or overly narrow designations. Moreover, it offers clear advantages with respect to relevant data. Were regions covering areas larger than individual states to be delineated (particularly if such regions were to include only portions of some states), problems would be likely to arise regarding data availability. State level data are readily available. In addition, state wide data may suffer from fewer shortcomings related to such elements as sample size and demographic anomalies than data for substate areas, such as counties and/or Metropolitan Statistical Areas (MSAs).

Furthermore, the state level approach, rather than a more local approach, is supported by economic factors indicative of depressed regions. For instance, the economic effects of a downturn in a given industry are likely to arise initially wherever that industry is present, and subsequently affect corresponding regional markets for labor, intermediate goods, raw materials and real estate. While the regions encompassed by these markets may not coincide precisely with state boundaries, they are not likely to be limited to one or a few isolated counties.

Consistent with the provisions of section 13(k)(5)(C), the primary focus of the FDIC's determination of "economically depressed region" is declining real estate values. For purposes of the final rule, the FDIC's economic analysis will continue to measure these declines in terms of impaired real estate assets for banks and thrifts. These factors are effective indicators of serious declines in real estate values, as necessitated by the statutory test for "economically depressed region" under section 13(k)(5)(C).

The FDIC has carefully considered the comments suggesting that other economic factors, in addition to impaired real estate values for depository institutions and unemployment data, be utilized in delineating "economically depressed region." The FDIC has decided to use the same factors employed in connection with the interim rule. The statute does not require consideration of—nor would it be feasible to consider—all the factors which might impact upon real estate values. Other economic indicators such as per capita income, poverty levels and retail sales, which were not employed with regard to the interim rule, are not as relevant to the analysis mandated by section 13(k)(5)(C). In addition, such factors are dependent in part on demographic factors and household labor and consumption decisions, which are even less relevant.

The remainder of this discussion responds to specific concerns raised by some of the comment letters.

1. Additional Economic Criteria

Some of the additional economic criteria suggested by the comments suffer from being very volatile indicators. Bankruptcies, building permits and construction starts vary widely from month to month during the course of the business cycle. Real estate price series are subject to problems related to changes in the quality mix of real estate properties, a lack of data availability for specific areas and types of properties, and difficulties in comparing values between different regions. Furthermore, other suggested indicators, such as foreclosures, the level of assets held by the RTC and vacancy rates, are likely to coincide to a large degree with the criteria employed by the final rule, and there is no reason to suspect that the suggested measures are superior indicators.

The concerns of one commentator addressed the possibility that the use of asset quality ratios reflects differences in management and underwriting practices as well as differences in economic performance. The FDIC recognizes this concern and maintains that management and underwriting deficiencies on a regional level should not be rewarded through the FDIC's policy of bank and thrift assistance. The inclusion of the unemployment rate confirms the presence of economic problems apart from management and underwriting deficiencies. Furthermore, the conditions placed on applicants for open thrift assistance are designed to exclude managers that participated in sloppy underwriting and speculative lending. The final rule continues to include designations based on unemployment rates as indicators of severe economic conditions. The FDIC recognizes that employment figures could be used in place of unemployment rates; however, the latter is a more commonly accepted gauge of regional or national economic performance.

2. Historical Perspective

In its determination of "economically depressed regions," the FDIC will continue to analyze indicators relative to historical data. This issue was also addressed specifically by two comments. One commentator expressed the view that no reference to current economic conditions nor any particular time period is required by the statute. Another comment noted Congress' use of the phrase "serious decline" mandated that historical data be an integral part of the determination process. Although section 13(k)(5)(C) does not expressly require that chronic economic conditions experienced by under-developed states should fall outside the purview of the economically depressed designation, it is more likely that regions experiencing substantial downturns in economic conditions, sufficient to reflect "serious decline," were intended by the statute to be so designated.

3. Case-by-Case Methodology

The FDIC has considered the comments which suggest that its determination of "economically depressed region" be made on a case-by-case basis. The examples provided by some of the commentators indicate how such a methodology could be

achieved, but the FDIC does not find them persuasive as reasons for changing its methodology. The designation of an identifiable state as a region is a reasonable approach that satisfies the requirements of the statute.

The designation of specific states also reduces the extent to which institutions may be forced to rely upon consultants and produce costly and redundant analysis to argue for depressed region status despite the fact that the designation, in and of itself, does not guarantee open thrift assistance. The FDIC recognizes the possibility that areas with healthy economies may exist among depressed areas within the same state and/or depressed areas may exist outside designated states. However, a thrift institution which is not within a region designated as "economically depressed" is not precluded from proposing and receiving open assistance and may apply for open assistance under section 13(c).

D. The Final Rule

The FDIC has carefully reviewed the comments received in response to its interim rule and has decided to adopt the interim rule, without change, as a final regulation. The FDIC intends to revisit annually the criteria used to identify states for designation as "economically depressed," as well as the list of states so designated, and may make revisions as circumstances warrant.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the final rule will not have a significant economic impact on a substantial number of small entities. The rule does not impose regulatory compliance requirements on depository institutions of any size.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) is inapplicable to the final rule as it does not establish any new record keeping or collection of information requirement or amend any such existing requirement.

List of Subjects in 12 CFR Part 357

Bank deposit insurance, Savings associations.

PART 357—DETERMINATION OF ECONOMICALLY DEPRESSED REGIONS

Accordingly, the interim rule adding 12 CFR part 357, which was published at 55 FR 11160 on March 27, 1990, is adopted as a final rule without change.

By order of the Board of Directors, dated at Washington, DC, this 11th day of September, 1990.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 90-21886 Filed 9-14-90; 8:45 a.m.]

BILLING CODE 6714-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90-NM-48-AD; Amendment 39-6739]

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 727 series airplanes, which currently requires inspection and repair, if necessary, of the wing center section front spar web. That AD provided for two different optional modifications which, if incorporated, terminated the required repetitive inspections. This action requires additional inspections of airplanes modified with angle stiffeners, one of the optional modifications. This amendment is prompted by several reports of cracking found after the modification was installed. This condition, if not corrected, could result in loss of cabin pressure.

EFFECTIVE DATE: October 22, 1990.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Kathi N. Ishimaru, Seattle Aircraft Certification Office, Airframe Branch, ANM-120S; telephone (206) 227-2778. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 86-18-03, Amendment 39-5384 (51 FR 28066, August 5, 1986), applicable to Boeing Model 727 series airplanes, to require additional inspections of wing center section front spar webs modified with angle stiffeners, was published in the **Federal Register** on April 23, 1990 (55 FR 15243).

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

One commenter stated that accomplishment of the modifications specified in proposed paragraph E. should terminate the repetitive inspection requirements of paragraph G. The FAA concurs and has revised the final rule to add the inspections specified in paragraph G. to the list of those which are terminated by accomplishing paragraph E.

One commenter stated that the proposed post-modification inspections were unjustified since no cracking has yet been found on modified aircraft in this commenter's fleet. Although this commenter has not found post-modification cracking, four other operators have experienced this problem. Due to the other operator's experiences, the FAA has determined that the additional inspections are necessary.

Paragraph H. of the final rule has been revised to specify the current procedure for submitting requests for approval of alternate means of compliance.

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

There are approximately 191 Model 727 series airplanes of the affected design in the worldwide fleet. It is estimated that 153 airplanes of U.S. registry will be affected by this AD, that it will take approximately 8 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $48,960.

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 "major rule" under Executive Order 12291; (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 is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding Amendment 39-5384 (51 FR 28066, August 5, 1986), AD 86-18-03, with the following new airworthiness directive:

Boeing: Applies to Mode 727 series airplanes, listed in Boeing Service Bulletin 727-57-0107, Revision 6, dated November 22, 1989, certificated in any category. Compliance required as indicated, unless previously accomplished.

To detect cracks in the wing center section front spar web, accomplish the following:

A. Except as provided in paragraphs F. and G. of this AD, prior to the accumulation of 15,000 landings since manufacture, or prior to the accumulation of 500 additional landings after September 11, 1986 (the effective date of AD 86-18-03, Amendment 39-5384), whichever occurs later, visually inspect the wing center section for cracks in accordance with Figure 1 of Boeing Service Bulletin 727-57-107, Revision 6, dated November 22, 1989 (hereafter referred to as "the service bulletin"). If no cracks are detected, repeat the visual inspection at intervals not to exceed 1,000 landings.

B. If a single crack less than two inches in length is detected on either side of body buttock line (BBL) 0.0, before further flight, the crack must be stop-drilled at each end in accordance with the Boeing 727 Structural Repair Manual (SRM), and visually reinspected at intervals not to exceed 10 landings for crack growth beyond the stop holes. If crack growth occurs beyond any stop hole, accomplish the procedures required by paragraph C. or D. of this AD.

C. If a single crack between two and five inches in length is detected on either side of BBL 0.0, before further flight, the crack must be stop-drilled at each end in accordance with the Boeing 727 SRM, and the crack must be repaired in accordance with Boeing Drawing Number 69-62491-2. Visually reinspect the affected area at intervals not to exceed 200 landings for crack growth beyond any stop hole. If crack growth occurs beyond any stop hole, accomplish the procedures requried by paragraph D. of this AD.

D. If any crack greater than five inches is detected, or if more than one crack on either side of BBL 0.0 is detected, they must be stop-drilled in accordance with the Boeing 727 SRM, and modified in accordance with paragraph E. of this AD.

E. To terminate the repetitive inspection requirements of paragraphs A., B., C., F., and G. of this AD, accomplish one of the following:

1. Accomplish the modification described in part I.D. of the Accomplishment Instructions of the service bulletin; or

2. Accomplish the interim modification described in part I.E. of the Accomplishment Instructions of the service bulletin. Prior to the accumulation of 12,000 landings after the incorporation of the interim modification, eddy current inspect the fastener and any stop holes for crack growth, oversize the holes, stop-drill any new cracks in accordance with the Boeing 727 SRM, and incorporate the terminating modification in accordance with part I.E. of the Accomplishment Instructions of the service bulletin.

F. Airplanes that have been modified prior to accumulating 20,000 landings, by installing angles back-to-back with existing stiffeners, must be inspected prior to the accumulation of 12,000 landings since the modification or within the next 1,000 landings after the effective date of this Amendment, whichever occurs later, in accordance with Figure 1 of the service bulletin. If cracks are found, before further flight, accomplish paragraph B., C., or D. of this AD, as appropriate. If no cracks are found, reinspect thereafter at intervals not to exceed 1,000 landings.

G. Airplanes that have been modified after accumulating more than 19,999 landings, by installing angles back-to-back with existing stiffeners must be inspected within the next 1,000 landings after September 11, 1986 (the effective date of Amendment 39-5384), in accordance with Figure 1 of the service bulletin. If cracks are found, before further flight, accomplish paragraph B., C., or D. of this AD, as appropriate. If no cracks are found, reinspect thereafter at intervals not to exceed 1,000 landings.

H. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Seattle Aircraft Certification Office, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments of concurrence to the ACO.

I. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This admendment becomes effective October 22, 1990.

Issued in Renton, Washington, on September 6, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-21845 Filed 9-14-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 90-NM-151-AD; Amendment 39-6736]

Airworthiness Directives; Boeing Model 747-400 and 767-300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747-400 and 767-300 series airplanes, which requires a one-time inspection of cargo fire protection plumbing, replacement of the fire extinguisher discharge orifices, if necessary, and reporting findings of improper configurations to the FAA. This amendment is prompted by a report from the manufacturer that fire protection components may have been incorrectly installed during production. This condition, if not corrected, could result in insufficient extinguishant concentration or duration in the event of cargo compartment fire.

EFFECTIVE DATE: October 1, 1990.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane

Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: G.M. Dail, Seattle Aircraft Certification Office, Systems & Equipment Branch, ANM-130S telephone (206) 227-2674. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: The FAA has received a report from the manufacturer indicating that the cargo compartment fire extinguishing discharge orifices on five Boeing Model 747-400 series airplanes may have been incorrectly configured in production. The installation of incorrect fire extinguisher discharge orifices could result in inadequate fire protection. If the orifice size is smaller than required, the quantity of agent discharged into the cargo compartment may be insufficient to knock down the fire. If the orifice is larger than required, the duration of fire protection would be shortened.

Since Model 767-300 series airplanes use this same orifice, the possibility exists for incorrect configurations to have been installed on those models as well.

The FAA has reviewed and approved Boeing Alert Service Bulletins 747-26A2170 and 767-26A0068, both dated July 5, 1990, which describe procedures for a one-time inspection and, if necessary, replacement of the fire extinguisher discharge orifices with the correct part.

Since this condition is likely to exist on other airplanes of the same type design, this AD requires a one-time inspection of the cargo fire protection plumbing, and replacement of the fire extinguisher discharge orifices with correct parts, if necessary, in accordance with the service bulletins previously described. Additionally, operators are required to submit a report to the FAA of any findings of improper configurations.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

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 (Pub. L. 96-511) and have been assigned OMB Control Number 2120-0056.

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.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 27, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

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

Boeing: Applies to Model 747-400 and 767-300 series airplanes listed in Boeing Alert Service Bulletins 747-26A2170 and 767-26A0068, both dated July 5, 1990, certificated in any category. Compliance required within 30 calendar days after the effective date of this AD, unless previously accomplished.

To prevent insufficient cargo fire protection, which could result in significant damage to the airplane in the event of a cargo compartment fire, accomplish the following:

A. Inspect the cargo compartment fire extinguisher orifices to determine the part number installed, in accordance with Boeing Alert Service Bulletins 747-26A2170 and 767-26A0068, both dated July 5, 1990, as appropriate. If the part number does not match any number specified as the correct number in the service bulletin, prior to further flight with cargo in that compartment, replace with a correct part number.

B. Within 10 days after the inspection required by paragraph A. of this AD, if configuration discrepancies are discovered, submit a report of findings to the Manager, Seattle Manufacturing Inspection District Office, ANM-108S, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. The report must include the airplane serial number.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Seattle ACO.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplane to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seatttle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

This amendment becomes effective October 1, 1990.

Issued in Renton, Washington, on September 6, 1990.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-21844 Filed 9-14-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-NM-254-AD; Amendment 39-6742]

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 727 series airplanes, which requires inspection to detect corrosion in the aft cargo compartment belly skin panels,

doublers, and triplers, and repair, if necessary. This amendment is prompted by reports of corrosion in the cold bonded skin, doubler, and triplers in the skin panels beneath the aft cargo compartment floor. This condition, if not corrected, could result in degrading the skin panels' structural integrity and could lead to possible depressurization of the cabin.

DATES: Effective October 23, 1990.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Kathi Ishimaru, Seattle Aircraft Certification Office, Airframe Branch, ANM-120S; telephone (206) 227-2778. Mailing address: FAA, Northwest Mountain Region, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to Boeing Model 727 series airplanes, which requires inspection to detect corrosion in the aft cargo compartment belly skin panels, doublers, and triplers, and repair, if necessary, was published in the **Federal Register** on January 19, 1990 (55 FR 1834).

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

One commenter requested an extension of the initial internal and external inspection thresholds, provided internal and ultrasonic inspections were accomplished within the last 30 months. The FAA does not concur because the commenter's suggestion does not include an inspection to determine the amount of material loss. This inspection is necessary to determine the structural integrity of the skin panel.

One commenter requested that the internal inspection repeat interval be increased from the proposed 36 months to 48 months. The request was based on the operator's experience of inspecting every 48 months and not finding significant levels of corrosion. The FAA does not concur with the request because the rate of corrosion can vary from one operator to the next. It is not appropriate to increase the inspection interval for all affected airplanes based on the inspection program of one operator.

One commenter stated that the proposed AD is not needed, since the FAA has already proposed mandatory repetitive corrosion inspections of the entire airplane in a separate rulemaking action, Docket 89-NM-268-AD (55 FR 31395, August 2, 1990). The FAA does not concur that this AD action is not necessary. The problem of disbonding and corrosion of doublers and triplers is limited to a specific group of airplanes. The inspections required for these airplanes are not contained in the proposed requirements of Docket 89-NM-268-AD; therefore, an additional AD is required.

One commenter stated that the repair instructions were ambiguous because repairs aft of Body Station 1080 were not addressed. The FAA concurs and paragraph D. has been revised to provide instructions for all the inspection areas.

Further, the FAA has determined that paragraph D. of the proposed rule is unclear and may give the impression that a repair is required even if there are no voids present in the corrosion area. Paragraph D. has been revised to add the stipulation of voids being present before repair is required. Paragraph H. of the final rule has been revised to specify the current procedure for submitting requests for approval of alternate means of compliance.

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

There are approximately 550 Model 727 series airplanes of the affected design in the worldwide fleet. It is estimated that 430 airplanes of U.S. registry will be affected by this AD, that it will take approximately 402 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $6,914,400.

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 "major rule" under Executive Order 12291; (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 is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§39.13 [Amended]

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

Boeing: Applies to Model 727 series airplanes, listed in Boeing Service Bulletin 727-53-0085, Revision 3, dated September 28, 1989, certificated in any category. Compliance required as indicated, unless previously accomplished.

To detect corrosion in the aft cargo compartment belly skin panels doublers, and triplers, accomplish the following:

A. Within the next 15 months after the effective date of this AD, conduct an internal and external close visual inspection for corrosion of the skin panels, doublers, and triplers located between body stations (BS) 950 and BS 1183 and stringers S-26L and S-26R. Perform the inspections in accordance with Parts II.A and II.B of Boeing Service Bulletin 727-53-0085, Revision 3, dated September 28, 1989 (hereafter referred to as "the service bulletin"). Repeat the external inspection at intervals not to exceed 15 months. Repeat the internal inspection and apply corrosion inhibitor at intervals not to exceed 36 months.

B. If no corrosion or minor corrosion, as defined in Part II.A.2. of the service bulletin, is detected, prior to further flight, perform an ultrasonic inspection for voids in accordance with Part II.C of the service bulletin.

1. If no voids and no corrosion are detected, prior to further flight, reseal the

doublers and triplers in accordance with Figure 3 of the service bulletin or replace the affected skin panel in accordance with Part VI. of the service bulletin.

2. If voids or minor corrosion are detected, perform a Low Frequency Eddy Current (LFEC) inspection, to determine the amount of material loss, in accordance with Part II.D. of the service bulletin.

C. If major corrosion, as defined in Parts II.A.3. or II.B. of the service bulletin, is detected, or material loss is 10 percent or more of the skin, doubler, or tripler thickness, prior to further flight, repair or replace the affected skin panel in accordance with Parts V. or VI. of the service bulletin.

D. If material loss is less than 10 percent of the skin, doubler, or tripler, and voids are present, prior to further flight, repair in accordance with Parts III.B., III.D., IV.B., V., or VI. of the service bulletin.

E. For repairs made in accordance with Parts III. or IV. of the service bulletin, within 15 months after the repair is made, perform a LFEC inspection for corrosion progression in accordance with Part II.D. of the service bulletin. Repeat the inspections at intervals not to exceed 15 months.

F. Blind fasteners installed in accordance with Part IV. of the service bulletin are to be used as an interim repair only. The blind fasteners have a life of 10,000 landings before they must be replaced with solid fasteners in accordance with Part IV. of the service bulletin. The blind fasteners must be inspected for loose or missing fasteners after accumulating 3,000 landings since installation or 1,000 landings after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 2,500 landings. Blind fasteners installed prior to the effective date of this AD must be replaced prior to accumulating 10,000 landings or within 3,000 landings after the effective date of this AD, whichever occurs later.

G. Replacement of the skin panels in accordance with Part VI. of the service bulletin constitutes terminating action for the inspection requirements of this AD for those panels.

H. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Seattle Aircraft Certification Office (ACO) and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the ACO.

I. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

This amendment becomes effective October 23, 1990.

Issued in Renton, Washington, on September 7, 1990.

Leroy A. Keith

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-21840 Filed 9-14-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 90-C-30-AD; Amendment 39-6741]

Airworthiness Directives; Christen Industries, Inc., Model A-1 (Husky) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, request for comments.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to certain Christen Industries, Inc., Model A-1 (Husky) airplanes. This action requires periodic inspections and subsequent modification of the front seat. A recent fatigue failure of the front seat resulted in the pilot falling backwards against the rear seat flight controls with subsequent loss of control of the airplane. The actions specified in this AD will prevent failure of the front seat back assembly.

DATES: Effective October 15, 1990. Comments for inclusion in the Rules Docket must be received on or before November 15, 1990.

ADDRESSES: Christen Industries, Inc., Service Bulletin No. 2, dated July 7, 1990, applicable to this AD, may be obtained from Christen Industries, Inc., P.O. Box 547, Afton, Wyoming, 83110, Telephone (307) 886-3151. This information may also be examined at the Rules Docket at the address below. Send comments on the AD in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 90-CE-30-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. Roman T. Gabrys, Denver Aircraft Certification Field Office, 2390 Syracuse Street, Denver, Colorado 80207, Telephone (303) 398-0839.

SUPPLEMENTARY INFORMATION: This AD is prompted by a report that the front seat of a Christen Industries, Inc., Model A-1 airplane failed causing the pilot to fall backwards, jamming the rear seat flight controls. Examination of the seat revealed a fatigue crack in the welded steel tubular front seat back assembly. The pilot in this case was able to terminate the takeoff roll without further incident. However, if this were to happen during a critical phase of flight, possible loss of flight control could occur resulting in the loss of the airplane.

An inspection procedure of the affected area for cracks, along with a reinforcement kit, has been developed to prevent failure of the front seat assembly. The reinforcement kit consists of bolt-on side braces to provide additional support of the seat back. Christen Industries issued Service Bulletin No. 2, dated July 25, 1990, which recommends immediate inspection of the affected area with preflight checks before each flight until the reinforcement kit is installed.

Since the FAA has determined that the unsafe condition described herein is likely to exist or develop in other Christen Industries, Inc., Model A-1 (Husky) airplanes, an AD is being issued requiring periodic inspections for cracks in the seat back assembly and subsequent installation of the seat reinforcement kit.

Because an emergency condition exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical and contrary to the public interest, and good cause exists for making this amendment effective in less than 30 days.

Although this action is in the form of a final rule, which involves requirements affecting immediate flight safety and, thus, was not preceded by notice and public procedure, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered and this rule may be amended in light of the comments received.

Comments that provide a factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effectiveness of the AD and determining whether additional rulemaking is needed. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might

suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket at the address given above. A report, summarizing each FAA-public contact concerned with the substance of this AD, will be filed in the Rules Docket.

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.

The FAA has determined that this regulation is an emergency regulation and is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

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

Christen Industries, Inc: Applies to Model A-1 (Husky), (Serial Numbers 1001 thru 1125) airplanes, certificated in any category.

Compliance: Required as indicated unless already accomplished.

To prevent failure of the forward seat back, which could result in loss of control of the airplane, accomplish the following:

(a) Within the next 25 hours time-in-service (TIS) after the effective date of this AD, visually inspect both sides of the front seat back for cracks using a 10x glass on the weld area where the diagonal support tube Part Number (P/N) 35039-008 is attached to the back support tube P/N 35034-005.

(1) If no cracks are found, reinspect this welded area at intervals of 25 hours TIS thereafter.

(2) If cracks are found, prior to further flight modify the seat by the installation of the seat reinforcement kit as specified in Christen Industries Inc., Service Bulletin No. 2, dated July 25, 1990.

(b) Within the next 100 hours TIS after the effective date of this AD, unless accomplished per the instructions in paragraph (a)(2) of this AD, modify the airplane by installing the seat reinforcement kit as specified by Christen Industries Inc., Service Bulletin No. 2, dated July 25, 1990. The inspections required by paragraph (a) of this AD are no longer required when the airplane has been modified with the seat reinforcement kit.

(c) Airplanes may be flown in accordance with FAR 21.197 to a location where the AD may be accomplished.

(d) An alternate method of compliance or adjustment of the initial or repetitive compliance times, which provides an equivalent level of safety, may be approved by the Manager, Denver Aircraft Certification Field Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Maintenance Inspector, who may add comments and then send it to the Manager, Denver Aircraft Certification Field Office.

All persons affected by this directive may obtain copies of the document referred to herein upon request to Christen Industries, Inc., P.O. Box 547, Afton, Wyoming 83110, Telephone (307) 886-3151, or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on October 15, 1990.

Issued in Kansas City, Missouri, on September 7, 1990.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-21841 Filed 9-14-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 90-NM-50-AD; Amendment 39-6738]

Airworthiness Directives; McDonnell Douglas Model DC-10-40 Series Airplanes Equipped With Engines Installed in Accordance With Rohr Supplemental Type Certificate (STC) SA3139WE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all McDonnell Douglas Model DC-10-40 series airplanes equipped with engines installed in accordance with Rohr Supplemental Type Certificate (STC) SA3139WE, which requires the inspection and replacement of the Rohr Common Nacelle System (CNS) forward engine mount cross beam with an improved part. This amendment is prompted by a report of a flaw found during routine maintenance, which has been attributed to a forging lap flaw and improper heat treatment. This condition, if not corrected, could result in the loss of structural integrity of the CNS forward engine mount cross beam.

EFFECTIVE DATE: October 22, 1990.

ADDRESSES: The applicable service information may be obtained from Rohr Industries, Inc., P.O. Box 878, Chula Vista, California 92012. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Ms. Dorenda Baker, Aerospace Engineer, Los Angeles Aircraft Certification Office, Airframe Branch (ANM-120L), FAA, Northwest Mountain Region, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5231.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to McDonnell Douglas Model DC-10-40 series airplanes, which requires the inspection and replacement of the Rohr Common Nacelle System (CNS) forward engine mount cross beam with an improved part, was published in the Federal Register on June 21, 1990 (55 FR 25316).

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 sole commenter, the Air Transport Association (ATA) of America, fully supported the proposed rule.

Paragraph C. of the final rule has been revised to specify the current procedure for submitting requests for approval of an alternate means of compliance.

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

There are approximately 20 Model DC-10-40 series airplanes of the affected design in the worldwide fleet. Currently, there are no airplanes of this model and design on the U.S. register; therefore, there would be no cost impact of this AD on U.S. operators. However, should an affected airplane be placed on the U.S. register in the future, it would require approximately 5.2 manhours to accomplish the required actions, at an average labor charge of $40 per manhour. Required parts would be supplied by Rohr Industries at no charge to operators. Based on these figures the total cost impact of this AD would be $208 per airplane.

The regulations adopted herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this 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 "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

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

McDonnell Douglas: Applies to all Model DC-10-40 series airplanes equipped with engines installed in accordance with Rohr STC SA3139WE, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent the loss of structural integrity of the Rohr Common Nacelle System (CNS) forward engine mount cross beam, accomplish the following:

A. Prior to the accumulation of 10,000 cycles or within 1,500 cycles after the effective date of this amendment, whichever occurs later, inspect and rework the CNS forward engine mount cross beam, Rohr part number 196-0328-1 or 196-0328-501, and replace, as specified below, in accordance with Rohr Alert Service Bulletin No. MDC-CNS A71-33, Revision 1, dated April 27, 1988.

1. If no cracks are found and the hardness is equal to or greater than C40 on the Rockwell hardness scale,

a. Within 3,000 cycles after the initial inspection, and thereafter at intervals not to exceed 3,000 cycles, conduct repetitive magnetic particle inspections in accordance with Rohr Alert Service Bulletin MDC-CNS A71-33, Revision 1, dated April 27, 1988, and

b. Prior to the accumulation of 35,000 cycles on the part, remove the CNS forward engine mount cross beam, Rohr part number 196-0328-1 or 196-0328-501, and replace it with Rohr part number 196-1300-501, in accordance with Rohr Service Bulletin No. MDC-CNS 71-33, dated July 25, 1988.

2. If a crack is found or the hardness is below C40 on the Rockwell hardness scale, prior to further flight, remove the CNS forward engine mount cross beam, Rohr part number 196-0328-1 or 196-0328-501, and replace it with Rohr part number 196-1300-501, in accordance with Rohr Service Bulletin No. MDC-CNS 71-33, dated July 25, 1988.

B. The CNS forward engine mount cross beam, Rohr part number 196-1300-501, is life limited and must be replaced prior to the accumulation of 46,667 cycles on the part.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be submitted directly to the Manager, Los Angeles ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Los Angeles ACO.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Rohr Industries, Inc., P.O. Box 878, Chula Vista, California 92012. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or at the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

This amendment becomes effective October 22, 1990.

Issued in Renton, Washington, on September 6, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-21846 Filed 9-14-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 90-NM-169-AD; Amendment 39-6734]

Airworthiness Directives; McDonnell Douglas Model DC-8F, -61F, -62F, -63F, -71F, -72F, and -73F Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC-8 series airplanes, which requires torque testing of the cargo door latch spool fitting attach bolts, and retorquing or replacement of the bolts, if necessary. This amendment is prompted by a report of broken latch spool fitting attach bolts found on a Model DC-9 series airplane. This condition, if not corrected, could result in inadvertent opening of the main cargo door in flight, and subsequently lead to loss of pressurization and reduced controllability of the airplane.

EFFECTIVE DATE: October 1, 1990.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846-0001, Attention: Business Unit Manager, Technical Publications, C1-HDR (54-60). This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: John Cecil, Aerospace Engineer, Los Angeles Aircraft Certification Office, ANM-122L, FAA, Northwest Mountain Region, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5322.

SUPPLEMENTARY INFORMATION: On August 3, 1990, the FAA issued telegraphic AD T90-16-51, applicable to McDonnell Douglas Model DC-9 series airplanes, which requires a one-time torque test of cargo door spool fitting attach bolts, and retorquing or replacement of the bolts, if necessary. The torque test ensures the security of the latch spool fitting to the door jamb. That action was prompted by a report of a broken cargo door latch spool fitting attach bolt found on a Model DC-9 series airplane. A torque check of the remaining bolts on that airplane revealed that 5 out of 28 bolts were broken. Failure of the bolts is attributed to stress corrosion. The attach bolts on the Model DC-8 are essentially the same as on the Model DC-9; thus, the same potential for failure exists for the Model DC-8. This condition, if not corrected, could result in inadvertent opening of the main cargo door in flight, and subsequently lead to loss of pressurization and controllability of the airplane.

The FAA has reviewed and approved McDonnell Douglas Service Bulletin 52-82, Revision 2, dated January 22, 1990, which describes procedures for torque testing of the upper cargo door latch spool fitting attach bolts, and retorquing or replacement of the bolts, as necessary.

Since this situation is likely to exist or develop on other airplanes of the same type design, this AD requires a one-time torque test of the cargo door latch spool fitting attach bolts, and retorquing or replacement of the bolts, if necessary, in accordance with the service bulletin previously described.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

This is considered interim action. The FAA may consider further rulemaking to require additional corrective action to ensure that Model DC-8 cargo door latch spool fitting attach bolts will not fail due to stress corrosion.

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.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

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

McDonnell Douglas: Applies to all McDonnell Douglas Model DC-8F, -61F, -62F, -63F, -71F, -72F, and -73F series airplanes, certificated in any category. Compliance required as indicated.

To prevent inadvertent opening of the main cargo door in flight, a condition which could result in loss of pressurization and control of the aircraft, accomplish the following:

A. Except as provided in paragraph B. of this AD, within 14 calendar days after the effective date of this AD, unless previously accomplished within the last 30 days, remove sealant in accordance with Figure 1, Step 2, and perform the torque test on the cargo door latch spool fitting attach bolts, in accordance with the Accomplishment Instructions for Group 1, Phase 1, of McDonnell Douglas DC-8 Service Bulletin 52-82, Revision 2, dated January 22, 1990.

Note: The requirements of this AD are applicable to all Model DC-8F series airplanes, regardless of effectivity as specified in the McDonnell Douglas Service Bulletin.

1. If a bolt breaks, prior to further flight, replace it with a new bolt and seal in accordance with Figure 1 of the Service Bulletin.

2. If a bolt passes the torque test, prior to further flight, retorque the bolt and seal in accordance with the Accomplishment Instructions for Group 1, Phase 1, of the Service Bulletin.

B. The test required by paragraph A. of this AD is not required for Inconel bolts, part numbers RA21026-7-23, 77711-7-24, and 3D0031-7-24.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes unpressurized to a base for the accomplishment of the requirements of this AD.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Los Angeles ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Los Angeles ACO.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846-0001, Attention: Business Unit Manager, Technical Publications, C1-HDR (54-60). These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

This amendment becomes effective October 1, 1990.

Issued in Renton, Washington, on September 6, 1990.

Leroy A Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-21843 Filed 9-14-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 90-NM-170-AD; Amendment 39-6735]

Airworthiness Directives; McDonnell Douglas Model DC-10 Series Airplanes, Manufacturer's Serial Fuselage Numbers 1 Through 379

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to McDonnell Douglas Model DC-10 series airplanes, which requires torque testing of the cargo door latch spool fitting attach bolts, and retorquing or replacement of the bolts, if necessary. This amendment is prompted by a report of broken latch spool fitting attach bolts found on a Model DC-9 series airplane. This condition, if not corrected, could result in inadvertent opening of a cargo door in flight, and subsequently lead to loss of pressurization and reduced controllability of the airplane.

EFFECTIVE DATE: October 1, 1990.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846-0001, Attention: Business Unit Manager Technical Publications, C1-HDR (54-60). This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Ms. Dorenda Baker, Aerospace Engineer, Los Angeles Aircraft Certification Office, ANM-121L, FAA, Northwest Mountain Region, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5231.

SUPPLEMENTARY INFORMATION: On August 3, 1990, the FAA issued telegraphic AD T90-16-51, applicable to McDonnell Douglas Model DC-9 series airplanes, which requires a one-time torque test of cargo door spool fitting attach bolts, and retorquing or replacement of the bolts, if necessary. The torque test ensures the security of the latch spool fitting to the door jamb. That action was prompted by a report of a broken cargo door latch spool fitting attach bolt found on a Model DC-9 series airplane. A torque check of the remaining bolts on the airplane revealed that 5 out of 28 bolts were broken. Failure of the bolts is attributed to stress corrosion. The attach bolts on the Model DC-10 are essentially the same as on the Model DC-9; thus, the same potential for failure exists on the Model DC-10. This condition, if not corrected, could result in inadvertent opening of a cargo door in flight, and subsequently lead to loss of pressurization and reduced controllability of the airplane.

The FAA has reviewed and approved McDonnell Douglas Service Bulletin 52-183, Revision 2, dated April 15, 1981, which describes procedures for torque testing of the upper cargo door latch spool fitting attach bolts, and retorquing or replacement of the bolts, as necessary.

Since this situation is likely to exist or develop on other airplanes of the same type design, this AD requires a one-time torque check of the cargo door latch spool fitting attach bolts, and retorquing or replacement of the bolts, if necessary, in accordance with the service bulletin previously described.

The compliance time for the accomplishment of the torque check required by this AD action differs from that for AD T90-16-51: Operators of Model DC-10 series airplanes are required to perform the torque check within 30 days after the effective date of the rule, whereas operators of Model DC-9 series airplanes are required (by AD T90-16-51) to perform the torque check within 14 days. The FAA has determined that the 30-day compliance time for this action is appropriate because:

a. Interim safety measures currently exist. AD 81-02-07, Amendment 39-4021, issued in 1981, requires inspection, lubrication, and sealing of the attach bolts. There have been no reports of failed attach bolts on Model DC-10 series airplanes since the issuance of that AD.

b. Thirty days will allow sufficient time for the orderly inspection of the U.S. fleet of Model DC-10's. Each airplane will require inspection of up to 100 bolts, depending upon the airplane's configuration.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

This is considered interim action. The FAA may consider further rulemaking to require additional corrective action to ensure that Model DC-10 cargo door latch spool fitting attach bolts will not fail due to stress corrosion.

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.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows: Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

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

McDonnell Douglas: Applies to McDonnell Douglas Model DC-10 series airplanes, manufacturer's fuselage numbers 1 through 379, certificated in any category. Compliance required as indicated.

To prevent inadvertent opening of a cargo door in flight, a condition which could result in loss of pressurization and control of the aircraft, accomplish the following:

A. Except as provided in paragraph B. of this AD, within 30 calendar days after the effective date of this AD, unless previously accomplished within the last 60 days, remove sealant in accordance with Figure 1, Step 2, and perform the torque test on the cargo door latch spool fitting attach bolts, in accordance with the Accomplishment Instructions for Group 1, Phase 1, of McDonnell Douglas DC-10 Service Bulletin 52-183, Revision 2, dated April 15, 1981 (hereafter referred to as the Service Bulletin).

Note: The requirements of this AD are applicable to Model DC-10 series airplanes, manufacturer's fuselage numbers 1 through 379, regardless of the effectivity as specified in the McDonnell Douglas Service Bulletin.

1. If a bolt breaks, prior to further flight, replace it with a new bolt and seal in accordance with Figure 1 of the Service Bulletin.

2. If a bolt passes the torque test, prior to further flight, retorque the bolt and seal in accordance with the Accomplishment Instructions for Group 1, Phase 1, of the Service Bulletin.

B. The test required by paragraph A. of this AD is not required for Inconel bolts, part numbers RA21026-7, 77711-7, and 3D0031-7 (grip lengths as applicable per location as specified in Figure 1, sheets 3 and 4, of the Service Bulletin).

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes unpressurized to a base for the accomplishment of the requirements of this AD.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Los Angeles, ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Los Angeles ACO.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846-0001, Attention: Business Unit Manager, Technical Publications, C1-HDR (54-60). These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

This amendment becomes effective October 1, 1990.

Issued in Renton, Washington, on September 6, 1990.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-21842 Filed 9-14-90; 8:45 am]

BILLING CODE 4910-13-M

Coast Guard

33 CFR Part 100

[CGD7 90-72]

Special Local Regulations; City of Ft. Lauderdale, FL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special Local Regulations are being adopted for the Bell South International Outboard Grand Prix City of Fort Lauderdale Regatta. The event will be held on October 6-7, 1990, from 9 a.m. e.d.t. until 6 p.m. e.d.t. October 8, 1990, from 9 a.m. e.d.t. until 6 p.m. e.d.t. has been established as the rain date. The regulations are needed to promote the safety of life on navigable waters during the event.

EFFECTIVE DATE: These regulations will become effective on October 6, 1990, at 8:30 a.m. e.d.t. and terminate on October 8, 1990, at 6:30 p.m. e.d.t.

FOR FURTHER INFORMATION CONTACT: ENS A.M. Palermo (305) 535-4304.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations. Following normal rulemaking procedures would have been impractical as there was insufficient time to publish a proposed rule in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of this regulation are LCDR DAVID G. DICKMAN, Project Attorney, Seventh Coast Guard District Legal Office, and ENS ANDREA PALERMO, Project Officer, USCG Group Miami.

Discussion of Regulations

The International Outboard Grand Prix and the City of Fort Lauderdale's Swimming Hall of Fame will sponsor the Bell South International Outboard Grand Prix City of Fort Lauderdale Regatta. The event is a race involving fifty (50) participants in outboard performance crafts, ranging in size from 15 to 22 feet with capabilities of reaching 100 MPH. The number of spectator vessels is unknown.

Federalism

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

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233, 49 CFR 1.46 and 33 CFR 100.35

2. A temporary § 100.35-07 39 is added to read as follows:

§ 100.35-07 39 Bell South International Outboard Grand Prix City of Ft. Lauderdale Regatta, FL

(a) *Regulated area.* The regulated area will be all navigable waters of the Intracoastal Waterway (ICW), from immediately north of the Las Olas Bridge (26-07.8N, 80-22.2W) proceeding north for a distance of 1000 yards in the New River Sound to the northeast point of the Nurmi Isles.

(b) *Special local regulations.*

(1) Entry into the regulated area is prohibited unless authorized by the Patrol Commander.

(2) All vessels in the regulated area will follow the directions of the Patrol Commander and will proceed at no more than 5 MPH when passing the regulated area.

(3) A succession of not fewer than 5 short whistle or horn blasts from a patrol vessel will be the signal for any non-participating vessel to stop immediately. The display of an orange distress smoke signal from a patrol vessel will be the signal for any and all vessels to stop immediately.

(c) *Effective date.* These regulations become effective on October 6, 1990, from 8:30 a.m. e.d.t. and terminate on October 8, 1990, at 6:30 p.m. e.d.t.

Dated: August 17, 1990.

Robert E. Kramek,

Rear Admiral, U.S. Coast Guard Commander, Seventh Coast Guard District.

[FR Doc. 90-21768 Filed 9-14-90; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 100

[CGD7 90-73]

Special Local Regulations; City of Ft. Lauderdale, FL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special Local Regulations are being adopted for the City of Ft. Lauderdale Great South Florida Rubber Duckie Race III. The event will be held on November 10, 1990, from 12:40 p.m. e.d.t. to 1:10 p.m. e.d.t. The regulations are needed to promote the safety of life on navigable waters during the event.

EFFECTIVE DATE: These regulations will become effective on November 10, 1990, at 12:10 p.m. e.d.t. and terminate on November 10, 1990, at 1:40 p.m. e.d.t.

FOR FURTHER INFORMATION CONTACT: ENS A. Palermo (305) 535-4304.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations. Following normal rulemaking procedures would have been impractical as there was insufficient time to publish a proposed rule in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of this regulation are LCDR DAVID G. DICKMAN, Project Attorney, Seventh Coast Guard District Legal Office, and ENS ANDREA PALERMO, Project Officer, USCG Group Miami.

Discussion of Regulations

The Great South Florida Rubber Duckie Race III is a release of 5,000 to 7,000 rubber duckies onto the New River. Starting at the Andrews Avenue Bridge, they will be carried along by the river's current for a distance of 0.25 Mile to the finish line at the Third Avenue Bridge. The New River from the Andrews Avenue Bridge to the Third Avenue Bridge will be closed to all vessel traffic for the event.

Federalism

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

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233, 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary section 100.35-0706 is added to read as follows:

§ 100.35-0706 City of Ft. Lauderdale Great South Florida Rubber Duckie Race III, FL

(a) *Regulated area.* A regulated area is established on the New River, Fort Lauderdale, Florida, to include all the area from the Andrews Avenue Bridge to the Third Avenue Bridge.

(b) *Special local regulations.* (1) Entry into the regulated area is prohibited unless authorized by the Patrol Commander. After the rubber duckies have been cleared from the regulated area, all vessels may resume normal operations.

(2) A succession of not fewer than 5 short whistle or horn blasts from a patrol vessel will be the signal for any non-participating vessel to stop immediately. The display of an orange distress smoke signal from a patrol vessel will be the signal for any and all vessels to stop immediately.

(c) *Effective date.* These regulations become effective on November 10, 1990, from 12:10 p.m. e.d.t. and terminate on November 10, 1990, at 1:40 p.m. e.d.t.

Dated: August 17, 1990.

Robert E. Kramek,

Rear Admiral, U.S. Coast Guard Commander, Seventh Coast Guard District.

[FR Doc. 90-21769 Filed 9-14-90; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 117

[CGD7-89-61]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, FL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the City of Vero Beach, the Coast Guard is adding regulations governing the Merrill Barber drawbridge at Vero Beach by permitting the number of openings to be limited during certain periods. This change is being made because vehicular traffic has increased. This action will accommodate the needs of vehicular traffic and still provide for the reasonable needs of navigation.

EFFECTIVE DATE: These regulations become effective on October 17, 1990.

FOR FURTHER INFORMATION CONTACT: Walt Paskowsky, (305) 536-4103.

SUPPLEMENTARY INFORMATION: On February 5, 1990, the Coast Guard published a proposed rule (55 FR 3750) concerning this amendment. The Commander, Seventh Coast Guard District, also published the proposal as a Public Notice dated March 1, 1990. In each notice interested persons were given until March 22, 1990, to submit comments.

Drafting Information

The drafters of these regulations are Walter J. Paskowsky, project officer, and LCDR D.G. Dickman, project attorney.

Discussion of Comments

33 comments were received. Most expressed support for a change to the operating rules and many contained alternate proposals such as half-hour or hourly openings. Two writers objected to any change to the regulation citing the relatively small beach population and the potentially unsafe holding area for vessels south of the bridge. Many commenters complained about the actions of the bridgetenders operating the draw. These comments have been brought to the attention of the bridge owner. The Coast Guard has carefully considered all of the comments. No additional information was presented to justify further change to the proposed rule. The final rule is, therefore, unchanged from the proposed rule published on February 5th, 1990.

Federalism

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

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures. (44 FR 11034; February 26, 1979) The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the regulations exempt tugs with tows. Since the economic impact is expected to be minimal, the Coast Guard certifies that they will not have a significant impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, part 117 of title 33, code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

2. Section 117.261(n) is revised to read as follows:

§ 117.261 Atlantic Intracoastal Waterway from St. Marys River to Key Largo.

* * * * *

(n) Merrill Barber (SR 60) bridge, mile 951.9 at Vero Beach. The draw shall open on signal, except that from 7:45 a.m. to 9 a.m., 12 noon to 1:15 p.m., and 4 p.m. to 5:15 p.m., Monday through Friday, except federal holidays, the draw need open only at 8:30 a.m., 12.30 p.m., and 4:30 p.m. From October 1 through May 31, from 7 a.m. to 6 p.m., except federal holidays and as provided above, the draw need open only on the hour, quarter-hour, half-hour, and three quarter-hour.

* * * * *

Dated: August 28, 1990.

Robert E. Kramek,

Rear Admiral U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 90-21767 Filed 9-14-90; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 14

RIN 2900-AE15

Recognition of Organizations, Representatives, Attorneys, and Agents

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is issuing final regulations to amend existing procedures and requirements regarding accreditation of certain individuals as representatives of claimants for benefits administered by VA. These amendments are designed to improve VA's ability to assure the availability of high-quality representation for claimants.

EFFECTIVE DATE: These rules are effective October 17, 1990.

FOR FURTHER INFORMATION CONTACT: Richard J. Hipolit, Deputy Assistant General Counsel (022A), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-2440.

SUPPLEMENTARY INFORMATION: On December 11, 1989, VA published in the **Federal Register** (54 FR 50772-73) two proposed amendments to existing regulations in 38 CFR part 14. One authorizes accreditation as claim representatives of individuals working at least 1,000 hours annually for organizations recognized by VA to represent veterans' benefit claimants. The second establishes criteria for the accreditation of county veterans' service officers as claim representatives based on recommendation and supervision by State organizations recognized by VA to represent veterans' benefit claimants.

VA received four comments on these rules, two from State departments of veterans affairs and two from veterans' service organizations. Three of these commenters endorsed the rules as proposed.

One commenter opposed one aspect of the proposed rule, suggesting that the requirement of at least 1,000 hours of part-time employment for recognition as a service organization claim representative would limit participation by volunteers and certain part-time workers in claim representation and thus hinder the service organizations in assisting claimants. VA believes this commenter is misreading the amendments, which specifically allow accreditation of a claim representative if the representative is "*either* a member in good standing" of the service organization "*or* a paid employee of such organization working for it no less than 1,000 hours annually" (emphasis added). Thus, membership in good standing alone will qualify an individual to serve as a claim representative. Only if accreditation is based on employment will the minimum requirement of 1,000 hours of work annually apply. Accordingly, the amendment will not exclude anyone currently eligible for accreditation, but instead will expand availability of representatives to aid in veterans' claims.

As explained in the preamble to the proposed rule, the rationale for the requirement of full-time employment has been that the representative should be sufficiently dependent upon remuneration from the recognized organization as to assure accountability in the performance of responsibilities involved in the claim process. However, VA believes less-than-full-time employment does not connote lack of accountability when the representative works a considerable number of hours annually for the recognized organization and is thus significantly dependent upon the organization as a source of livelihood. Further, as the commenter noted, the part-time status of an employee does not insulate the employer from responsibility for the employee's failure to perform properly the responsibilities incident to his or her position.

VA has concluded the proposed amendment to authorize accreditation of employees of recognized organizations working at least 1,000 hours annually will not undermine the purpose of VA regulations regarding recognition of organizations and representatives to assure that claimants for veterans' benefits receive qualified, responsible representation in the preparation, presentation, and prosecution of claims. This amendment is therefore adopted without change.

The second proposed amendment would set out criteria under which a State organization which has been recognized by VA to represent claimants could seek accreditation of county veterans' service officers as representatives, even though such officers are not employed by the State organization. The two commenters on this amendment approved of VA's proposal. One commenter did make reference to training of volunteer service officers. The amendment establishes criteria in the regulation regarding adequate training, testing, and monitoring of county service officers to assure quality representation of veterans' benefit claimants. Further, the regulations provide recognized State organizations with clear and uniform standards to apply in determining whether to certify county service officers as qualified to represent claimants. Although it was not explicitly stated in the proposed rule, VA contemplated that county representatives, as an assurance of accountability, would be employees of the county government. Accordingly, the second amendment is adopted with a minor change to clarify this point.

The Secretary hereby certifies that these regulatory amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), these regulatory amendments are therefore exempt from the initial and final regulatory-flexibility analyses requirements of §§ 603 and 604. The reason for this certification is that the

regulatory amendments will have only a limited, beneficial effect on claimants and their representatives.

These amended regulations do not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulations will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. They will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

There is no Catalog of Federal Domestic Assistance number for these regulations.

List of Subjects in 38 CFR Part 14

Administrative practice and procedure, Claims, Organization and functions (Government Agencies), Veterans.

Approved: August 9, 1990.

Edward J. Derwinski,

Secretary.

PART 14—[AMENDED]

In 38 CFR Part 14, Legal Services, General Counsel, in § 14.629(a), paragraph (a)(2) is revised, and an authority citation is added at the end of paragraph (a), to read as follows:

§ 14.629 Requirements for accreditation of representatives, agents, and attorneys

* * * * *

(a) * * *

(2) Is either a member in good standing or a paid employee of such organization working for it not less than 1,000 hours annually; is accredited and functioning as a representative of another recognized organization; or, in the case of a county veteran's service officer recommended by a recognized State organization, meets the following criteria:

(i) Is a paid employee of the county working for it not less than 1,000 hours annually;

(ii) Has successfully completed a course of training and an examination which have been approved by a VA District Counsel within the State; and

(iii) Will receive either regular supervision and monitoring or annual training to assure continued qualification as a representative in the claim process; and

* * * * *

(Recordkeeping requirements contained in § 14.629 were approved by the Office of Management and Budget under OMB control number 2900-0018)

(Authority: 38 U.S.C. 210 (b)(1) and (c)(1) and 3402)

* * * * *

[FR Doc. 90-21836 Filed 9-14-90; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[FRL-3821-2]

Radionuclide NESHAP

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of stay.

SUMMARY: Today's action announces a further 180-day stay, pending reconsideration and judicial review, of subpart I of 40 CFR part 61 ("Subpart I"), National Emission Standards for Hazardous Air Pollutants for Radionuclide Emissions from Facilities Licensed by Nuclear Regulatory Commission and Non-DOE Federal Facilities (54 FR 51654 December 15, 1989). EPA is issuing this stay pursuant to the authority inherent to EPA's general rulemaking authority under Clean Air Act section 301(a), 42 U.S.C. 7601(a), and also pursuant to section 10(d) of the Administrative Procedure Act, 5 U.S.C. 705, which grants the Administrator discretion to postpone the effective date of Agency rules pending judicial review, which for subpart I is ongoing in United States Court of Appeals for the DC Circuit. This action continues in place the existing stay originally granted by the Administrator pursuant to Clean Air Act section 307(d)(7)(B), 42 U.S.C. 7607(d)(7)(B), 54 FR 51654 (December 15, 1990), and subsequently extended pursuant to the presently applicable authorities on March 15, 1990, 55 FR 10455 (March 21, 1990), and on July 12, 1990, 55 FR 29205 (July 18, 1990).

EFFECTIVE DATES: Effective September 11, 1990, subpart I of 40 CFR part 61 is stayed until March 10, 1991.

FOR FURTHER INFORMATION CONTACT: Fran Cohen, Environmental Standards Branch, Criteria and Standards Division (ANR-460), Office of Radiation Programs, Environmental Protection Agency, Washington DC 20460, (202) 475-9610.

SUPPLEMENTARY INFORMATION:

A. Background

On October 31, 1989, EPA promulgated under section 112 of the Clean Air Act, 42 U.S.C. 7412, National Emissions Standards for Hazardous Air Pollutants ("NESHAPs") controlling radionuclide emissions to the ambient (outdoor) air from several source categories, including emissions from Licensees of the Nuclear Regulatory Commission and Non-DOE Federal Facilities. This rule was publshed in the **Federal Register** on December 15, 1989 (54 FR 51654; to be codified at 40 CFR part 61, subpart I ("Subpart I")). At the same time, EPA granted reconsideration of subpart I. 54 FR 51667-51668. In so doing, EPA established a 60-day period to receive further information and comment from the public on these issues, and also granted a 90-day stay of subpart I as provided by Clean Air Act section 307(d)(7)(B), 42 U.S.C. 7607(d)(7)(B). That stay expired on March 16, 1990. On March 15, 1990, EPA announced that it was continuing in place the existing stay for 120 days pending judicial review pursuant to section 10(d) of the Administrative Procedure Act ("APA"), 5 U.S.C. 705, 55 FR 10455 (March 21, 1990). On July 12, 1990, EPA announced that it was extending the existing stay 60 more days pursuant to APA section 10(d), and the additional authority inherent to EPA's general rulemaking authority under Clean Air Act section 301(a), 42 U.S.C 7601(a). 55 FR 29205 (July 18, 1990).

At least 11 petitions for review, made pursuant to Clean Air Act section 307(b), 42 U.S.C. 7607(b), challenging EPA's radionuclide NESHAPs (54 FR 51654 December 15, 1989) have been filed with the United States Court of Appeals for the DC Circuit. Some of these petitions take issue with the rulemaking generally, while others are narrowly addressed to particular source categories such as subpart I. For instance, the Nuclear Management and Resources Council, Inc. ("NUMARC") has petitioned only insofar as the rules apply to nuclear power plants and fuel fabrication facilities (DC Circuit Case No. 90-1073), and thus its petition challenges only aspects of subpart I. In any event, all petitions have been consolidated by the court, *sua sponte*, under the heading *FMC Corp.* v. *EPA*, No. 90-1057 (DC Cir.).

EPA decided to reconsider subpart I on the basis of assertions that the NESHAP would conflict with existing standards and regulations implemented by the Nuclear Regulatory Commission ("NRC"), including those pertaining to radioisotope therapies. *See* 54 FR 51667-51668. Moreover, EPA was concerned with the issue, raised by the Nuclear Regulatory Commission, whether the NESHAP provides additional health benefits or is necessary to protect public

health with an ample margin of safety. *Id.*

In conducting reconsideration proceedings, EPA has received numerous comments reiterating the view that regulation is not necessary in light of the existing NRC-implemented regulatory scheme, and asserting that the record does not justify the additional and allegedly burdensome regulation contemplated by the subpart I NESHAP. In response to these comments, EPA has been investigating the nature of these facilities, their interaction with NRC, and the record bases for the rule, as well as meeting with various of the commenters to exchange information and further explain the requirements of subpart I. EPA's investigation is active and ongoing, and EPA anticipates that it will have information sufficient to rule on the pending petitions and to conclude reconsideration in an additional 180 days.

B. Issuance of Stay

EPA today further stays, pending reconsideration and judicial review, for an additional 180 days until March 10, 1991, the NESHAP for NRC-Licensees and Non-DOE Federal Facilities, 40 CFR part 61, subpart I. This stay is issued pursuant to the authority inherent to EPA's general rulemaking authority under Clean Air Act section 301(a), 42 U.S.C. 7601(a), and also pursuant to section 10(d) of the Administrative Procedure Act ("APA"), 5 U.S.C. 705, which grants the Administrator discretion to postpone the effective date of Agency rules pending judicial review, which for subpart I is ongoing in the United States Court of Appeals for the DC Circuit. It is intended to continue in place the stay initially issued by EPA pursuant to Clean Air Act section 307(d)(7)(B), 42 U.S.C. 7607(d)(7)(B), on December 15, 1989, 54 FR 51668, and extended for 180 days by subsequent stays issued on March 15, 1990, and July 12, 1990, pursuant to APA section 10(d) and Clean Air Act section 301(a). 55 FR 10455 (March 21, 1990); 55 FR 29205 (July 18, 1990).

EPA has an ongoing proceeding for reconsideration of subpart I, announced on December 15, 1989, 54 FR 51667–51668. These proceedings are currently active, and EPA is accumulting and analyzing the information necessary to determine whether the subpart I NESHAP is necessary to protect public health with an ample margin of safety or whether it conflicts with existing NRC-implemented regulations. EPA requires an additional 180 days to complete this task. Because reconsideration has not concluded and no final decision has been made by the Agency as to whether to propose modification to subpart I, and given the ongoing judicial review proceedings on the DC Circuit, justice requires that the stay of the effective date of subpart I be continued for 180 days. EPA believes that most facilities subject to this rule are in compliance and that, during the short period provided by this stay, their emissions are unlikely to increase. Thus, granting the stay would have little or no potential to have any adverse effects on public health, and is therefore consistent with the public interest.

Dated: September 10, 1990.

William K. Reilly,

Administrator.

[FR Doc. 90–21893 Filed 9–14–90; 8:45 am]

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40 CFR Part 261

[SW-FRL-3830-8]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Denial

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environment Protection Agency (EPA or Agency) today is finalizing its decision to deny a petition submitted by Allegan Metal Finishing Company (Allegan), Allegan, Michigan, to exclude certain solid wastes generated at its facility from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. This action responds to a delisting petition submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 268, 124, 270, and 271 of title 40 of the Code of Federal Regulations, and under 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists.

This rulemaking finalizes the proposed denial for Allegan's petitioned wastes published on November 7, 1989 (see 54 FR 46737). The effect of this action is that these wastes must continue to be handled as hazardous in accordance with 40 CFR parts 260 through 268 and the permitting standards of 40 CFR part 270.

EFFECTIVE DATE: September 17, 1990.

ADDRESSES: The public docket for this final rule is located at the U.S. Environmental Protection Agency, 401 M Street SW. (room M2427), Washington DC 20460, and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call (202) 475–9327 for appointments. The reference number for this docket is "F–90–ALDF–FFFFF". The public may copy material from any regulatory docket at a cost of $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline, toll free at (800) 424–9346, or at (202) 382–3000. For technical information concerning this notice, contact Chichang Chen, Office of Solid Waste (OS–343), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382–4782.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

Under 40 CFR 260.20 and 260.22, facilities may petition the Agency to remove their wastes from hazardous waste control by excluding them from the lists of hazardous wastes contained at 40 CFR 261.31 and 261.32. Petitioners must provide sufficient information to EPA to allow the Agency to determine: (1) That the waste to be excluded is not hazardous based upon the criteria for which it was listed, and (2) that no other hazardous constituents are present in the waste at levels of regulatory concern.

B. History of the Rulemaking

Allegan petitioned the Agency for a one-time upfront exclusion (for wastes that have not yet been generated) based on a bench-scale waste treatment process (*i.e.*, scaled down version of a proposed treatment system), untreated waste characteristics, and process descriptions. After evaluating the petition, EPA proposed, on November 7, 1989, to deny Allegan's petition to exclude its wastes from the lists of hazardous waste under 40 CFR 261.31 and 261.32 (see 54 *FR* 46737).

This rulemaking addresses public comments received on the proposal and finalizes the proposed decision to deny Allegan's petition.

II. Disposition of Delisting Petition

A. Allegan Metal Finishing Company, Allegan, Michigan

1. Proposed Denial

Allegan Metal Finishing Company (Allegan), located in Allegan, Michigan, electroplates carbon steel with zinc chloride/zinc cyanide on a job shop basis. Allegan petitioned the Agency for a one-time upfront exclusion of wastewater treatment sludges, presently contained on-site in two sand seepage lagoons and proposed to be physically

and chemically stabilized with 10 percent (by weight) reclaimed lime. Allegan's petitioned wastes are presently listed in 40 CFR 261.31 as EPA Hazardous Waste No. F006—"Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum". The listed constituents for EPA Hazardous Waste No. F006 are cadmium, hexavalent chromium, nickel, and cyanide (complexed) (see 40 CFR part 261, appendix VII).

In support of its petition, Allegan submitted: (1) Partial descriptions of its manufacturing and treatment processes, including schematic diagrams; (2) a partial list of raw materials (and Material Safety Data Sheets for all tradename materials) used in the manufacturing processes; (3) descriptions of procedures for stabilizing the lagoon sludges; (4) results from total constituent and EP analyses on representative samples (bench-scale) of the lime-stabilized lagoon sludges; (5) results from total oil and grease analyses on representative samples (bench-scale) of the lime-stabilized lagoon sludges; (6) results from the characteristics testing for ignitability and reactivity on representative samples (bench-scale) of the lime-stabilized lagoon sludges, including reactive cyanide and reactive sulfide analyses; and (7) total constituent analyses for those constituents listed in 40 CFR 261, appendix IX on one sample of the reclaimed lime, which is to be used in full-scale stabilization of the lagoon sludges.

The Agency evaluated the information and analytical data provided by Allegan in support of its petition and determined that the hazardous constituents found in the petitioned wastes could pose a threat to human health and the environment. Specifically, the Agency's evaluation of analytical data provided by Allegan indicates that the bench-scale lime-stabilized lagoon sludges exhibit concentrations of leachable cadmium and lead that yield compliance-point concentrations exceeding the Agency's health-based levels used in delisting decision-making. The Agency used its vertical and horizontal spread (VHS) landfill model to evaluate the potential mobility of the hazardous inorganic constituents detected in the EP extract of representative samples of Allegan's bench-scale lime-stabilized lagoon sludges. Based on this evaluation, the Agency determined that Allegan failed to substantiate its claim that the hazardous constituents of concern will not leach and migrate at concentrations above the delisting health-based levels. See 54 FR 46737, November 7, 1989, for a more detailed explanation of why EPA proposed to deny Allegan's petition.

2. Agency Response to Public Comments

The Agency received comments regarding its decision to deny Allegan's petition from two interested parties. Both of the commenters opposed the Agency's proposed denial decision. The comments submitted related to the following areas:

(1) Characteristic and listed hazardous wastes; (2) the Agency's use of the VHS model to evaluate the petitioned wastes; (3) the health-based levels used by the Agency to evaluate the petitioned wastes; (4) use of site-specific information to evaluate the petitioned wastes; (5) consideration of post-delisting waste disposition; (6) the completeness of Allegan's petition; (7) the Agency's delay in the evaluation of Allegan's petition; (8) the effect of Allegan performing as a job-shop electroplater on the evaluation of the petition; and (9) the potential impact of the denial decision on other F006 generators and small business electroplaters. The specific comments made by the two interested parties and the Agency's responses to them are discussed below.

Characteristic and Listed Hazardous Wastes

The first commenter stated that the data provided in Allegan's petition confirm that the petitioned wastes pass each of the RCRA characteristic tests and are not otherwise hazardous. The commenter thus believed that the Agency should grant Allegan's petition for its lime-stabilized lagoon sludges. This commenter also believed that a waste deemed hazardous solely for failing one of the characteristic tests would be subject to less stringent controls than those listed wastes.

The Agency believes that the commenter may not fully recognize the difference between a waste that is characteristically hazardous and a waste listed as hazardous under 40 CFR part 261, subpart D. The EP toxicity characteristic, in particular, was designed to bring into the RCRA Subtitle C hazardous waste management system wastes that present a hazard to human health due to their propensity to leach significant concentrations of specific constituents (*i.e.*, those listed in Table 1 of 40 CFR 261.24). The EP toxicity characteristic was *not* designed to identify those wastes that are *not* hazardous; it, like the other characteristics, was developed to allow the Agency to identify a hazardous waste by a distinct measurable property. A waste is clearly hazardous due to EP toxicity; nevertheless, passing the EP toxicity test does not reflect that a waste is not otherwise hazardous. The Agency established criteria to identify and "list" hazardous wastes because the Agency also recognized that wastes may be hazardous even if they leach hazardous constituents at levels less than the EP toxicity characteristic levels. For example, wastes may be listed as hazardous if, pursuant to the criteria contained in 40 CFR 261.11, these lesser concentrations in combination with other factors are deemed to pose a substantial present or potential threat to human health and the environment.

The Agency agrees that Allegan's petitioned wastes may not exhibit the characteristic of EP toxicity or other characteristics; however, Allegan's petitioned wastes are listed as F006 wastes because they contain hazardous constituents listed in appendix VIII of 40 CFR part 261, and thus the waste must be evaluated for these constituents. Furthermore, the Hazardous and Solid Waste Amendments (HSWA) of 1984 require the Agency to consider any factors (including additional constituents) other than those for which a waste was listed, if there is a reason to believe that such additional factors could cause the waste to be hazardous. For the reasons stated in the proposed denial (54 FR 46737, November 7, 1989), the Agency believes that Allegan's petitioned wastes have the potential to harm human health and the environment and thus should not be removed from Subtitle C control.

The Agency notes that, contrary to the commenter's claim regarding differing standards, all wastes identified as hazardous under RCRA are subject to the same management criteria regardless of whether the wastes are characteristics or listed hazardous wastes. Specifically, characteristic and listed hazardous wastes must be managed in accordance with 40 CFR part 260 through 268 and the permitting standards of 40 CFR part 270. Facilities may dispose of wastes as non-hazardous only if the wastes do not exhibit the characteristics of hazardous waste and if the wastes are not otherwise hazardous (*i.e.*, listed as

hazardous under 40 CFR part 261, subpart D) unless they are specifically excluded from RCRA regulation.

Agency's Use of the VHS Model

Both commenters challenged the Agency's use of the VHS model for various reasons. The first commenter believed that the application of the VHS model unjustly subjects Allegan, a generator of a listed hazardous waste, to a more exacting standard (*i.e.*, a standard "above and beyond the already accepted limits of the EP toxicity standard") than a generator whose waste is classified as hazardous solely because it exhibits one of the hazardous waste characteristics. Further, both commenters believed that the threshold levels established by the Agency in conjunction with the VHS model are inappropriate and unfair. Both commenters noted that the delisting health-based level for cadmium of 0.01 ppm is 100 times more stringent than the EP toxicity characteristic level for cadmium of 1 ppm.

The commenter's concerns regarding the stringency of the delisting health-based levels as compared to the EP toxicity characteristic levels are unfounded because the objectives of the characteristic and delisting regulations are different. As stated previously, the hazardous waste characteristics were designed to identify broad classes of solid wastes that are clearly hazardous, while delisting standards are those below which a petitioned waste is not hazardous. For example, in accordance with 40 CFR 261.24, a waste whose extract concentrations of cadmium are equal to or above the EP toxicity characteristic level for cadmium is clearly a hazardous waste. The Agency's delisting health-based levels (used in conjunction with various fate and transport models, as appropriate) are those levels which the Agency uses to determine, on a waste-specific basis, whether a waste is non-hazardous. Because the delisting process was established to identify the potential hazards a waste might present and whether particular wastes should remain subject to Subtitle C regulation, the Agency believes that its use of delisting levels of concern that are more stringent than the EP toxicity characteristic levels is both appropriate and fair.

The first commenter indicated that, although the Agency's decision to deny Allegan's petition is based, in part, on leachable levels of cadmium and lead, the petitioner uses neither of these constituents in the manufacturing processes generating the petitioned wastes.

The Agency notes that the total constituent concentrations of lead and cadmium in the treated waste showed levels as high as 210 and 20 ppm respectively. These data alone indicate that lead and cadmium must be present in the manufacturing, treatment, or stabilization processes generating the petitioned wastes. For example, one potential source of the lead and cadmium may be from the reclaimed lime used in the stabilization process which, for the single sample collected and analyzed, had total lead and cadmium levels of 15 and 4.9 ppm, respectively. Thus, although information provided in the petition indicate that lead and cadmium are not used in the manufacturing process, other sources (such as the treatment and stabilization processes) may have resulted in the presence of these contaminants in the petitioned wastes and, thus, the extracts of the wastes.

The first commenter did not believe that the Agency justified its use of the VHS model to evaluate Allegan's petitioned wastes. The commenter specifically questioned why the Agency thought the VHS model was appropriate in this case. The commenter cited the ruling in *McLouth Steel Products Corp.* v. *EPA*, 838 F.2d 1317 (D.C. Cir. 1988) and the Agency policy regarding application of models addressed in 53 FR 21640, June 9, 1988, as evidence of inappropriateness in the Agency's application of the VHS model for evaluating Allegan's petition.

The Agency disagrees with the commenter's belief that the Agency did not justify its use of the VHS model. As noted in the proposal, the Agency believes that disposal in a landfill is the most reasonable worst-case scenario for Allegan's petitioned wastes because stabilized wastes typically are disposed of in land-based units. In fact, Allegan stated in its petition that it plans to dispose of its treated wastes at a landfill. Under a landfill disposal scenario, the major exposure route of concern for any hazardous constituents would be ingestion of contaminated ground water. The Agency proposed the use of the VHS model because this model predicts the potential for ground-water contamination from wastes that are land-disposed. (The VHS model accomplishes this in its consideration of three basic steps: (1) Generation of a leachate from the waste, (2) migration of the leachate to the underlying aquifer, and (3) migration of the contaminated ground water in the aquifer to a nearby receptor well.) For this reason the Agency maintains its belief that the VHS model is an appropriate evaluation tool for Allegan's wastes.

Furthermore, using the VHS model in evaluating Allegan's petition is consistent with the McLouth decision. The McLouth decision allows the Agency to treat the model as a non-binding policy so long as the Agency exercises discretion in individual delisting cases and remains open to challenges to its use. Subsequent to this decision, the Agency indicated in 53 FR 21640 that "EPA will treat the model as non-binding policy, will propose to apply the model where appropriate, and will respond to comments challenging the use of the VHS model where proposed to be applied." In this case, the Agency considered the VHS model as appropriate for use and requested comments on its use as applied to the evaluation of Allegan's wastes (see 54 FR 46737, November 7, 1989, proposed rulemaking for Allegan's petitioned waste).

The Health-Based Levels Used by the Agency

The second commenter stated that the use of a cadmium concentration threshold level of 0.01 ppm for evaluation of Allegan's petitioned wastes was a premature application of EPA treatment standards now being proposed and commented upon in the Land Disposal Restrictions for Third Scheduled Wastes (see 54 FR 48372).

The Agency believes that the commenter has misunderstood the source of the 0.01 ppm level of concern for cadmium used in the evaluation of Allegan's petitioned wastes. The Agency's delisting level of concern for cadmium is based on the Maximum Contaminant Level (MCL) promulgated under the Safe Drinking Water Act (SDWA). The SDWA requires EPA to promulgate National Primary Drinking Water Regulations (NPDWRs) for contaminants in drinking water which may cause any adverse effect on the health of persons and which are known or anticipated to occur in public water systems. These NPDWRs are to include MCLs. The Agency believes that the promulgated MCL is an appropriate level of concern for cadmium because the major exposure route of concern for Allegan's petitioned wastes under a landfill disposal scenario, as stated in the proposed rulemaking, is the ingestion of contaminated ground water. Thus, the Agency notes that it relied on a promulgated MCL for cadmium, not a proposed treatment standard from the Land Disposal Restrictions, to evaluate Allegan's petitioned wastes.

The first commenter questioned whether EPA had followed appropriate rulemaking procedures in adopting the health-based levels used in its evaluation of delisting petitions. This commenter also compared the 0.01 mg/l health-based level directly with the EP toxicity standard of 1.0 mg/l for cadmium, indicating that it is unnecessary, inconsistent, and unfair to use the former number to evaluate Allegan's wastes by application of the VHS model, as discussed in the previous section.

The Agency believes that appropriate rulemaking procedures were followed in adopting the health-based levels used in the evaluation of Allegan's petitioned wastes. Although health-based levels are not promulgated in the delisting regulations, the use of these numbers for the hazardous constituents of concern for Allegan's waste was subject to public comment during the proposed rulemaking comment period on this delisting petition. The commenter's contention that it is improper to use the health-based level of 0.01 mg/l for cadmium, as opposed to the much higher EP toxicity standard of 1.0 mg/l for this metal, may be due to the misunderstanding of the Agency's delisting evaluation technique. The Agency uses the health-based levels and the EP toxicity standards for different purposes under different circumstances. As previously discussed, if a waste fails the EP toxicity test, it is characteristically hazardous. However, a waste may still be hazardous even if the EP toxicity test shows that the leachable concentrations of the waste do not exceed the EP toxicity standards (*i.e.* the maximum concentrations of contaminants specified in 40 CFR 261.24). In the determination of the EP toxicity characteristic, waste volume and the mobility of the hazardous constituents are not considered. In contrast, the health-based levels used in delisting evaluations are those below which a waste is not hazardous. This determination involves the use of the VHS model to predict the potential hazard from the ingestion of contaminated ground-water at a hypothetic receptor well (or compliance point) located downgradient from the disposal site. The calculated compliance-point concentrations are then compared with the Agency's health-based levels. The Agency's evaluation of Allegan's petition in this regard has been described in detail in the November 7, 1989 proposed rule.

Use of Site-Specific Information to Evaluate the Petitioned Wastes

The first commenter argued that the Agency should evaluate Allegan's petition without the application of the VHS model, and should rely upon the waste characteristics and site-specific conditions. For example, the commenter believed that the Agency should have considered ground-water monitoring data from the lagoons containing the raw wastes (*i.e.*, the petitioned wastes prior to lime stabilization). Both commenters also believed that it was unnecessary to apply the VHS model which has its sole intent of the determination of uncontrolled waste management because Allegan proposed to dispose of its wastes in a controlled manner.

As addressed in the November 7, 1989 proposed rule, the Agency believes it is inappropriate to consider extensive site-specific factors, because a waste once delisted is no longer subject to RCRA control and may therefore be transported to any disposal unit at an unspecified location of unknown site conditions. Thus, the Agency considers a reasonable worst-case disposal scenario for petitioned wastes such as Allegan's. Results of ground-water monitoring data evaluations are only used by the Agency as a check on the reasonable worst-case scenario performed in order to provide an additional level of confidence in delisting decisions. In this case, since land disposal is the most reasonable worst-case scenario for Allegan's wastes, the Agency believes that the use of the VHS model is appropriate as previously discussed.

In addition, the Agency believes that it would be inappropriate to evaluate the ground-water monitoring data collected from Allegan's lagoons because the monitoring data would not be indicative of the impact of the treated waste on the underlying aquifer.

Note: Allegan was seeking a one-time upfront exclusion of lagoon sludges treated by a stabilization process, a waste that is not currently generated or disposed of.

Ground-water monitoring for the original unit containing untreated waste generally will not provide useful information on the potential for the treated waste to impact ground-water quality. Treatment or stabilization is expected to alter the chemical/physical composition of a waste and the mobility of waste constituents; thus, a treated or stabilized waste is inherently different from a waste in its untreated form. The Agency believes that ground-water monitoring data from a unit used to manage treated waste, if such data were available, would be useful in evaluating the hazards of the treated or stabilized waste. However, as stated previously, ground-water monitoring data are not available for Allegan's petitioned treated wastes.

Furthermore, even if the Agency were to consider the existing ground-water monitoring data collected for Allegan's lagoons in the evaluation of Allegan's petition, the lack of unacceptable toxicant levels (*e.g.*, hazardous constituent concentrations above health-based levels) alone is not sufficient evidence to grant an exclusion. Ground-water monitoring data showing no contamination may indicate that either contamination has not yet occurred or has not been detected, but do not indicate whether the waste will cause ground-water contamination in the future at the site assessed or at other potential sites. In addition, because wastes may be moved to a different location following exclusion, the evaluation of ground-water monitoring data from the current location does not reflect the potential to contaminate other sites which may have different hydrogeological conditions. Therefore, the Agency evaluates toxicant mobility using fate and transport models. If the Agency believes that a waste will leach unacceptable levels of hazardous constituents under reasonable worst-case conditions, then the Agency may consider the waste hazardous and subject to Subtitle C control, even though relevant ground-water monitoring data may not indicate ground-water contamination. The commenter's view that "this proposed rule in fact expressly recognizes that modeling is not as accurate as actual field data" appears to be a misinterpretation of the Agency's consideration of ground-water monitoring data in delisting decisions described in the November 7, 1989 proposed rule. See the proposed rule previously published in the **Federal Register** clarifying the Agency's use of ground-water data in delisting decisions (54 FR 41930, October 12, 1989).

Consideration of Post-Delisting Waste Disposition

Both commenters argued that Allegan's petition should be granted conditional upon meeting specified post-delisting requirements and disposition, such as ultimate disposal in a licensed Michigan Type II landfill.

The Agency believes that it would have been inappropriate to evaluate Allegan's petitioned wastes based on Allegan's intention to dispose of the wastes in a "controlled manner",

especially based on a condition specifying disposal in a Michigan Type II landfill. The Agency evaluates all delisting petitions with the understanding that, if the petitioned waste is excluded, it will be removed from Federal regulation as a hazardous waste.

Both commenters cited several precedents where the Agency has imposed post-delisting conditions. This Agency notes that, in all precidents cited, those conditions were waste-specific post-delisting conditions. For example, the majority of conditional exclusions require continuous analysis of the petitioned wastes to ensure that specified delisting levels are met. Further, in all cases where the Agency has imposed post-delisting conditions, the petitioned wastes were still evaluated based on a reasonable worst-case disposal scenario, without considering site-specific conditions.

The Agency further recognizes that, even though Allegan's closure plan requires the designation of a disposal facility acceptable to the Michigan Department of Natural Resources (MDNR), the petitioned wastes may in the future be relocated to a disposal site having different characteristics. For this reason, the Agency does not believe that delisting evaluations should be based on the prediction or specification of future storage or disposal conditions. Again, the Agency maintains that its formulation of a delisting decision is waste specific, not disposal-site specific. As such, the Agency does not believe that it is appropriate to establish conditions in a waste exclusion that specify the disposal practices of any petitioned waste. The Agency believes that the use of a generic fate and transport model, such as the VHS model, is appropriate to model a reasonable worst-case disposal scenario in the evaluation of Allegan's petitioned wastes. The Agency believes that its use of this approach will ensure protection of human health and the environment.

Petition Completeness

Both commenters stated that they did not understand how Allegan could have used the appropriate sampling and compositing protocols, yet the Agency stated that a more complete characterization of the petitioned wastes might have shown the presence of other hazardous constituents.

In the course of reviewing the petition, the Agency evaluated the sampling and compositing protocols utilized by Allegan. In Allegan's first submittal, Allegan submitted samples consisting of samples only from the south lagoon stabilized with lime. Following the initial review of the petition, the Agency 1) requested that Allegan sample both lagoons, and 2) specified that Allegan utilize appropriate sampling and compositing protocols. Allegan's second round of sampling again did not adhere to appropriate sampling and compositing protocols outlined by the Agency. Moreover, the two samples analyzed were obtained by dividing up one composite sample collected from only one lagoon. The Agency, therefore, requested Allegan to perform a third round of sampling. The Agency subsequently determined that Allegan had used the appropriate sampling and compositing protocols in its third round of sampling.

As noted above, the Hazardous and Solid Waste Amendments (HSWA) of 1984 require the Agency to consider any factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Accordingly, a petitioner also must demonstrate that the waste does not exhibit any of the hazardous waste characteristics and must present sufficient information for the Agency to determine whether the petitioned wastes contain any constituents at hazardous levels. In each of the requests for additional information sent to Allegan, the Agency not only required that appropriate sampling and compositing be used, but also requested more complete descriptions of the processes generating the wastes. From a review of the Material Safety Data Sheets (MSDS) of materials used in Allegan's processes, as well as the ground-water monitoring data from the lagoons containing the unstabilized wastes, it appeared that the raw wastes may contain several hazardous organic constituents that should have been analyzed for in the lime-stabilized lagoon sludges. For example, ground-water monitoring data submitted by Allegan showed levels of chloroform which exceeded the delisting health-based level. Nevertheless, Allegan did not provide any analytical data for chloroform in the lime-stabilized lagoon sludges. Allegan's submissions did not present sufficient information to rule out the possibility that the petitioned wastes could be contaminated by other hazardous constituents. Therefore, although Allegan did utilize the appropriate sampling and compositing protocols for characterizing the petitioned wastes, it did not provide sufficient information to show that the wastes were not hazardous due to the presence of other constituents.

Agency's Delay in the Evaluation of Allegan's Petition

The first commenter argued that the Agency's review of Allegan's petition extending over 3½ years (*i.e.* from June 1986 to November 1989) is contrary to the spirit of the delisting strategies and procedures announced in the March 3, 1988 **Federal Register** notice (53 FR 6822). This commenter further stated that the Agency's delay has resulted in Allegan being faced with land disposal restrictions for its wastes.

First, the Agency disagrees with the commenter's claim that the Agency caused the delay. As delineated before, the Agency had provided sufficient opportunities for Allegan to submit needed data to demonstrate that the petitioned wastes were not hazardous. However, Allegan never completed its petition. Although the Agency believes it could have dismissed this petition based on its continued deficiencies (see 53 FR 6822), the Agency chose to propose a denial because the available information had provided sufficient basis for such a decision. Therefore, the commenter's claim is unfounded. The Agency believes that Allegan's incomplete submissions were a key factor in any apparent delay in processing Allegan's petition. The first commenter also felt that the Agency should not have imposed on April 6, 1988 "a 6-week response period by retroactive application of the Agency's March 3, 1988 dismissal policy (53 FR 6822) to this pre-existing petition". The Agency maintains that its review of Allegan's petition is in compliance with the announced delisting strategies and procedures. The March 3, 1988 notice, which was sent to all petitioners at that time (including Allegan), clearly indicates that the Agency "is announcing strategies and procedures it intends to apply in reviewing existing and anticipated petitions . . ." The notice also stipulates that the Agency may require the petitioners to respond to an information request within 6 months, and that the Agency may also establish a shorter time period for the petitioners to respond if the requested information can be prepared in less than 6 months. Therefore, the Agency did not impose an unreasonable requirement on Allegan's petition as the commenter stated.

Effect of Allegan Performing as a Job-Shop Electroplater on the Evaluation of the Petition

The second commenter believed that, based on exclusions granted by EPA for other F006 wastes, the denial of Allegan's petition is an example of

"extraordinarily exacting standards" for job-shop electroplaters who submit delisting petitions.

The Agency disagrees with the commenter. Allegan's petition was for wastes contained in two sand seepage lagoons that were to be stabilized with lime. At the time the lagoons were sampled, no additional wastes were being added to the lagoons. In order for Allegan to successfully petition for an exclusion, Allegan only needed to provide samples representative of the lime-stabilized lagoon sludges and not of the on-going job-shop discharges. The sample collection and analysis requirements of wastes for Allegan were identical to those requirements for any facility submitting a petition for a waste contained in a land-based unit. The sampling requirements would have been the same if Allegan were a captive electroplating operation.

The commenter's observation that more "captive" F006 wastes were excluded in the past than "job-shop" F006 wastes might reflect that job-shop wastes generally contained higher concentrations of hazardous constituents of concern. Therefore, the Agency does not believe that "extraordinarily exacting standards" were used to evaluate job-shop petitions as the commenter concluded.

Potential Impact of the Denial Decision on F006 Generators and Small Businesses

Both commenters indicated that they felt that the petition review process and the basis for the Agency's decision on Allegan's petition will have a potential impact on small businesses and generators of F006 waste. In particular, the second commenter believed that the length of time to review this petition would discourage small businesses and job shop electroplaters from initiating and pursuing a delisting.

The Agency believes that the decision to deny Allegan's petition will not have an adverse impact on small businesses and generators of F006 wastes, because this rule affects only one facility in one industrial segment. The Agency denied Allegan's petition based on the presence of significant leachable levels of cadmium and lead. Not all facilities involved in electroplating operations follow the same procedures during manufacture of plated parts, nor do all manage the resultant metal-laden plating rinsewaters in the same manner. For example, many facilities recover chromium and nickel, thereby reducing constituent levels in the plating wastes. Because of the differences inherent in electroplating operations, the Agency does not believe that the decision to deny Allegan's petition will adversely affect the broad category of electroplaters.

The Agency recognizes that the petition review process in the past has been lengthy in some cases. However, the length of time required to review a petition is partially due to the submission of petitions that lack information necessary to completely support a decision, as was the case for Allegan's petition. Incomplete information and the iterative requests for information significantly lengthened the time of review for Allegan's petition. The Agency has implemented strategies and procedures to facilitate reaching more expeditious decisions on petitions (see 53 FR 6822, March 3, 1988). However, the length of time necessary to complete a delisting is also dictated, to a large extent, by the statutory requirement that EPA follow formal rulemaking procedures.

3. Final Agency Decision

For the reasons stated in the proposal, the Agency believes that Allegan's petitioned wastes should not be excluded from hazardous waste control. The Agency, therefore, is denying Allegan Metal Finishing Company's petition, for a one-time upfront exclusinon of its wastewater treatment sludges described in its petitions as EPA Hazardous Waste No. F006 and contained in its two on-site sand seepage lagoons at its Allegan, Michigan facility. Consequently, these petitioned wastes must continue to be handled as hazardous wastes in accordance with 40 CFR parts 260 through 268 and the permitting standards of 40 CFR part 270.

III. Effective Date

This rule is effective immediately. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here because this rule does not change the existing requirements for persons generating hazardous wastes. This facility has been obligated to manage its wastes as hazardous before and during the Agency's review of its petition. Because a six-month deadline is not necessary to achieve the purpose of section 3010, EPA believes that this denial should be effective immediately. These reasons also provide a basis for making this rule effective immediately under the Administrative Procedure Act, pursuant to 5 USC 553(d).

IV. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. The denial of this petition does not impose an economic burden on this facility, because prior to submission and during the review of the petition, this facility should have handled its wastes as hazardous. The denial of this petition means that the petitioner is to continue managing its wastes as hazardous in the manner in which it has been doing, economically and otherwise. There is no additional economic impact, therefore, due to today's rule. This rule is not a major regulation, therefore, no Regulatory Impact Analysis is required.

V. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 USC 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator or a delegated representative may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will not have an adverse economic impact on small entities. The facility included in this notice may constitute a small entity, however, this rule only affects one facility in one industrial segment. The overall economic impact, therefore, on small entities, is small. Accordingly, I hereby certify that this reguation does not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VI. Paperwork Reduction Act

Information collection and recordkeeping requirements associated with this final rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511, 44 USC 3501 *et seq.*) and have been assigned OMB Control Number 2050–0053.

VII. List of Subjects in 40 CFR Part 261

Hazardous materials, Waste treatment and Disposal, Recycling.

Authority: Sec. 3001 RCRA, 42 USC 6921.

Dated: August 28, 1990.

Don. R. Clay,

Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 90-21894 Filed 9-14-90; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 281

[FRL-3831-3]

New Mexico: Final Approval of State Underground Storage Tank Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of final determination of State of New Mexico Application for Final Approval.

SUMMARY: The State of New Mexico has applied for final approval of its underground storage tank program under subtitle I of the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed the New Mexico application and determined, subject to public review and comment, that the New Mexico underground storage tank program satisfies all of the requirements necessary to qualify for final approval. Thus, EPA is granting approval to the State to operate its program unless adverse public comment shows the need for further review. The New Mexico application for final approval is available for public review and comment.

DATES: Final authorization for the New Mexico underground storage tank program shall be effective at 1 p.m. on November 16, 1990 unless EPA publishes a prior **Federal Register** action withdrawing this final rule. All comments on the New Mexico final approval application must be received by the close of business on October 17, 1990.

ADDRESSES: Copies of the New Mexico final approval application are available during the hours between 8 a.m. and 5 p.m. at the following addresses for inspection and copying: Environmental Improvement Division, Harold Runnels Building, 1190 St. Francis Drive, Santa Fe, New Mexico 87503, Phone: 505/827-3982; U.S. EPA Headquarters Library, PM211A, 401 M Street SW., Washington, DC 20460, Phone: 202/382-5926; and U.S. EPA Region 6 Library, 1445 Ross Avenue, Dallas, Texas 75202, Phone: 214/655-6755. Written comments should be sent to Program Manager, Underground Storage Tank Program, Attention William Rhea, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, Phone: 214/ 655-6755.

FOR FURTHER INFORMATION CONTACT: New Mexico State Progam Officer, Underground Storage Tank Program, Attention James Duck, U.S. EPA Region 6, Dallas, Texas 75202, Phone: 214/655-6755.

SUPPLEMENTARY INFORMATION:

A. Background

Section 9004 of the Resource Conservation and Recovery Act (RCRA) enables EPA to approve State underground storage tank programs to operate in the State in lieu of the Federal underground storage tank (UST) program. To qualify for final authorization, a State's program must: (1) Be "no less stringent" than the Federal program; and (2) provide for adequate enforcement (sections 9004(a) and 9004(b) of RCRA, 42 U.S.C. 6991c(b)).

On September 25, 1989, the State of New Mexico submitted an official application for final approval. Prior to its submission, the State of New Mexico provided an opportunity for public notice and comment in the development of its underground storage tank program as required under § 281.509(b). The EPA review of the application determined that existing State regulations establishing June 1, 2008, as the regulatory deadline for upgrading of existing underground storage tanks could not be found to be no less stringent than the Federal requirements found at 40 CFR 281.31. Subsequent to notification of this finding, on March 9, 1990, the State, following a public comment period and a public hearing on the proposal, repealed all State UST regulations pertaining to new tank standards, general operating requirements, release detection, release reporting, response and corrective action, tank closure and financial responsibility. The State then adopted by reference the corresponding Federal UST regulations which became fully effective on July 26, 1990. On July 2, 1990, EPA received an amended application from the State reflecting the adoption of the Federal regulations by reference as State regulations.

B. Decision

After reviewing the amended New Mexico application, I conclude that the State's program meets all of the requirements necessary to qualify for final approval. Accordingly, the State of New Mexico is granted final approval to operate its underground storage tank program. The State of New Mexico now has the responsibility for managing underground storage tank facilities within its borders and carrying out all aspects of the UST program. The State of New Mexico also has primary enforcement responsibility, although EPA retains the right to conduct inspections under section 9005 of RCRA U.S.C. 6991d and to take enforcement actions under section 9006 of RCRA U.S.C. 6991e.

The State of New Mexico is not authorized to operate the UST program on Indian lands and this authority will remain with EPA.

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. The approval effectively suspends the applicability of certain Federal regulations.

List of Subjects in 40 CFR Part 281

Administrative practice and procedure, Hazardous materials, State program approval, Underground storage Tanks.

Authority: This notice is issued under the authority of secs. 2002(a), 7004(b), and 9004 of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: August 21, 1990.

Joe D. Winkle,

Acting Regional Administrator.

[FR Doc. 90-21895 Filed 9-14-90; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[Gen. Dkt. 86-285]

Fee Collection Program; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule (55 FR 19148, May 8, 1990) relating to the procedures for implementation of a fee collection program under 47 U.S.C. 158 (1989). The final rules were adopted to implement changes in that program under the Omnibus Budget Reconciliation Act of 1989.

EFFECTIVE DATE: September 17, 1990.

FOR FURTHER INFORMATION CONTACT:
Martin Blumenthal, Office of General Counsel, Federal Communications Commission, (202) 254–6530.

In FR Doc 90–10157, published in the May 8, 1990 **Federal Register** on page 19172, the amendatory instruction 20 for § 1.1115 is corrected to read as follows:

20. Section 1.1115 is amended by removing paragraphs (c)(1) and (c)(2) and adding a new paragraph (e) to read as follows:

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 90–21613 Filed 9–14–90; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register
Vol. 55, No. 180
Monday, September 17, 1990

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 968

[Docket No. AO F&V 88-1; FV-88-110]

RIN 0581-AA30

Seedless European Cucumbers Grown in the United States; Secretary's Decision and Referendum Order on Proposed Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and referendum order.

SUMMARY: This decision proposes a marketing agreement and order regulating the handling of seedless European cucumbers, more commonly known as "greenhouse cucumbers", grown in the United States and directs that a referendum be conducted to determine if greenhouse cucumber producers favor the proposed order. The order would authorize the establishment of grade, size, quality, maturity, container and pack regulations to promote the quality and standardize the pack of greenhouse cucumbers shipped to fresh markets. In addition, it would authorize production research and marketing research and development activities to improve production practices, reduce costs and increase the consumption of greenhouse cucumbers. Consumers would benefit by being provided with a reliable supply of good quality product, and producers and handlers would benefit from the resulting consumer confidence and increased acceptance and sales of the product. The program would be administered by an 11 member committee consisting of 7 producers, 3 handlers and a public member, and would be financed by assessments levied on greenhouse cucumber handlers.

DATES: The referendum shall be conducted from October 8 to November 9, 1990. The representative period for the purpose of the referendum herein ordered is January 1, 1989, to December 31, 1989.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456; telephone (202) 447-2020.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing—Issued June 22, 1988, and published in the **Federal Register** on June 27, 1988 (53 FR 24070). Recommended Decision and Opportunity to File Written Exceptions—Issued September 29, 1989, and published in the **Federal Register** on October 11, 1989 (54 FR 41601); and Reopening and Extension of the Period to File Written Exceptions—Issued November 17, 1989, and published in the **Federal Register** on November 22, 1989 [54 FR 48252].

This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code, and therefore is excluded from the requirements of Executive Order 12291.

Preliminary statement: This decision with respect to a proposed marketing agreement and order regulating the handling of greenhouse cucumbers grown in the fifty States of the United States and the District of Columbia, hereinafter referred to as the proposed order, is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act, and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

The proposed order was formulated on the record of a public hearing held in Sacramento, California, on July 26-28, 1988. Notice of the hearing was published in the June 27, 1988, issue of the **Federal Register**. The notice set forth a proposed order submitted by the American Greenhouse Vegetable Growers Association (AGVGA) which represents a sizable portion of the greenhouse cucumber industry. At the hearing, a number of witnesses, including producers, handlers, a scientific researcher, a consumer, and an economist testified in support of the order. Proponents emphasized that greenhouse cucumber producers need a marketing order if they are to continue to operate viable businesses and expand markets. They offered evidence in support of their position.

In general, witnesses testified that a marketing order for greenhouse cucumbers that allows the establishment of grade, size, quality, maturity, container, and pack regulations would improve the quality and standardize the pack of greenhouse cucumbers in the marketplace. Additionally, the proposed order would enable the establishment of programs and projects relating to production and marketing research, consumer education, promotion, and market development which could result in reduced costs and increased sales.

At the close of the hearing, November 1, 1989, was established as the date post-hearing briefs were due. One brief was filed by George H. Soares on behalf of the AGVGA. The brief in general reaffirmed the testimony presented at the hearing in support of the proposed order with regard to such issues as: (1) Industry support for the proposed order; (2) the basis used in formulating the proposed production area; (3) eligibility requirements for producers; (4) the impact of the proposed order on small entities; and (5) the most appropriate method for assessing greenhouse cucumbers. The brief was proposed several amendments to the proposed order.

Upon the basis of the evidence introduced at the hearing and the record thereof, including the brief filed, the Administrator of the Agricultural Marketing Service (AMS) on September 29, 1989, filed with the Hearing Clerk, U.S. Department of Agriculture, a Recommended Decision providing opportunity to file written exceptions thereto by November 13, 1989. The period to file written exceptions was subsequently reopened and extended to December 13, 1989.

Fourteen exceptions were filed during the allotted time period. Of those, four supported the establishment of the proposed order, and concurred with the findings and conclusions contained in the Recommended Decision. The remaining 10 exceptions objected to the proposed order, or to certain of its provisions. These exceptions are

discussed and ruled upon in this document.

Small business consideration: In accordance with the provisions of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et. seq.*), the Administrator of the Agricultural Marketing Service has determined that this action would not have a significant economic impact on a substantial number of small entities. Small agricultural producers have been defined by the Small Business Administration (SBA) (13 CFR 121.2) as those having annual receipts of less than $500,000. Small agricultural service firms, which would include handlers under this proposed order, are defined as those with annual receipts of less than $3.5 million.

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 rules issued thereunder are unique in that they are normally brought about through group action of essentially small entities acting on their own behalf. Thus, both the RFA and the Act are compatible with respect to small business entities. Interested persons were invited to present evidence at the hearing on the probable economic impacts that the proposed order would have on small businesses. There are approximately 250 handlers of greenhouse cucumbers in the United States, with all but about 20 also in the business of growing greenhouse cucumbers. During the 1987–88 season, U.S. production of greenhouse cucumbers was estimated to be about 38 million pounds, or the equivalent of 2.4 million 16-pound boxes. Testimony given at the hearing indicated that in recent seasons, f.o.b. prices averaged about $8.00 per box, which would yield a total value of about $19 million. While there is a great variance in size of individual handler operations, most of the handlers that would be regulated under the proposed order would qualify as small businesses under SBA's definition.

There are between 250 and 300 greenhouse cucumber producers in the United States. The largest greenhouse cucumber producer has 22 acres of growing area, but all others operate substantially smaller greenhouses. The average size of a greenhouse cucumber growing operation is about 18,500 square feet or four-tenths of an acre. With gross annual receipts of $175,000 to $250,000 per acre, the vast majority of these producers could a classified as small businesses.

Because most greenhouse cucumber producers and handlers are small businesses, a marketing order program would provide a necessary means for the greenhouse cucumber industry to provide a uniform, quality product to consumers and expand markets.

The proposed order would authorize a number of requirements that may be imposed upon handlers. Principal requirements which could impact handlers include: standardized container and pack specifications; minimum standards of quality and size; mandatory inspection; payment of assessments; and associated reporting and recordkeeping.

Container and pack specifications could be used to limit the types of containers which may be used by handlers to ship greenhouse cucumbers, and how those greenhouse cucumbers must be packed. Quality and size restrictions could be established to remove from fresh market channels less desirable grades and sizes of greenhouse cucumbers. The establishment of these types of regulations would likely require the mandatory inspection of greenhouse cucumbers destined for fresh market with costs paid by handlers. In any consideration of regulatory requirements, the committee would have due consideration to the impacts those requirements would have on small businesses and report the expected impacts to the Secretary and the industry. In the event it is deemed necessary to provide relief from certain requirements, the proposed order authorizes a number of exemptions. For example, provision has been made to allow small quantities of greenhouse cucumbers to be marketed without regard to the regulatory requirements that may be in effect. Additionally, waivers from the inspection requirement could be obtained when it was determined that inspection would not be practicable.

The proposed order would be administered by a committee of greenhouse cucumber growers and handlers, and all recommendations for handling requirements would require the review and approval of the Secretary. The burden of these regulatory requirements should not be significant compared to the benefits which should accrue to the regulated businesses. For example, uniform pack and container requirements should result in cost savings and reduced confusion on the part of buyers. If lower quality and smaller sizes were eliminated from fresh market channels, demand for higher quality and preferred sizes should increase.

The program would be financed by assessments paid by greenhouse cucumber handlers. While the assessment rate that may be levied is not specified in the proposed order, it would have to be established at a rate sufficient to generate adequate revenue to cover the operating costs of a national program such as that proposed herein. Expenses would include committee staff salaries and travel expenses for committee members and staff, as well as other administrative expenses relating to establishing and equipping an office such as rent, utilities, postage and office equipment. Additionally, assessment funds would be used to fund any production research projects and promotion activities undertaken by the committee and to establish and maintain an effective program for assuring compliance with program requirements.

While the rate of assessment is not specified in the proposed order, witnesses, at the hearing indicated that an assessment rate in the range of ½ to 1½ cents per greenhouse cucumber would be an appropriate and acceptable amount to accomplish the purposes of the proposed order. At these rates, the estimated 38 million pounds of greenhouse cucumbers produced in 1987–88 would have generated total assessment income of $190,000 to $570,000. With wholesale prices averaging about 50 cents per greenhouse cucumber (or approximately 50 cents per pound) nationwide, an assessment rate of ½ to 1½ cents should not be burdensome and should not represent a significant financial burden on handler operations. Further, the benefits of reduced costs and increased sales that should result from the contemplated research and promotion programs should outweigh assessment costs.

The reporting and recordkeeping requirements that may be imposed under the proposed order should not be burden on handler's businesses because handlers already maintain the necessary types of records, or could easily compile them from current records used in the normal operation of their businesses. The reporting and recordkeeping requirements that may be established under the proposed order are likely to be comparable to those in effect under similar marketing order programs, which are not considered burdensome on handlers regulated under those orders. Therefore, the reporting and recordkeeping requirements would not be expected to impose any significant additional costs on handlers.

The terms of the proposed order should be administered in an efficient and economical manner in order to effectuate the declared policy of the Act. All entities, small and large, should be subject to minimal regulatory requirements as a result of the proposed order.

In determining that the proposed order would not have a significant economic impact on a substantial number of small entities, all of the issues discussed above were considered. The order provisions have been carefully reviewed and every effort has been made to minimize any unnecessary costs or other requirements on handlers. Although the order may impose some additional costs and requirements on handlers, it is anticipated that the program under the proposed order would help to increase demand for greenhouse cucumbers. Therefore, any additional costs should be offset by the benefits derived from expended markets and sales benefiting handlers and producers alike. Accordingly, it is determined that the provisions of the proposed order would not have a significant impact on small handlers or producers.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the reporting and recordkeeping provisions that may be imposed by the proposed order would be submitted to the Office of Management and Budget (OMB) for approval. They would not become effective prior to OMB approval. Any requirements imposed would be evaluated against potential benefits to be derived, and any added burden resulting from increased reporting or recordkeeping would not be significant when compared to those anticipated benefits.

Reporting and recordkeeping requirements issued under comparable marketing order programs impose an average annual burden on each regulated handler of about one hour. It is reasonable to expect that a comparable burden may be imposed under this proposed order on the estimated 250 handlers of greenhouse cucumbers.

The Act requires that prior to the issuance of a marketing order, a referendum be conducted of affected producers to determine whether they approve the order. The ballot material that will be used in conducting the referendum on this proposed marketing order has been submitted to and approved by OMB under OMB No. 0581-0161. It has been estimated that it will take an average of 10 minutes for each of the approximately 250 greenhouse cucumber producers to participate in the voluntary referendum balloting. Additionally, it has been estimated that it will take approximately 5 minutes for each of the 250 greenhouse cucumber handlers to complete the proposed marketing agreement. And finally, should the order be approved, it has been estimated that it would take approximately 10 minutes for each of the 22 committee member nominees to complete a background statement to ascertain their eligibility to serve on the Cucumber Administrative Committee.

In accordance with Executive Order 12612, entitled "Federalism", consideration has been given as to whether the proposed order would have substantial direct effects on the 50 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. To this end, notice of the Department's intention to conduct a hearing on the establishment of a Federal marketing order program for greenhouse cucumbers grown in the United States was provided to all governors, as well as to the Mayor of the District of Columbia, and to the Commissioners of Agriculture of all 50 States. No evidence has been received indicating that the proposed order would create any burdens, financial or otherwise, on any of the States or the District of Columbia. Further, the proposed order would cover all greenhouse cucumbers grown in the U.S. Thus, any marketing orders, or their equivalent, authorized under State statutes could not achieve the same results as an alternative to a Federal marketing order program. It is therefore determined that this proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Findings and Conclusions

The findings and conclusions included in the discussion of the material issues and the rulings and general findings of the Recommended Decision set forth in the October 11, 1989, issue of the **Federal Register** (54 FR 41601) are hereby approved and adopted subject to the following modifications.

Based on the exceptions filed by Craig Miller and Carl A. Pescosolido, Jr., the findings and conclusions in material issue 2 of the Recommended Decision concerning the need for research and promotion are amended by adding the following 4 paragraphs after the 23rd paragraph of material issue 2 to read as follows:

Exceptions received from Craig Miller, a greenhouse cucumber producer in Lodi, California, and Carl A. Pescosolido, Jr., an orange producer in Exeter, California, opposed the need for research and promotion authority in a Federal marketing order for greenhouse cucumbers. Mr. Miller indicated that advertising costs are prohibitive, and that the industry would therefore be unable to finance an effective advertising program. Further, he stated that any increases in demand that might be achieved through promotion would encourage new entries into the greenhouse cucumber production industry and increased supplies of imported product, and would not benefit current domestic producers.

The Act authorizes paid advertising only for certain specified commodities, which do not include cucumbers. Therefore, no funds collected under the proposed order could be used for paid advertising. The record evidence indicates that other, less expensive promotional activities could be undertaken to expand the market for greenhouse cucumbers. Such efforts, while not affordable to many individual entities, could be successful if financed collectively by all greenhouse cucumber handlers. The record evidence also supports the conclusion that greenhouse cucumber producers would benefit from promotion. Future increases in production are anticipated, and therefore finding new markets will be necessary for the greenhouse cucumber industry. Further, the record indicates that promotion of domestic greenhouse cucumbers, coupled with better quality and more uniform packs, will improve the domestic industry's overall competitive position in the marketplace. Mr. Miller's exception is therefore denied.

Mr. Pescosolido objected to a Federal research and promotion program, contending that private firms are able to finance any needed research and that promotion activities should be supported only on a voluntary basis.

The record evidence is contrary to both of these contentions. Few, if any, greenhouse cucumber producers are able to individually finance research that is needed in such areas as pest control and disease resistance. Further, the record indicates that public funding for such work is virtually non-existent. The record also indicates that the situation regarding product promotion is similar. The proposed order is necessary because past efforts undertaken on a voluntary basis have failed. The record supports the need for authorizing the industry to fund research and promotion under the proposed order, and Mr. Pescosolido's exception is therefore denied.

Based on the exceptions filed by Mr. Miller and Mr. Pescosolido, as well as

those received from Ron Lane, Kenneth A. Gerhart, Michael Klosovsky and Bruce Sutheland, the findings and conclusions in material issue 2 of the Recommended Decision concerning the need for the proposed marketing order are further amended by adding the following 12 paragraphs after the 35th paragraph of material issue 2 to read as follows:

Ron Lane, a greenhouse cucumber producer in Standard, California, Kenneth A. Gerhart, a greenhouse cucumber producer in Daggett, California, and Craig Miller took exception to the conclusion that authority is needed to regulate the quality of greenhouse cucumbers that may be marketed. Each indicated that the competitive forces at work in the marketplace adequately control the quality that may be sold, and handlers are therefore required to ship only acceptable quality fruit if they are to remain in business.

The record evidence indicates, however, that poor quality fruit does appear in the marketplace. Buyers who receive substandard greenhouse cucumbers are hesitant or unwilling to purchase them again, even from a different shipper who might pack a better product. These lost sales are detrimental to the industry as a whole, and mandatory quality requirements imposed prior to shipment could therefore serve to maintain and expand total sales of greenhouse cucumbers. For these reasons, the exceptions opposing the need for quality regulation are denied.

Messrs. Lane and Gerhart also opposed the need for standardization of packs and containers. They stated that attempts at such efforts would be impractical due to current regional packing practices, and that national standards are unnecessary because the uniformity that exists on a regional basis is sufficient.

The record indicates that there is some amount of standardization in the container sizes used in the three major producing States of California, Florida and Ohio. The record also indicates, however, that there is substantial variability in what is packed in those containers. Additionally, containers used outside those three States are not uniform, and a proliferation of container types and sizes is likely as greenhouse cucumber production increases in other areas of the country. Finally, the record indicates that instability exists in receiving markets due to the confusion among buyers who purchase greenhouse cucumbers from different parts of the country. Providing authority in the marketing order to establish container and pack requirements would reduce this confusion by permitting a uniform basis of trade throughout the country, which should benefit the industry. Based on the foregoing, the exceptions filed by Messrs. Lane and Gerhart are denied.

The exceptions filed by Messrs. Lane and Pescosolido concluded that current economic conditions do not justify the need for the proposed marketing order. Mr. Pescosolido specifically cited the lack of such evidence as disorderly marketing conditions, fluctuating prices, or a lack of profitability to indicate a problem exists that could be remedied by the proposed order.

Contrary to these contentions, the record evidence is that greenhouse cucumber prices fluctuate widely within seasons and from year to year. Production costs are on the rise, and at times exceed prices received. Increases in domestic supplies of at least 10 percent per year are projected. The record indicates that these increasing supplies will exert downward pressure on prices unless the industry makes a concerted effort to expand markets. Finally, the significant variation in product offerings serves to create a disorderly marketing situation, which contributes to price instability and fluctuation. The proposed order would provide the industry with a number of ways to address these problems and for this reason, the exceptions by Messrs. Lane and Pescosolido are denied.

Mr. Lane's exception further stated that issuance of the proposed order would be contrary to § 608c(9)(B) of the Act because it is not the only means by which the interests of greenhouse cucumber producers could be advanced.

Section 608(c)(9)(B) provides that notwithstanding the refusal or failure of the requisite number of handlers to sign a marketing agreement, a marketing order shall become effective if the Secretary finds that the refusal or failure of handlers to sign a marketing agreement tends to prevent the effectuation of the declared policy of the Act and that the issuance of the marketing order is the only practicable means of advancing the interest of the producers pursuant to the declared policy and is approved by appropriate voting percentages. This final decision provides handlers an opportunity to sign a marketing agreement and producers to vote in a referendum. In addition, the record evidence is that greenhouse cucumber producers and handlers face numerous problems in marketing their product. Private and voluntary efforts to resolve some of those problems have proven unsuccessful. A Federal marketing order is an effective way to address the marketing problems facing the greenhouse cucumber industry. Accordingly, Mr. Lane's exception is therefore denied.

Michael Klosovsky, a greenhouse cucumber producer in West Middlesex, Pennsylvania, and Mr. Pescosolido opposed the proposed order on the basis that it would result in increased consumer costs.

There is no evidence on the record to support this claim. Rather, the record indicates that one objective of production research would be to lower production costs which, in turn, could be reflected in lower prices to consumers. These exceptions are therefore denied.

Mr. Miller and Bruce Sutheland, a greenhouse cucumber sales agent in Lodi, California, objected to the proposed order because it does not have sufficient producer support.

Testimony reflects that the proposed order has been widely discussed. Also, references were made in testimony as to support of the proposed order by greenhouse cucumber producers and handlers. However, the Act requires that before any new order can become effective, it must be approved in a producer referendum by at least two-thirds of those voting or by those accounting for at least two-thirds of the volume represented in the referendum. Given the statutory requirement that producer support be demonstrated in a referendum, all affected producers will be given an opportunity to indicate their approval or disapproval in the referendum called for in this document. For these reasons, the exceptions filed by Messrs. Miller, and Sutheland are denied.

Based on the exception received from Mr. Lane, the findings and conclusions in material issue 3(a) of the Recommended Decision concerning the definition of the term production area are amended by adding the following 2 paragraphs after the 8th paragraph of material issue 3(a) to read as follows:

Mr. Lane contended that the proposed order is contrary to §§ 608c(11) (A) and (C) of the Act because it would apply to all production areas, without giving recognition to regional differences in production and marketing.

The record supports the proposed order covering the entire U.S. as the only means by which sufficient funds could be generated to finance an effective research and promotion program. Further, greenhouse cucumbers grown in various parts of the country are or can be sold in the same markets. A primary objective of the order is to establish standardized requirements to provide a uniform basis for marketing greenhouse cucumbers. Since

greenhouse cucumbers are grown indoors, growing conditions are similar throughout the country. Separate orders are not necessary to recognize regional differences. The proposed order should cover all 50 States and the District of Columbia. Accordingly upon the basis of the record, the findings and determinations in this decision include that the proposed marketing agreement and order are limited in their application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act; and that there are no differences in the production and marketing of Seedless European cucumbers grown in the production areas which make necessary different terms and provisions applicable to different parts of such area. Accordingly, Mr. Lane's exception is denied.

Based on the exception received from Mr. Lane, the findings and conclusions in material issue 3(a) of the Recommended Decision concerning the identity of those who would be subject to regulation under the proposed order are amended by adding the following 2 paragraphs after the 23rd paragraph of material issue 3(a) to read as follows:

Mr. Lane objected to the proposed order because testimony implied that producers would pay assessments which would be contrary to the Act.

Assessments would be imposed only on greenhouse cucumber handlers, as defined in the proposed order. Producers would not be required to pay assessments, unless they also handled greenhouse cucumbers and then would be required to pay them only in their capacity as handlers. The provisions of the proposed order are therefore consistent with the Act, and Mr. Lane's exception is denied.

Based on the exceptions filed by Leo Overgaag and Art Overgaag, the findings and conclusions in material issue 3(b) of the Recommended Decision concerning committee member qualifications are amended by adding the following 2 paragraphs after the 6th paragraph of material issue 3(b) to read as follows:

Leo Overgaag, a greenhouse cucumber producer in Thermal, California, and Art Overgaag, a greenhouse cucumber producer in Carpinteria, California, suggested two additional requirements for producers to be eligible to serve on the committee, They indicated that members should be required to have been in the business of growing greenhouse cucumbers for at least 3 years and have a minimum of 50,000 square feet of growing area.

The record indicates that any producers with more than 2,500 square feet of growing area should be eligible to serve on the committee because that producer's greenhouse cucumbers would be subject to regulation under the proposed order. Futher, the record indicates that the average greenhouse cucumber producer has 18,500 square feet of growing area. The 50,000 square feet requirement would therefore exclude all but the largest producers from serving on the committee, which would be contrary to the objectives of assuring equitable industry representation on the committee and providing opportunity for input in program matters from both large and small producers. The exceptions from the Overgaags are therefore denied.

Based on the exception filed by Mr. Pescosolido, the findings and conclusions in material issue 3(b) of the Recommended Decision referencing the brief filed after the close of the hearing, are amended by adding the following 2 paragraphs after the 7th paragraph of material issue 3(b) to read as follows:

Mr. Pescosolido took exception to the Department's consideration of the brief filed by George Soares. He contended that since Mr. Soares did not testify at the hearing, his subsequent comments should be rejected as irrelevant because the hearing evidence is the only information upon which a decision can be made in this proceeding.

At the close of the hearing, the Administrative Law Judge fixed November 1, 1989, as the date by which any interested person could file proposed findings and conclusions based upon the record evidence. Mr. Soares, who represents the proponent group (AGVGA), qualifies as a person interested in this proceeding. Further, the brief filed by Mr. Soares presented conclusions based on the record evidence. It was therefore appropriate that the brief was considered in reaching a Recommended Decision in this proceeding, and Mr. Pescosolido's exception is therefore denied.

Based on the exception filed by Messrs. Lane, Miller and Overgaag, and those received from the Cleveland Greenhouse Vegetable Growers' Cooperative Association and the Ohio Vegetable and Potato Growers Association, the findings and conclusions in material issue 3(c) of the Recommended Decision concerning committee expenses and the establishment of assessments are amended by adding the following 8 paragraphs after the 6th paragraph of material issue 3(c) to read as follows:

Mr. Lane filed an exception in opposition to the proposed order because the administrative costs of the program would reduce private funds available for promotion.

The record evidence indicates that attempts would be made to minimize the costs of operating the proposed order to enable the committee to use most of the assessment revenue collected for research and promotion. Although there would be administrative costs incurred, the preponderance of evidence is that those costs would be substantially outweighed by benefits derived from operation of the program. Mr. Lane's exception is therefore denied.

Mr. Lane also took exception to establishing an assessment rate of 2 cents per greenhouse cucumber, because it has not been proven that such a rate is reasonable.

Although possible rates of assessment were discussed at the hearing, the proposed order does not specify what the actual rate would be. Any assessment rate established by the Secretary under the proposed order would be based upon recommendations of the committee, which would include an analysis of why the recommended rate was appropriate. Mr. Lane's exception is therefore denied.

In a related issue, the exceptions filed by Mr. Miller and the Ohio Vegetable and Potato Growers Association stated that the proposed order should specify a maximum limitation on the assessment rate that could be established.

The record does not support such a limitation, however. Evidence indicates that there is no need to limit the assessment rate because the committee, comprised primarily of greenhouse cucumber producers and handlers, would not be expected to recommend an unreasonably high assessment rate. For the reason, the exceptions are denied.

Messrs, Overgaag, the Cleveland Greenhouse Vegetable Growers' Cooperative Association, and the Ohio Vegetable and Potato Growers Association objected to assessing shipments of domestically-grown greenhouse cucumbers unless imports were also subject to assessment.

Imported commodities are not assessed under the Act and marketing orders, and these exceptions therefore are denied.

Based on the exception filed by Mr. Pescosolido, the findings and conclusions in material issue 3(e) of the Recommended Decision concerning the establishment of quality standards are amended by adding the following 2 paragraphs after the 8th paragraph of material issue 3(e) to read as follows:

Mr. Pescosolido objected to establishing a minimum grade requirement for greenhouse cucumbers because none of the current grade factors relate to the wholesomeness of the product.

The grade requirements specified in the U.S. Standards, including those relating to shape, color and freedom from decay, are based on consumer preferences, and are therefore appropriate criteria for measuring quality. Additionally, the record indicates that the committee would not be limited to the use of the U.S. Standards in establishing quality requirements for greenhouse cucumbers. Other factors could be established if deemed necessary and appropriate by the committee and the Secretary. For these reasons, Mr. Pescosolido's exception is denied.

Based on the exception filed by Mr. Lane, the findings and conclusions in material issue 3(e) of the Recommended Decision concerning container marking regulations are amended by adding the following 2 paragraphs after the 14th paragraph of material issue 3(e) to read as follows:

The exception filed by Mr. Lane contended that authority to regulate greenhouse cucumber containers is contrary to § 608c(10) of the Act, which forbids the restriction of advertising any commodity covered by a marketing order.

Section 8c(10) of the Act does provide that no order shall be issued prohibiting, regulating or restricting the advertising of any commodity or product thereof. The Act also authorizes the establishment of order provisions concerning fixing the size, capacity, weight, dimensions or pack of the container or containers. The record indicates that regulations to standardize the containers used in packing greenhouse cucumbers could benefit the industry. Container regulations would not interfere with a firm's individual advertising or promotion effort. Therefore, Mr. Lane's exception is denied.

Based on the exceptions received from Mr. Lane and the Cleveland Greenhouse Vegetable Growers' Cooperative Association, the findings and conclusions in material issue 3(e) of the Recommended Decision concerning exemptions from regulations are amended by adding the following 2 paragraphs after the 17th paragraph of material issue 3(e) to read as follows:

Mr. Lane and the Cleveland Greenhouse Vegetable Growers' Cooperative Association objected to the provisions in the proposed order that shipments for certain purposes could be exempt from handling requirements. Specifically, they took exception to exempting shipments to farmers' markets and restaurants from handling and assessment requirements. Handlers that ship a large proportion of their greenhouse cucumbers to such outlets would be regulated to a lesser degree than those who marketed their product in other channels.

While the proposed order contains authority for exempting certain shipments, including those to farmers' markets and restaurants, such exemptions would only be provided on the basis of the committee's recommendation and the Secretary's approval. In its deliberations, the committee would be required to analyze the expected impacts of any such exemption on greenhouse cucumber handlers. Additionally, individual handlers and other interested persons would be provided the opportunity to express their views on any such recommendation. Thus, the exceptions are denied.

Based on the exceptions filed by Messrs. Lane, Miller and Overgaag, and that received from the Cleveland Greenhouse Vegetable Growers' Cooperative Association, the findings and conclusions in material issue 3(f) of the Recommended Decision concerning inspection and certification are amended by adding the following 2 paragraphs after the 5th paragraph of material issue 3(f) to read as follows:

Messrs. Overgaag, Miller and Lane, and the Cleveland Greenhouse Vegetable Growers' Cooperative Association objected to the inspection requirements that may be imposed under the proposed order. These exceptions suggested that the impact of such requirements would be particularly great on small handlers and those in remote locations.

These concerns were expressed at the hearing, and a provision is included in the proposed order for exemptions from inspection requirements. The committee may, with the approval of the Secretary prescribe rules and regulations waiving the inspection requirements when it is determined that inspection is not practicable. Accordingly, these exceptions are denied.

Based on the exception filed by Mr. Lane, the findings and conclusions in material issue 3(g) of the Recommended Decision concerning reporting and recordkeeping requirements are amended by adding the following 2 paragraphs after the 3rd paragraph of material issue 3(g) to read as follows:

Mr. Lane contended that the reporting requirements that may be imposed under the proposed order would be burdensome.

However, the record indicates that such requirements would be minimal, and that most information that would be required to be submitted to the committee is readily available to handlers. For this reason, Mr. Lane's exception is denied.

Based on the exception filed by the Ohio Vegetable and Potato Growers Association, the findings and conclusions in material issue 3(i) of the Recommended Decision concerning oversight of the proposed order by the Secretary are amended by adding the following 2 paragraphs after the 2nd paragraph of material issue 3(i) to read as follows:

The Ohio Vegetable and Potato Growers Association objected to the authority the Secretary would have to overrule committee actions. Specific exception was taken to the Secretary's power to appoint committee members, approve rates of assessment and terminate the program.

Although the committee would be responsible for the local administration of the proposed order, the Act also charges the Secretary with responsibility for the administration of marketing orders. The provisions of the proposed order are consistent with the requirements of the Act, and this exception is therefore denied.

Rulings on Exceptions

In arriving at the findings and conclusions and the regulatory provisions of this decision, the exceptions to the Recommended Decision were carefully considered in conjunction with the record evidence. To the extent that the findings and conclusions and the regulatory provisions of this decision are at variance with the exceptions, such exceptions are hereby denied for the reasons previously stated in this decision.

Marketing Agreement and Order

Annexed hereto and made a part hereof are two documents entitled, respectively, "Order Regulating the Handling of Seedless European Cucumbers Grown in the United States" and "Marketing Agreement Regulating the Handling of Seedless European Cucumbers Grown in the United States." These documents have been decided upon as the detailed and appropriate means of effectuating the foregoing findings and conclusions.

It is hereby ordered, That this entire decision, except the annexed marketing agreement, be published in the **Federal**

Register. The regulatory provisions of the marketing agreement are identical to those contained in the order as hereby proposed by the annexed order which is published with this decision.

Referendum Order

It is hereby directed that a referendum be conducted in accordance with the procedure for the conduct of referenda (7 CFR 900.400 *et seq.*) to determine whether the issuance of the annexed order regulating the handling of seedless European cucumbers grown in the United States is approved or favored by growers, as defined under the terms of the proposed order, who during the representative period were engaged in the production of seedless European cucumbers in the aforesaid production area.

The representative period for the conduct of such referendum is hereby determined to be January 1, 1989, to December 31, 1989.

The agents of the Secretary to conduct such referendum are hereby designated to be Kenneth G. Johnson and Robert F. Matthews, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456, telephone (202) 447-2020.

List of Subjects in 7 CFR Part 968

Cucumbers, Marketing agreements, Reporting and recordkeeping requirements.

Dated: September 7, 1990.

John E. Frydenlund,

Deputy Assistant Secretary, Marketing and Inspection Services.

Order Regulating the Handling of Seedless European Cucumbers Grown in the United States [1]

Findings and determinations upon the basis of the hearing record. Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure effective thereunder (7 CFR part 900), a public hearing was held upon a proposed marketing agreement and order regulating the handling of Seedless European cucumbers grown in the United States.

Upon the basis of the record it is found that:

(1) The proposed marketing agreement and order and all of the terms and conditions thereof will tend to effectuate the declared policy of the Act;

(2) The proposed marketing agreement and order regulate the handling of Seedless European cucumbers grown in the production area in the same manner as, and is applicable only to persons in the respective classes of commercial and industrial activity specified in, the proposed marketing agreement and order upon which a hearing has been held;

(3) The proposed marketing agreement and order are limited in their application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

(4) There are no differences in the production and marketing of Seedless European cucumbers grown in the production area which make necessary different terms and provisions applicable to different parts of such area; and

(5) All handling of Seedless European cucumbers grown in the production area is in the current of interstate of foreign commerce or directly burdens, obstructs or affects such commerce.

It is therefore ordered, that on and after the effective date thereof, all handling of Seedless European cucumbers grown in the production area shall be in conformity to, and in compliance with, the terms and conditions of the said marketing agreement and order as follows:

The provisions of the proposed marketing agreement and order contained in the Recommended Decision issued by the Administrator on September 29, 1989, and published in the **Federal Register** on October 11, 1989 (54 FR 41601), shall be and are the terms and provisions of this order and are set forth in full herein. Those sections identified with an asterisk (*) apply only to the proposed marketing agreement and not to the proposed marketing order.

It is proposed that title 7, chapter IX be amended by adding part 968 to read as follows:

PART 968—SEEDLESS EUROPEAN CUCUMBERS GROWN IN THE UNITED STATES

Definitions

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968.1 Secretary.
968.2 Act.
968.3 Person.
968.4 Production area.
968.5 Cucumbers.
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968.7 Producer.
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968.9 Handle.
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Administrative Body

968.20 Establishment and membership.
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Expenses and Assessments

968.40 Expenses.
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968.42 Delinquent assessments.
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Research and Promotion

968.50 Research and promotion.
968.51 Patents, copyrights, inventions, trademarks, and publications.

Regulation

968.60 Marketing policy.
968.61 Recommendations for regulation.
968.62 Issuance of regulations.
968.63 Modification, suspension, or termination of regulations.
968.64 Special purpose shipments.
968.65 Inspection and certification.
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Reports and Recordkeeping

968.70 Reports and records.

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968.80 Compliance.

Miscellaneous provisions

968.82 Right of the Secretary.
968.83 Termination.
968.84 Proceedings after termination.
968.85 Effect of termination or amendment.
968.86 Duration of immunities.
968.87 Agents.
968.88 Derogation.
968.89 Personal liability.
968.90 Separability.
968.91 Amendments.

Marketing Agreement

968.97 Counterparts.*
968.98 Additional parties.*
968.99 Order with marketing agreement.*

Authority: Sec. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601 *et seq.*

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

Definitions

§ 968.1 Secretary

Secretary means the Secretary of Agriculture of the United States, or any officer or employee of the Department of Agriculture to whom has been delegated, or to whom may hereinafter be delegated, the authority to act for the Secretary.

§ 968.2 Act.

Act means Public Act No. 10, 73rd Congress (May 12, 1933) as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended.

(Sec. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601 *et seq.*).

§ 968.3 Person.

Person means an individual, partnership, corporation, association, or any other business unit.

§ 968.4 Production area.

Production area means the fifty States of the United States of America and the District of Columbia.

§ 968.5 Cucumbers.

Cucumbers means predominately gynoecious cultivars of *Cucumis sativus L.*, commonly known as seedless European cucumbers, greenhouse cucumbers, European cucumbers, English cucumbers, hothouse seedless cucumbers, or greenhouse seedless cucumbers, grown by producers in greenhouses in the production area.

§ 968.6 Varieties.

Varieties means and includes all classifications of cucumbers according to those definitive characteristics now or hereafter recognized by the United States Department of Agriculture.

§ 968.7 Producer.

Producer is synonymous with "grower" and means any person engaged in a proprietary capacity in the production of cucumbers grown in a greenhouse exceeding 2500 square feet of climate-controlled, weather-protected growing area devoted to cucumber production.

§ 968.8 Handler.

Handler is synonymous with "shipper" and means any person (except a common or contract carrier transporting cucumbers owned by another person) who handles cucumbers, or causes cucumbers to be handled.

§ 968.9 Handle.

Handle is synonymous with "ship" and means to sell, consign, deliver, or transport cucumbers, or to cause cucumbers to be sold, consigned, delivered, or transported, between the production area and any point outside thereof, or within the production area: Provided, That under such rules and regulations as the committee, with the approval of the Secretary may prescribe, that the term handle shall not include the transportation within the production area of cucumbers from the greenhouse where grown to a handling facility for preparation for market.

§ 968.10 Committee.

Committee means the Cucumber Administrative Committee established pursuant to § 968.20.

§ 968.11 Fiscal period.

Fiscal period is synonymous with "fiscal year" and means the 12-month period beginning on January 1 and ending December 31, or such other period as the committee, with the approval of the Secretary, may prescribe: Provided, That the initial fiscal period shall begin on the effective date of this subpart.

§ 968.12 District.

District means each of the geographic divisions of the production area initially established pursuant to this section, or as reestablished pursuant to § 968.29(n).

(a) District 1 shall include the States of Alaska, Arizona, California, Hawaii, Idaho, Nevada, Oregon, Utah, and Washington.

(b) District 2 shall include the States of Colorado, Kansas, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming.

(c) District 3 shall include the States of Connecticut, Delaware, Illinois, Indiana, Iowa, Maine, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont and Wisconsin.

(d) District 4 shall include the States of Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, West Virginia and the District of Columbia.

§ 968.13 Container.

Container means any type of receptacle used in the packaging or handling of cucumbers.

§ 968.14 Pack.

Pack means the specific arrangement, size, weight, count, grade, or any combination of these, of cucumbers in any type of container.

§ 968.15 Part and subpart.

Part means the Order Regulating the Handling of Seedless European Cucumbers Grown in the United States and all rules, regulations, and supplementary orders issued thereunder. The aforesaid Order Regulating the Handling of Seedless European Cucumbers Grown in the United States shall be a "subpart" of such "part."

Administrative Body

§ 968.20 Establishment and membership.

(a) The Cucumber Administrative Committee is hereby established, consisting of eleven members, to administer the terms and provisions of this part. Seven of the members shall be producers, or officers or employees of producers; three of the members shall be handlers, or officers or employees of handlers; and one shall be a public member. Each member shall have an alternate who shall have the same qualifications as the member for whom such person is an alternate.

(b) Two producer members shall be from District 1; one producer member shall be from District 2; two producer members shall be from District 3; and two producer members shall be from District 4. Handler members shall be selected from the production area at large: Provided, That no more than two handlers shall be selected from any one district.

(c) No producer or handler shall have more than one member on the committee.

(d) The public member shall be neither a producer nor a handler and shall have no direct financial interest in the commercial production, financing, buying, packing or marketing of cucumbers, except as a consumer, nor be a director, officer or employee of any firm so engaged.

§ 968.21 Term of office.

(a) Except as otherwise provided in paragraph (b) of this section, the term of office of committee members and their respective alternates shall be for three years and shall begin as of January 1 and end the last day of December, three years hence, or for such other three-year period as the committee may recommend and the Secretary approve: Provided, That the members of the initial committee shall begin their term of office upon appointment by the Secretary and that if the initial committee is appointed after the beginning of a fiscal year, that portion of the fiscal year shall not be counted in calculating terms of office. Members and alternates shall serve in such capacity for the portion of the term of office for

which they are selected, and until their successors are selected.

(b) The terms of office shall be staggered so that approximately one-third of the total committee membership shall terminate each year. Two producer members and one handler member shall serve an initial term of one year; two producer members, one handler member and the public member shall serve initial terms of two years; and three producer members and one handler member shall serve initial terms of three years.

(c) The consecutive terms of office of members shall be limited to two terms, except for those three initial members who serve for one year shall be eligible for renomination for two full terms at the end of their initial one-year term. Any member serving on the committee for two full consecutive terms shall not be eligible for renomination to the committee for a period of one year. Alternate members shall be eligible for renomination at the end of their respective terms.

§ 968.22 Nomination.

(a) *Initial members.* Nominations for the initial producer and handler members shall be conducted by the Secretary. Nominations for producer and handler members and alternates shall be conducted at a meeting or meetings of producers and handlers in each district. A nomination for the public member, together with a nomination for the alternate public member, shall be made by the initial producer and handler members of the committee as soon as possible after their selection.

(b) *Successor members.* The committee shall hold or cause to be held a meeting or meetings of producers and handlers in each district for the purpose of designating nominees for successor members and alternate members of the committee: Provided, That the committee may conduct nominations of producers and handlers by mail in a manner recommended by the committee and approved by the Secretary. One nominee shall be submitted for each member position on the committee and one nominee for each alternate member position. Such nominations shall be submitted to the Secretary by the committee not later than October 15 of each year, or such other date as may be specified by the Secretary. The committee may prescribe procedural rules, not inconsistent with the provisions of this section, for the conduct of nominations.

(c) Only producers may participate in the nomination of producer members and their alternates. Each producer shall be entitled to cast only one vote for each nominee to be elected in the district in which such producer produces cucumbers. No producer shall participate in the election of nominees in more than one district in any one fiscal year.

(d) Only handlers, including a duly authorized officer or employee of handlers, may participate in the nomination and election of nominees for handler members and their alternates. Each handler shall be entitled to cast only one vote for each handler nominee.

(e) Any person who is engaged in both producing and handling cucumber shall elect the classification in which to participate in designating nominees.

(f) The committee members shall nominate the public member and alternate member at the first meeting following the selection of members for a new term of office.

§ 968.23 Qualifications.

Any person nominated to serve on the committee shall, prior to selection as a member or alternate member of the committee, qualify by filing with the Secretary a written statement indicating that person's willingness to serve.

§ 968.24 Selection.

From the nominations made pursuant to § 968.22 of this subpart, or from other qualified persons, the Secretary shall select committee members and alternates on the basis of representation provided for in § 968.20 or as modified pursuant to § 968.29.

§ 968.25 Failure to nominate.

If nominations are not made within the time and in the manner prescribed in § 968.22 of this subpart, the Secretary may, without regard to nominations, select the members and alternate members of the committee on the basis of the representation provided for in § 968.20 of this subpart or as modified pursuant to § 968.29.

§ 968.26 Alternate members.

An alternate member of the committee shall act in the place and stead of the member for whom such person is an alternate in the member's absence, or when designated to do so by such member. In the event both a member and that member's alternative are unable to attend a committee meeting, the member, the alternate, or the committee, in that order may designate another alternate from the same district and the same group (handler or producer) to act in the place of such member. In the event of the death, removal, resignation, or disqualification of a member, that member's alternate shall serve until a successor for the member's unexpired term is selected. The committee may request the attendance of alternates at any or all meetings, notwithstanding the expected or actual presence of the respective members.

§ 968.27 Vacancies.

To fill any vacancy caused by the death, removal, resignation, or disqualification of any member or alternate member of the committee, a successor to fill the unexpired term of such member or alternate member of the committee shall be nominated in the manner specified in § 968.22 or by such other method as may be recommended by the committee and approved by the Secretary.

§ 968.28 Powers.

The committee shall have the following powers:

(a) To administer the provisions of this part in accordance with its terms;

(b) To make and adopt rules and regulations to effectuate the terms and provisions of this subpart;

(c) To recieve, investigate, and report to the Secretary complaints of violations of the provisions of this part; and

(d) To recommend to the Secretary amendments to this subpart.

§ 968.29 Duties.

The committee shall have, among others, the following duties:

(a) To select, from among its membership, such officers as may be necessary, and to define the duties of such officers, and to adopt such rules or by-laws for the conduct of its meetings as it deems necessary;

(b) To appoint such employees and agents, as it may deem necessary, and to determine the compensation and to define the duties of each;

(c) To appoint such subcommittees as it may deem necessary;

(d) To submit to the Secretary, at least 90 days prior to the beginning of each new fiscal period, or such other date as may be specified by the Secretary, a budget for such fiscal period, including a report and explanation of the items appearing therein and a recommendation as to the rate of assessment for such period;

(e) To keep minutes, books, and records which will reflect all of the acts and transactions of the committee and which shall be subject to examination by the Secretary;

(f) To prepare periodic statements of the financial operations of the committee and to make copies of each statement available to producers and

handlers for examination at the office of the committee;

(g) To cause its books to be audited by a certified public accountant at least once each fiscal year, or at such times as the Secretary may request; to submit copies of each audit report to the Secretary; and to make available a copy which does not contain confidential data for inspection at the offices of the committee by producers and handlers.

(h) To act as intermediary between the Secretary and any producer or handler;

(i) To investigate and assemble data on the growing, handling, and marketing conditions with respect to cucumbers;

(j) To investigate compliance with the provisions of this part;

(k) To notify producers and handlers of all meetings of the committee to consider recommendations for regulations and of all regulatory actions taken;

(l) To submit to the Secretary such available information as may be requested or that the committee may deem may desirable and pertinent;

(m) to provide to the Secretary the same notice of meetings of the committee and its subcommittees as is given to its members; and

(n) At least once every five years, to review the geographic distribution of cucumber acreage and production in the production area and, if warranted, recommend to the Secretary the reapportionment of producer members among the districts, or the reestablishment of districts within the production area: Provided, That the number of districts shall not be less than four and that each district shall be entitled to at least one producer representative on the committee. Any such changes would require the Secretary's approval.

§ 968.30 Procedure

(a) At an assembled meeting, all votes shall be cast in person and six members of the committee shall constitute a quorum. Decisons of the committee shall require the concurring vote of at least six members.

(b) The committee may vote by mail, telephone, telegraph, or other means of communication: Provided, That each proposition is explained accurately, fully, and identically to each member. All votes shall be confirmed promptly in writing. Seven concurring votes shall be required for approval of a committee action by such method.

§ 968.31 Expenses and compensation.

Members of the committee and alternates, when serving as members, shall serve without compensation but shall receive reimbursement for necessary expenses incurred by them in attending committee meetings and in performing their duties, as may be approved by the committee. The committee notwithstanding the expected or actual presence of the respective members, and may pay the expenses of such alternates.

§ 968.32 Annual report

The committee shall, as soon as is practicable after the close of each fiscal period, prepare and mail an annual report to the Secretary and make a copy available to each producer and handler who requests a copy of the report.

Expenses and Assessments

§ 968.40 Expenses.

The committee is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred during each fiscal period for its maintenance and functioning, and for purposes determined to be appropriate for administration of the provisions of this part. The funds to cover such expenses shall be acquired in the manner prescribed in § 968.41, and from such other funds which may accrue to the committee as authorized in this subpart.

§ 968.41 Assessments

(a) *Requirements for payment.* Each person who first handles cucumbers shall pay assessments to the committee upon demand, which assessments shall be in payment of such handler's pro rata share of the committee's expenses. Each handler's pro rata share shall be the rate of assessment fixed by the Secretary multiplied by the quantity of cucumbers which the handler handled as the first thereof. The payment of assessments for the maintenace and functioning of the committee and for such purposes as the Secretary may, pursuant to this subpart, determine to be appropriate, may be required under this part throughout the period it is in effect, irrespective of whether particular provisions thereof are suspended or become inoperative.

(b) *Rate of assessment.* Assessments may be levied upon handlers at rates established by the Secretry upon the basis of the committee's recommendation or other available information. At any time during or after a given fiscal year, the Secretary may increase the rate of assessment as necessary to cover authorized expenses. Such increase shall be applied to all cucumbers which were handled during the applicable fiscal year.

(c) *Advance assessments and authority to borrow:* In order to provide funds for the administration of this part before sufficient operating income is available from assessments, the committee may accept advance assessments and may borrow money for such purpose. Advance assessments received from a handler shall be credited toward assessments levied against the handler during the fiscal year.

§ 968.42 Delinquent assessments.

The committee may impose a late payment or interest charge, or both, on any handler who fails to pay any assessment in a timely manner. Such time and the rates shall be recommended by the committee and approved by the Secretary.

§ 968.43 Accounting.

(a) If, at the end of a fiscal period, the assessments collected are in excess of expenses incurred, such excess shall be accounted for in accordance with one of the following:

(1) Except as provided in subparagraphs (a)(2) and (a)(3) of this section, each handler entitled to a proportionate refund of any excess assessments shall be credited at the end of a fiscal period with such refund against the operations of the following fiscal period unless such handler demands repayment thereof, in which event it shall be paid to the handler: Provided, That any sum paid by a handler in excess of that handler's pro rata share of the expenses during any fiscal period may be applied by the committee at the end of such fiscal period to any outstanding obligations due the committee from such handler.

(2) The committee, with the approval of the Secretary, may carry over such excess funds into subsequent fiscal periods as an operating monetary reserve: Provided, That funds already in the reserve do not equal approximately one fiscal period's operational expenses. Funds in such reserve shall be available for use by the committee for all expenses authorized pursuant to this subpart.

(3) Upon termination of this part, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate: Provided, That to the extent practical, such funds shall be returned pro rata to the persons from whom such funds were collected.

(b) All funds received by the committee pursuant to any provision of this subpart shall be used solely for the purposes specified in this part and shall be accounted for in the manner provided in this part. The Secretary may, at any

time require the committee, its members, employees, agents and all other persons to account for all receipts and disbursements, funds, property, or records for which they are responsible.

(c) Whenever any person ceases to be a member or alternate member of the committee, such person shall account for all receipts and disbursements and deliver all property and funds, together with all books and records in such member's possession, to the committee, and shall execute such assignments and other instruments as may be necessary or apropriate to vest in the committee full title to all of the property, funds, and claims vested in such member pursuant to this part.

(d) The committee may make recommendations to the Secretary for one or more of its members, or any other person, to act as a trustee for holding records, funds or any other committee property during periods of suspension of this part, or during any period or periods when regulations are not in effect and, upon determining such action is appropriate, the Secretary may direct that such person or persons shall act as trustee or trustees for the committee.

Research and Promotion

§ 968.50 Research and promotion.

(a) The committee may, with the approval of the Secretary, establish or provide for the establishment of production research and marketing research and development projects designed to assist, improve, or promote the production, marketing, distribution, and consumption of cucumbers. In a similar manner any such project may be modified, suspended, or terminated. The expenses of such projects shall be paid from funds collected pursuant to § 968.41 or from voluntary contributions. Voluntary contributions may be accepted by the committee only to pay the expenses of such projects: Provided, That (a) Such contributions shall be free from any encumbrances by the donor; (b) the committee shall retain complete control over their use; and (c) the committee is prohibited from accepting contributions from handlers subject to the order, or any person whose contributions could constitute a conflict of interest.

(b) In recommending marketing research and development projects pursuant to this section, the committee shall give consideration to the following factors:

(1) The expected supply of cucumbers in relation to market requirements;

(2) The supply situation among competing areas and commodities;

(3) The need for marketing research with respect to any market development activity; and

(4) The anticipated benefits from such projects in relation to their costs.

(c) If the committee should conclude that a program of production or marketing research or market development should be undertaken or continued in any fiscal period, it shall submit the following for the approval of the Secretary:

(1) Its recommendations as to funds to be obtained pursuant to § 968.41 or from voluntary contributions;

(2) Its recommendations as to any production or marketing research projects;

(3) Its recommendations as to market development activity; and

(4) Any other information requested by the Secretary.

(d) Upon conclusion of each project, and at least annually, the committee shall report the results of the projects to the Secretary, producers and handlers.

§ 968.51 Patents, copyrights, inventions, trademarks, and publications.

(a) Any patents, plant materials, copyrights, trademarks, inventions, or publications developed through the use of funds collected under the provisions of this part shall be the property of the U.S. Government as represented by the committee.

(b) Funds generated by such patents, plant materials, copyrights, trademarks, inventions, or publications shall be considered income subject to the same fiscal, budget, and audit controls as other funds of the committee.

(c) Upon termination of this subpart, the committee shall transfer custody of all patents, plant materials, copyrights, trademarks, inventions, and publications to the Secretary pursuant to the procedure provided in § 968.84 of this subpart.

Regulation

§ 968.60 Marketing policy.

Each fiscal period prior to or simultaneous with making any recommendations pursuant to § 968.61, the committee shall submit to the Secretary a report setting forth its marketing policy for the ensuing season. Such marketing policy report shall contain information relative to:

(a) The estimated total production of cucumbers within the production area;

(b) The expected general quality and size of cucumbers in the production area and in other areas;

(c) The expected demand conditions for cucumbers in different market outlets;

(d) The expected shipments of cucumbers produced in the production area and in areas outside the production area;

(e) Supplies of competing commodities;

(f) Trend and level of consumer income;

(g) Other factors having a bearing on the marketing of cucumbers; and

(h) The type of regulations expected to be recommended during the fiscal period.

§ 968.61 Recommendations for regulation.

(a) Whenever the committee deems it advisable to regulate the handling of cucumbers in the manner provided in §§ 968.62, 968.63 or 968.64 it shall so recommend to the Secretary.

(b) In arriving at its recommendations for regulation pursuant to paragraph (a) of this section, the committee shall give consideration to current information including but not limited to the factors affecting the supply and demand for cucumbers during the period or periods when it is proposed that such regulations should be made effective. With each such recommendation for regulation, the committee shall submit to the Secretary the data and information on which such recommendation is predicated and such other available information as the Secretary may request, including the following:

(1) a clear definition of the problem;

(2) the conditions that led to the problem;

(3) how the recommendation will address or correct the problem;

(4) whether there are viable alternatives to address the problem;

(5) what the expected results of the regulation would be; and

(6) an assessment of impact on small business.

§ 968.62 Issuance of regulations.

(a) The Secretary shall regulate, in the manner specified in this section, the handling of cucumbers whenever the Secretary finds, from the recommendations and information submitted by the committee, or from other available information, that such regulations will tend to effectuate the declared policy of the Act. Such regulations may:

(1) Limit, during any period or periods, the handling of any particular grade, size, quality, maturity, or pack, or any combination thereof, of any variety or varieties of cucumbers grown in the production area.

(2) Limit the handling of cucumbers by establishing, in terms of grades, sizes, or both, minimum standards of quality and

maturity during any period when season average prices are expected to exceed the parity level.

(3) Fix the size, capacity, weight, dimensions, markings, or pack of the container, or containers which may be used in the packaging or handling of cucumbers.

(b) The committee shall be informed immediately of any such regulation issued by the Secretary and the committee shall promptly give notice thereof to handlers.

§ 968.63 Modification, suspension, or termination of regulations.

(a) In the event the committee at any time finds that, by reason of changed conditions, any regulations issued pursuant to § 968.62 should be modified, suspended, or terminated, it shall so recommend to the Secretary.

(b) Whenever the Secretary finds from the recommendations and information submitted by the committee or from other available information, that a regulation should be modified, suspended, or terminated with respect to any or all shipments of cucumbers in order to effectuate the declared policy of the Act, the Secretary shall modify, suspend, or terminate such regulation. If the Secretary finds that a regulation obstructs or does not tend to effectuate the declared policy of the Act, the Secretary shall suspend or terminate such regulation. On the same basis and in like manner, the Secretary may terminate any such modification or suspension.

§ 968.64 Special purpose shipments.

(a) Except as otherwise provided in this section, any person may, without regard to the provisions of § 968.41, § 968.62, § 968.63, and § 968.65, and the regulations issued thereunder, handle cucumbers:

(1) For consumption by charitable institutions;

(2) For distribution by relief agencies; or

(3) For commercial processing into products.

(b) Upon the basis of recommendations and information submitted by the committee, or from other available information, the Secretary may modify or relieve from any or all requirements, under or established pursuant to § 968.41, § 968.62, § 968.63, or § 968.65, the handling of cucumbers:

(1) To designated market areas;

(2) For such specified purposes as, but not limited to: (i) Sales or deliveries of cucumbers by a producer to a handler within any area; (ii) sales by the producer to the final consumer and not for resale; (iii) sales by the producer to food service establishments; (iv) packaging cucumbers for others; (v) receipts, sales, or shipments of cucumbers already handled by another person; and (vi) shipments for research and development projects, as may be designated by the committee, with the approval of the Secretary; or,

(3) In such minimum quantities as may be prescribed.

(c) The committee may, with the approval of the Secretary, prescribe such rules and regulations as it may deem necessary to prevent cucumbers handled under the provisions of this section from entering the channels of trade for other than the specific purposes authorized by this section. Such rules and regulations may include the requirements that handlers shall file applications and receive approval from the committee for authorization to handle cucumbers pursuant to this section, and that such applications be accompanied by a certification by the purchaser or receiver that the cucumbers were not used for any purpose not authorized by this section.

§ 968.65 Inspection and certification.

(a) Whenever the handling of any variety of cucumbers is regulated pursuant to § 968.62 or § 968.63 no handler shall handle cucumbers unless cucumbers are inspected by an authorized representative of the Federal or Federal-State Inspection Service and are covered by a Valid inspection certificate, except when relieved of such requirements under §§ 968.64, 968.65 or 968.66.

(b) The committee may, with the approval of the Secretary, issue rules requiring inspection or regarded, resorted or repacked lots, or providing for special inspection requirements or relief therefrom.

(c) Insofar as the requirements of this section are concerned, the length of time for which an inspection certificate is valid may be established by the committee with the approval of the Secretary.

(d) When cucumbers are inspected pursuant to the requirements of this section, each handler shall promptly submit, or cause to be submitted, to the committee a copy of the certificate of inspection issued with respect to such cucumbers.

(e) The committee may, with the approval of the Secretary, prescribe rules and regulations waiving the inspection requirements of this section where it is determined that inspection is not practicable: Provided, That all shipments made under such waiver shall comply with all other regulations in effect.

(f) The committee may enter into an agreement with the Federal and Federal-State Inspection Services with respect to the costs of inspection required by paragraph (a) of this section, and may collect from handlers their respective pro rata shares of such costs.

§ 968.66 Minimum quantities.

The committee, with the approval of the Secretary, may establish minimum quantities below which handling will be free from regulations issued or effective pursuant to § 968.41, § 968.62, § 968.64, § 968.65, or any combination thereof.

Reports and Recordkeeping

§ 968.70 Reports and records.

(a) Each handler shall furnish to the committee, at such times and for such periods as the committee may designate, with the approval of the Secretary, certified reports covering, to the extent necessary for the committee to perform its functions, each shipment of cucumbers as follows:

(1) The name of the shipper and the shipping point;

(2) The car or truck license number (or name of the trucker), and identification of the carrier;

(3) The date and time of departure;

(4) The number and type of containers in the shipment;

(5) The quantities shipped, showing separately the variety, size and grade of the cucumbers;

(6) the destination; and

(7) Identification of the inspection certificate or waiver pursuant to which the cucumbers were handled.

(b) Upon request of the committee, made with the approval of the Secretary, each handler shall furnish to the committee, in such manner and at such times as it may prescribe, such other information as may be necessary to enable the committee to perform its duties under this part.

(c) Each handler shall maintain for at least two succeeding fiscal years, such records of the cucumber received and disposed by such handler as may be necessary to verify the reports submitted to the committee pursuant to this section.

(d) All reports and records submitted by handlers pursuant to the provisions of this section shall be received by, and at all times be in custody of, one or more designated employees of the committee. No such employee shall disclose to any person, other than the Secretary upon request therefor, data or information obtained or extracted from such reports and records which might affect the trade

position, financial condition, or business operation of the particular handler from whom received: Provided, That such data and information may be combined, and made available to any person, in the form of general reports in which the identities of the individual handler furnishing the information is not disclosed but may be revealed to any extent necessary to effect compliance with the provisions of this part and the regulations issued thereunder.

(c) For the purpose of checking and verifying reports filed by handlers, the Secretary and the committee, through duly authorized representatives shall have access to any handler's premises during regular business hours, and shall be permitted at any such times to inspect such premises and any cucumbers held by such handler, and any and all records of the handler with respect to the handler's acquisition, sales, uses and shipments of cucumbers. Each handler shall furnish all labor and equipment necessary to make such inspections.

Compliance

§ 968.80 Compliance.

No person shall handle cucumbers except in conformity with the provisions of this part.

Miscellaneous Provisions

§ 968.82 Right of the Secretary

The members of the committee (including successors and alternates), and any employees or agents thereof, shall be subject to removal or suspension by the Secretary at any time. Each and every regulation, decision, determination, or other act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time. Upon such disapproval, the disapproved action of the committee shall be deemed null and void, except as to acts done in reliance thereon or in accordance therewith prior to such disapproval by the Secretary.

§ 968.83 Termination

(a) The Secretary may at any time terminate the provisions of this part by giving at least one day's notice by means of a press release or in any other manner in which the Secretary may determine.

(b) The Secretary shall terminate or suspend the operation of any and all of the provisions of this part whenever the Secretary finds that such provisions do not tend to effectuate the declared policy of the Act.

(c)(1) The Secretary shall terminate, in accordance with section 8(c)(16)B of the Act, the provisions of this order at the end of any fiscal period in which the Secretary has found by referendum or otherwise that such termination is favored by a majority of the producers, who during a representative period as determined by the Secretary, have been engaged in the production of cucumbers for market: *Provided*, That such majority has, during such representative period, produced for market more than fifty percent of the volume of such cucumbers produced for market, and that such termination shall be effective only if announced on or before the end of the then current fiscal period.

(2) The Secretary shall conduct a continuance referendum every fifth fiscal period with the first such referendum to be conducted within five years from the effective date of this subpart, to ascertain whether continuance of this order is favored by producers. The Secretary may terminate the provisions of this order at the end of any fiscal period in which the Secretary has found that continuance of this order is not favored by producers who, during a representative period determined by the Secretary, have been engaged in the production for market of cucumbers in the production area. Such termination of the order shall be effective only if announced on or before the end of the then current fiscal period.

(d) The provisions of this order shall, in any event, terminate whenever the provisions of the Act authorizing them cease to be in effect.

§ 968.84 Proceedings after termination.

(a) Upon the termination of the provisions of this part, the committee members shall, for the purpose of liquidating the affairs of the committee, continue as trustees of all the funds and property then in its possession, or under its control, including claims for any funds unpaid or property not delivered at the time of such termination.

(b) The said trustees shall:

(1) Continue in such capacity until discharged by the Secretary;

(2) From time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the committee and of the trustees, to such persons as the Secretary may direct; and

(3) Upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person, full title and right to all of the funds, property, and claims vested in the committee or the trustees pursuant thereto.

(c) Any person to whom funds, property, or claims have been transferred or delivered, pursuant to this section, shall be subject to the same obligation imposed upon the committee and upon the trustees.

§ 968.85 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this part or of any regulation issued pursuant to this part, or the issuance of any amendment to either thereof, shall not (a) Affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this part or any regulation issued under this part, or (b) release or extinguish any violation of this part or of any regulation issued under this part, or (c) affect or impair any rights or remedies of the Secretary or of any other person with respect to any such violation.

§ 968.86 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this part shall cease upon the termination of this part, except with respect to acts done under the during the existence of this part.

§ 968.87 Agents.

The Secretary may, by designation in writing, name any officer or employee of the United States, or name any agency or division in the U.S. Department of Agriculture, to act as the Secretary's agent or representative in connection with any of the provisions of this part.

§ 968.88 Derogation.

Nothing contained in this part is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or the United States:

(a) To exercise any powers granted by the act or otherwise, or

(b) In accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 968.89 Personal liability.

No member or alternate member of the committee and no employee or agent of the committee shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate, employee, or agent, except for acts of dishonesty, willful misconduct, or gross negligence.

§ 968.90 Separability.

If any provision of this part is declared invalid or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the

remainder of this part or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

§ 968.91 Amendments.

Amendments to this subpart may be proposed, from time to time, by the committee or by the Secretary.

Marketing Agreement

§ 968.97 Counterparts.*

This agreement may be executed in multiple counterparts and when one counterpart is signed by the Secretary, all such counterparts shall constitute, when taken together, one and the same instrument as if all signatures were contained in one original.

§ 968.98 Additional parties.*

After the effective date thereof, any handler may become a parts to this agreement if a counterpart is executed by such handler and delivered to the Secretary. This agreement shall take effect as to such new contracting party at the time such counterpart is delivered to the Secretary, and the benefits, privileges and immunities conferred by this agreement shall then be effective as to such new contracting party.

§ 968.99 Order with marketing agreement.*

Each signatory hereby requests the Secretary to issue, pursuant to the act, an order providing for regulating the handling of cucumbers in the same manner as is provided for in the agreement.

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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 326

RIN 3064-AA77

Minimum Security Procedures

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Proposed rule.

SUMMARY: The FDIC, in coordination with the other Federal financial institution supervisory agencies, has reviewed subpart A of part 326 and determined that it is appropriate to revise the regulation to reflect changes in the technology of security devices, and to implement certain changes made by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"). The revision incorporates some of the amendments made to the Bank Protection Act of 1968 by FIRREA and provides the flexibility to avoid the technical obsolescence that occurred with the existing regulation.

DATES: Comments must be received on or before November 16, 1990.

ADDRESSES: Send comments to Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. Comments may be hand-delivered to room F-400 on business days between 8:30 a.m. and 5 p.m., and may be inspected in room F-457 between 8:30 a.m. and 5 p.m., on business days. (FAX number: (202) 898-3838).

FOR FURTHER INFORMATION CONTACT: Roger A. Hood, Assistant General Counsel, (202) 898-3681, Legal Division, or Eugene Seitz, Review Examiner, Special Activities Section, Division of Supervision, (202) 898-6793, FDIC, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this rule has been submitted to the Office of Management and Budget for review pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). Comments on the collection of information should be directed to the Office of Management and Budget, Paperwork Reduction Project (3064-0095), Washington, DC 20503, with copies of such comments to be sent to Steven F. Hanft, Office of the Executive Secretary, room F-451, 550 17th Street, NW., Washington, DC 20429. The collection of information in this regulation consists of recordkeeping requirements described in §§ 326.2 through 326.4. The recordkeeping is required by the FDIC to ensure compliance with the Bank Protection Act of 1968 (12 U.S.C. 1881 through 1884). This recordkeeping requirement will be imposed on all insured nonmember banks.

The estimated annual reporting burden for the collection of information in the regulation is summarized as follows:

Number of Respondents: 8,700.
Number of Responses Per Respondent: 1.
Total Annual Responses: 8,700.
Hours Per Response: 0.5.
Total Annual Burden Hours: 4,350.

Background Information

The Bank Protection Act of 1968 requires the Federal financial institution supervisory agencies to establish minimum standards for security devices and procedures to discourage financial-type crime and to assist in the identification of persons who commit such crimes. To implement this statute a uniform regulation was adopted in 1969 by each of the supervisory agencies—Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Home Loan Bank Board (now known as the Office of Thrift Supervision), and the FDIC. With the exception of minor, nonsubstantive changes in 1981, this regulation has not been modified since it was first adopted.

The existing regulation's appendix recommends use of specific types of security devices. Due to the advancement of technology, these recommendations now refer to obsolete equipment. For example, the requirements for surveillance systems state that the film used in the camera should be capable of operating not less than three minutes and should be at least 16mm. Today's camera systems are more likely to be continuous video cameras.

The FDIC believes that any standards that refer to specific security devices are likely to become obsolete because technology is continuing to advance at a rapid pace. To avoid the necessity of constantly updating required security devices, the FDIC's proposed regulations takes a more flexible approach. It requires each insured nonmember bank to designate a security officer who will administer a written security program. The proposed regulation states that the security program shall include certain procedures, and requires, at a minimum, that four specific security devices be installed, but leaves it to the discretion of the security officer to determin which additional security devices will best meet the needs of the program. It this way the security officer can choose the most up-to-date equipment that meets the requirements of his or her particular bank. This approach also addresses the difficulty caused by establishing specific standards to apply to all banks regardless of the incidence of crime in their neighborhoods.

The Bank Protection Act requires that the supervisory agencies issue minimum standards for the installation, operation and maintenance of security devices and procedures. The proposed regulation establishes a minimum standard by requring four specified security devices. These four devices are a secure space for cash, a lighting system for illuminating the vault, an alarm system, and tamper resistant locks on exterior doors and windows. In addition, the proposed regulation mandates the content of a security program; *e.g.*, procedures for opening

and closing for business, for safekeeping valuables, and for identifying persons committing crimes. These are the minimum procedures that should comprise a bank's security program. To assist insured nonmember banks in establishing their program, the regulation suggests certain factors to be considered when selecting additional security devices.

To ensure that a bank's security program is reviewed on a regular basis for effectiveness, the proposed regulation requires a report to be made by the security officer to the bank's board of directors at least annually. This changes the current requirement, which was eliminated by FIRREA, that reports must be filed periodically with a bank's primary supervisory agency.

Following is a section-by-section analysis showing the modifications to the existing regulation:

Section 326.0 Authority, Purpose, and Scope

This section has been rewritten to emphasize the responsibility of a bank's board of directors to ensure that the bank adopts and maintains appropriate security procedures.

Section 326.1 Definitions

This section has been revised in a manner consistent with other changes made in this proposed regulation. Definitions of "banking hours" and "teller's station or window" have been deleted.

Section 326.2 Designation of Security Officer

Only minor changes have been made in this section.

Section 326.3 Security Program [formerly "Security Devices"]

The concept of the security officer surveying the need for security devices is contained in new § 326.2. The required minimum security devices for each bank are set forth in this section (§ 326.3(b)(1)–(5)), within the addition of a requirement for a secure space to protect cash or other liquid assets. Also appropriateness considerations are now covered in § 326.3(b)(5).

This section previously contained language allowing a bank not to comply with the specifics of the regulation so long as it preserved a statement of the reasons in its records. Because the specificity of the regulation has been eliminated, this language has been deleted. Finally, the substance of previous provisions on security procedures in the former § 326.4 has been incorporated in this section.

Section 326.4 Reports [formerly 326.5]

The requirement for filing reports regularly with the regulatory agency has been changed to require annual reports to the bank's board of directors. The requirement of internal recorkeeping of external crimes is now a suggested procedure under § 326.3(a)(2). The requirement for special reports whenever requested by the regulatory agency has been eliminated as unnecessary because an agency can obtain such reports through its regular supervisory powers.

Finally, former § 326.6 on corrective action has been eliminated because it is covered under the agency's supervisory authority to prevent unsafe and unsound practices. Similarly, the former § 326.7 on civil money penalties has been eliminated as unnecessary because it is contained in the statute and need not be set forth in the regulation.

In addition, both appendices A and B of the former regulation have been deleted. Appendix A was considered to be too specific and had become obsolete. Any specific new requirements would also have to be updated with advances in technology. Therefore, the draft regulation has been changed to be very general, with the requirement that the bank determine what is the best means of protecting itself and identifying criminals.

Appendix B concerns actions to be taken by employees in the case of a robbery. This has been deleted because it is included in the list of suggested procedures to be established under the security program required by § 326.3(a).

Approval of the proposed amendments to part 326 would eliminate the need for information that the FDIC currently requires insured nonmember banks to submit in the Report of Compliance with the Bank Protection Act (FDIC 6140/03). The FDIC therefore proposes to discontinue this report effective with final approval of the proposed amendments to this part. In accordance with the Paperwork Reduction Act of 1980, the proposed discontinuance of this report will be reviewed by the Office of Management and Budget after consideration of the comments received during the public comment period.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. No. 96–354, 5 U.S.C. 601 *et seq.*), the FDIC certifies that the proposed amendment will not have a significant economic impact on a substantial number of small entities. Shall entities already are required to comply with the security standards established in the existing regulation, and this amendment provides for more flexibility in devising security programs, which should help minimize the existing costs to the institutions. The amendment also replaces required reports to the government with annual reports to the bank's board of directors, which should ease the regulatory burden on small institutions.

List of Subjects in 12 CFR Part 326

Banks, Banking, Bank deposit insurance, Insured nonmember banks, Reporting and recordkeeping requirements, Security measures.

For the reasons set out in the preamble, Title 12, Part 326, Subpart A of the Code of Federal Regulations is proposed to be revised as follows:

PART 326—MINIMUM SECURITY DEVICES AND PROCEDURES AND BANK SECRECY ACT COMPLIANCE

Subpart A—Minimum Security Procedures

Sec.
326.0 Authority, purpose and scope.
326.1 Definitions.
326.2 Designaton of security officer.
326.3 Security program.
326.4 Reports.

* * * * * * *

Authority: 12 U.S.C. 1881–1884.

§ 326.0 Authority, purpose, and scope.

(a) This regulation is issued by the Federal Deposit Insurance Corporation ("FDIC") pursuant to section 3 of the Bank Protection Act of 1968 (12 U.S.C. 1882). It applies to insured state banks that are not members of the Federal Reseve System. It requires each bank to adopt appropriate security procedures to discourage robberies, burglaries, and larcenies and to assist in identifying and apprehending persons who commit such acts.

(b) It is the responsibility of the bank's board of directors to comply with this regulation and ensure that a security program for the bank's main office and branches is developed and implemented.

§ 326.1 Definitions.

For the purposes of this part—

(a) The term *insured nonmember bank* means any bank, including a foreign bank having a branch the deposits of which are insured in accordance with the provisions of the Federal Deposit Insurance Act, which is not a member of the Federal Reserve System. The term does not include any institution chartered or licensed by the Comptroller of the Currency, any District bank, or any savings association.

(b) The term *banking office* includes any branch of an insured nonmember bank, and, in the case of an insured state nonmember bank, it includes the main office of that bank.

(c) The term *branch* for a bank chartered under the laws of any state of the United States includes any branch bank, branch office, branch agency, additional office, or any branch place of business located in any state or territory of the United States, District of Columbia , Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Northern Mariana Islands or the Virgin Islands at which deposits are received or checks paid or money lent. In the case of a foreign bank, as defined in 12 CFR 346.1(a), the term "branch has the meaning given in 12 CFR 346.1(d).

§ 326.2 Designation of security officer.

Within 30 days after the issuance of federal deposit insurance, the board of directors of each insured nonmember bank [1] shall designate a security officer who shall have the authority, subject to the approval of the board of directors, for immediately developing and administering a written security program, to protect the bank from robberies, burglaries, and larcenies and to assist in identifying and apprehending persons who commit such acts.

§ 326.3 Security program.

(a) *Contents of security program.* The security program shall:

(1) Establish procedures for opening and closing for business and for the safekeeping of all currency, negotiable securities, and similar valuables at all times;

(2) Establish procedures that will assist in identifying persons committing crimes against the bank and that will preserve evidence that may aid in their identification and conviction; such procedures may include, but are not limited to:

(i) Retaining a record of any crime committed against the bank;

(ii) Maintaining a camera that records activity in the banking office; and

(iii) Using identification devices, such as bait money, dye packs or electronic tracking devices;

(3) Provide for initial and periodic training of employees in their responsibilities under the security program and in proper employee conduct during and after a robbery; and

(4) Provide for selecting, testing, operating and maintaining appropriate security devices, as specified in paragraph (b) of this section.

(b) *Security devices.* Each insured nonmember bank shall have, at a minimum, the following security devices:

(1) A means of protecting cash or other liquid assets, such as a vault, safe, or other secure space;

(2) A lighting system for illuminating, during the hours of darkness, the area around the vault, if the vault is visible from outside the banking office;

(3) An alarm system or other appropriate device for promptly notifying the nearest responsible law enforcement officers of an attempted or perpetrated robbery or burglary;

(4) Tamper resistant locks on exterior doors and exterior windows designed to be opened; and

(5) Such other devices as the security officer determines to be appropriate, taking into consideration:

(i) The incidence of crimes against financial institutions in the area;

(i) The amount of currency or other valuables exposed to robbery, burglary, and larceny;

(iii) The distance of the banking office from the nearest law enforcement officers;

(iv) The cost of the security devices;

(v) Other security measures in effect at the banking office; and

(vi) The physical characteristics of the structure of the banking office and its surroundings.

§ 326.4 Reports.

The security officer for each insured nonmember bank shall report at least annually to the bank's board of directors on the effectiveness of the security programs.

By Order of the Board of Directors.

Dated at Washington, DC, this 11th day of September, 1990.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 90-21887 Filed 9-14-90; 8:45 am]

BILLING CODE 6714-01-M

[1] The term "board of directors" includes the managing official of an insured branch of a foreign bank for purposes of 12 CFR 326.0 through 326.4.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90-NM-147-AD]

Airworthiness Directives; Boeing of Canada, Ltd., de Havilland Division, Model DHC-7 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to supersede an existing airworthiness directive (AD), applicable to all de Havilland Model DHC-7 series airplanes, which currently requires repetitive visual inspections of the right-hand main landing gear (MLG) frame and attachment bolts to detect heat damage, and repair, if necessary. This condition, if not corrected, could result in degradation of the structural integrity of the right-hand MLG frame and attachment bolts and possible malfunction of the MLG. This action would require installation of a modification which relocates the external power grounding stud to the nacelle longeron, and would constitute terminating action for the repetitive inspections.

DATES: Comments must be received no later than November 6, 1990.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-147-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from Boeing of Canada, Ltd., de Havilland Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Mr. John Maher, Airframe Branch, ANE-172; telephone (516) 791-6220. Mailing address: FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Valley Stream, New York 11581.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals

contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90-NM-147-AD." The post card will be date/time stamped and returned to the commenter.

Discussion:

On April 11, 1990, the FAA issued AD 90-09-02, Amendment 39-6579 (55 FR 14411, April 18, 1990), to require repetitive visual inspections of right-hand main landing gear (MLG) frame and attachment bolts to detect heat damage to the right MLG frame bolts due to electrical arcing across air gaps between the bolts and frame. This condition, if not corrected, could result in degradation of the structural integrity of the right-hand MLG frame and attachment bolts, and possible malfunction of the MLG.

The Notice of Proposed Rulemaking (NPRM) which preceded issuance of AD 90-09-02, proposed the installation of Modification 7/2577 as terminating action for the repetitive inspections. (This modification relocates the external power grounding stud to the nacelle longeron.) Comments received in response to the NPRM included a report from an operator whose airplane had sustained arcing damage after installation of Modification 7/2577. This same operator also reported similar damage to a second airplane. The FAA concluded, at that time, that further evaluation of the relocation design was necessary and, therefore, did not include it as terminating action in the final rule.

Since issuance of that AD, the manufacturer has re-evaluated Modification 7/2577. The manufacturer's review revealed that only one operator experienced arcing problems on two of its five airplanes following modification, while 59 other airplanes with this modification installed have had no arcing. Upon further review of the service history, the FAA has determined that the modification in its present design is satisfactory and, if incorporated, constitutes terminating action for the repetitive inspections.

Boeing of Canada, Ltd., de Havilland Division, has issued Service Bulletin No. 7-24-66, Revision B, dated June 23, 1989, which describes procedures for repetitive inspections for heat damage to the right MLG frame and attachment bolts, and repair, if necessary. This service bulletin also describes procedures for installing Modification 7/2577, which involves relocating the external power ground studs to the nacelle longeron; once this modification is accomplished, the repetitive inspections may be discontinued. Transport Canada has classified this service bulletin as mandatory, and has issued Airworthiness Directive No. CF-89-04 addressing this subject.

This airplane model is manufactured in Canada and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would supersede AD 90-09-02 with a new airworthiness directive that would continue to require repetitive inspections to detect heat damage to the MLG frame and attachment bolts, and repair, if necessary, in accordance with the service bulletin previously described. Installation of Modification 7/2577, in accordance with this service bulletin, would be required within 180 days and would constitute terminating action for the requirement for the repetitive inspections.

It is estimated that 43 airplanes of U.S. registry would be affected by this AD, that it would take approximately 7 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The modification kit will be supplied by the manufacturer at no cost to the operators. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $12,040.

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding Amendment 39-6579 (55 FR 14411, April 18, 1990), AD 90-09-02, with the following new airworthiness directive:

Boeing of Canada, Ltd., De Havilland Division. Applies to all de Havilland Model DHC-7 series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent possible malfunction of the right main landing gear (MLG), accomplish the following:

A. Within 100 landings after May 29, 1990 (the effective date of AD 90-09-02), and thereafter at intervals not to exceed 500 landings, conduct a visual inspection of the right MLG frame and attachment bolts, in accordance with paragraph A. of the Accomplishment Instructions in de Havilland Service Bulletin No. 7-24-66, Revision B, dated June 23, 1989.

1. If no damage is found, reassemble parts and return the airplane to service.

2. If damage is found, replace with serviceable parts prior to further flight, in accordance with the service bulletin.

B. Within 180 days after the effective date of this AD, install Modification No. 7/2577, which relocates the external power grounding stud, in accordance with paragraph B of the Accomplishment Instructions in de Havilland Service Bulletin No. 7-24-66, Revision B, dated June 23, 1989. Installation of this modification constitutes terminating action

for the repetitive inspections required by paragraph A., above

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, New York Aircraft Certification Office (ACO), ANE-170.

Note: The request should be submitted directly to the Manager, New York Aircraft ACO, ANE-170, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, New York ACO, ANE-170.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing of Canada, Ltd., de Havilland Division, Garratt Boulevard, FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Valley Stream, New York.

Issued in Renton, Washington, on September 6, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-21848 Filed 9-14-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 90-NM-161-AD]

Airworthiness Directives; SAAB-Scania Model SF-340A Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to supersede an existing airworthiness directive (AD), applicable to certain SAAB-Scania Model SF-340A series airplanes, which currently requires an eddy current inspection to detect cracks in the horizontal stabilizer, and repair, if necessary; and reinforcement of the horizontal stabilizer. This action would require, in addition to the previous requirements, the removal and replacement of the right and left drag angle and associated shims. This proposal is prompted by additional reports of damage in the area of the drag angle and fuselage skin that occurred during airframe fatigue tests after the horizontal stabilizers had been reinforced. This condition, if not corrected, could result in reduced structural integrity of the horizontal stabilizer.

DATES: Comments must be received no later than November 6, 1990.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-161-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from SAAB-Scania AB, Product Support, S-581.88, Linkoping, Sweden. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Standardization Branch, ANM-113; telephone (206) 227-2145. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90-NM-161-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

On May 30, 1990, the FAA issued AD 90-12-12, Amendment 39-6628 (55 FR 23189, June 7, 1990), to require an eddy current inspection to detect cracks in the horizontal stabilizer, and repair, if necessary; and reinforcement of the horizontal stabilizer. That action was prompted by a report of damage to the front and rear spar of the horizontal stabilizer that occurred during airframe fatigue tests. This condition, if not corrected, could result in reduced structural integrity of the horizontal stabilizer.

Since issuance of that AD, the manufacturer has conducted additional airframe fatigue tests on airplanes after the horizontal stabilizer had been reinforced. Fatigue damage occurred in the area of the horizontal stabilizer drag angle and the fuselage skin, close to the radius of the drag angle. This condition, if not corrected, could also result in reduced structural integrity of the horizontal stabilizer.

SAAB-Scania has issued Service Bulletin 340-55-027, dated June 28, 1990, which incorporates procedures from SAAB-Scania Service Bulletin 340-55-013, for eddy current inspections of the horizontal stabilizer to detect cracks and damage, and repair, if necessary; and reinforcement of the horizontal stabilizer. In addition, this service bulletin describes procedures for the removal of drag angles and shims, additional inspections of the drag angle attaching holes, and repair, if necessary; and replacement of the drag angles and associated shims. The Luftfartsverket, which is the airworthiness authority of Sweden, has classified this service bulletin as mandatory, and has issued Airworthiness Directive SAD No. 1-035, Revision A.

This airplane model is manufactured in Sweden and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would supersede AD 90-12-12 with a new airworthiness directive that would continue to require eddy current inspections to detect cracks in the horizontal stabilizer; repair, if necessary; and reinforcement of the horizontal stabilizer. This proposed action would add a requirement to perform visual and dye penetrant inspections to detect cracks of the drag angle attaching holes; repair, if necessary, and installation of new drag angles and associated shims, in accordance with the service bulletin previously described.

It is estimated that 79 airplanes of U.S. registry would be affected by this AD, that it would take approximately 25 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The estimated cost for required parts is $4,936. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,179,944.

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding Amendment 39–6628 (55 FR 23189, June 7, 1990), AD 90–12–12, with the following new airworthiness directive:

SAAB-Scania: Applies to Model SF–340A series airplanes, Serial Numbers 004 through 138, inclusive, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent reduced structural integrity of the horizontal stabilizer, accomplish the following:

A. Prior to the accumulation of 16,000 landings or within 90 days after July 13, 1990 (the effective date of AD 90–12–12, Amendment 39–6628), whichever occurs later, accomplish the following:

1. Perform an eddy current inspection to detect cracks in the horizontal stabilizer, in accordance with SAAB-Scania Service Bulletin 340–44–013, dated December 1, 1989. If cracks are detected, repair prior to further flight, in accordance with the service bulletin.

2. Reinforce the horizontal stabilizer, in accordance with SAAB-Scania Service Bulletin 340–55–013, dated December 1, 1989.

B. Prior to the accumulation of 16,000 landings, or within 90 days after the effective date of this AD, whichever occurs later, accomplish the following in accordance with the Accomplishment Instructions in SAAB-Scania Service Bulletin 340–55–027, dated June 28, 1990:

1. Remove the left and right drag angles and associated shims.

2. Perform a visual and dye penetrant inspections of the drag angle attaching holes, if cracks are found, repair prior to further flight.

3. Install new drag angles and associated shims.

C. An alternate means of compliance or adjustment of the compliance time, which provides an accepteble level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Standardization Branch, ANM–113, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, Standardization Branch, ANM–113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to SAAB-Scania AB, Produce Support, S–581.88, Linkoping, Sweden. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on September 6, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Adircraft Certification Service.

[FR Doc. 90–21847 Filed 9–14–90; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamati and Enforcement

30 CFR Part 936

Oklahoma Permanent Regulatory Program

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

ACTION: Proposed rule; Public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: Oklahoma promulgated rules for its permanent regulatory program, (hereinafter, the "Oklahoma program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The promulgated rules pertain to the requirements for maps (in permit applications) for coal exploration operations extracting greater than 250 tons, and the definition of "owned or controlled and owns or controls." Oklahoma's promulgated rules differ from the rules it previously proposed to OSM and OSM approved. OSM is reviewing the promulgated rules to ensure that they are consistent wih SMCRA and the Federal regulations.

This notice sets forth the times and locations that the Oklahoma promulgated rules are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received by 4 p.m., c.d.t. October 17, 1990. If requested, a public hearing on the proposed amendment will be held on October 12, 1990. Requests to present oral testimony at the hearing must be received by 4 p.m., c.d.t. on October 2, 1990.

ADDRESSES: Written comments should be mailed or hand delivered to James H. Moncrief at the address listed below.

Copies of the Oklahoma program, the amendments, 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. Each requester may receive one free copy of the amendment by contacting OSM's Tulsa Field Office.

James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100

East Skelly Drive, Suite 550, Tulsa, OK 74135, Telephone: (918) 581-6430

Oklahoma Department of Mines, 4040 North Lincoln, Suite 107, Oklahoma City, OK 73105, Telephone: (405) 521-3859.

FOR FURTHER INFORMATION CONTACT: James H. Moncrief, Director, Tulsa Field Office, at the address in "**ADDRESSES.**" The telephone number is (918) 581-6430.

SUPPLEMENTARY INFORMATION:

I. Background on the Oklahoma Program.

On January 19, 1981, the Secretary of the Interior conditionally approved the Oklahoma program. General background information on the Oklahoma program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Oklahoma program can be found in the January 19, 1981 **Federal Register** (46 FR 4910). Subsequent actions concerning Oklahoma's program and program amendments can be found at 30 CFR 936.15, 936.16, and 936.30.

II. Proposed Amendment

On March 27 and May 15, 1990, OSM published notices in the **Federal Register** (55 FR 11169 and 55 FR 20138; Administrative Record Nos. OK-931 and OK-932) announcing the Director of OSM's approval of the May 18, 1988 (as revised and clarified on June 8 and November 14, 1988, and June 22, August 8, and December 15, 1989; Administrative Record Nos. OK-847, OK-866, OK-888, OK-890, and OK-903), State-proposed amendment to the rules of the Oklahoma program. The Director approved the amendment on the condition that Oklahoma adopt the rules in a form identical to those submitted to an reviewed by OSM and the public.

On June 21, 1990 (Administrative Record No. OK-933), Oklahoma submitted to OSM copies of the rules that it had promulgated (effective June 22, 1990) subsequent to the Director's approvals. Upon comparing the OSM-approved rules and the Oklahoma-promulgated rules, OSM identified differences in the two sets of rules. Because SMCRA requires consistency between State and Federal standards, OSM is further reviewing and soliciting public review of Oklahoma's promulgated rules to determine whether they are no less effective than the Federal regulations and no less stringent than SMCRA.

The rules for which OSM has noted differences between the OSM-approved and Sate-promulgated rules are:

(1) The requirements at § 772.12(b)(12) for maps (in permit applications) for coal exploration operations extracting greater than 250 tons (corresponding Federal regulation 30 CFR 772.12(b)(12); OSM approved Oklahoma's requirement for maps "at a scale of 1:24,000, or larger," but Oklahoma promulgated "at a scale of 1:200, or larger"), and

(2) The definition at § 773.5(a)(2) of "owned or controlled and owns or controls" (corresponding Federal regulation 30 CFR 773.5(a)(2); OSM approved the phrase "based on instrument of ownership or voting securities, owning of record in excess of 10% of an entity," but Oklahoma promulgated "based on instrument of ownership or voting securities, owning of record in excess of 50% of an entity.")

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Oklahoma 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 Tulsa Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by 4 p.m., c.d.t. on October 2, 1990. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**" All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under "**ADDRESSES.**" A written summary of each meeting will be made a part of the administrative record.

List of Subjects in 30 CFR Part 936

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 7, 1990.

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

[FR Doc. 90-21815 Filed 9-14-90; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 58

[DoD Directive 6485.aa]

RIN 0790-AC49

Human Immunodeficiency Virus (HIV-1)

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed rule.

SUMMARY: This proposed rule revises 32 CFR Part 58, "Compliance with Host Nation Human Immunodeficiency Virus (HIV) Screening Requirements for DoD Civilian Employees," and incorporates the policy promulgated by the August 8, 1988 Deputy Secretary of Defense memorandum on HIV-1/AIDS. Mandatory testing of civilians is accomplished solely in compliance with host nation HIV-1 screening requirements. This proposed rule contains no major policy changes, but does include technical guidelines in support of the existing policy. It denies eligibility for appointment of enlistment for military service to individuals with serologic evidence of HIV-1 infection; requires periodic screening of active duty and Reserve component military personnel for evidence of HIV-1 infection; refers active duty personnel with serologic evidence of HIV-1

infection for a medical evaluation of fitness for continued service in the same manner as personnel with other progressive illnesses; and denies eligibility for extended active duty (duty for a period of more than 30 days) to those Reserve component members with serologic evidence of HIV-1 infection. The rule also provides for the retirement or separation of Service members infected with HIV-1 who are determined to be unfit for further duty; ensures the safety of the blood supply through policies of the Armed Service Blood Program Office, the guidelines of the Food and Drug Administration, and the accreditation of the American Association of Blood Banks; and, complies with statutory limitations on the use of the information obtained from a Service member during or as a result of an epidemiologic assessment interview and the results obtained from laboratory tests for HIV-1. Finally, it establishes an aggressive disease surveillance and health education program, and provides education and voluntary HIV-1 serologic screening for DoD health care beneficiaries.

DATES: Written comments on this proposed rule must be received by October 17, 1990.

ADDRESSES: Forward comments to the Office of the Assistant Secretary of Defense (Health Affairs), the Pentagon, Room 3D360, Washington, DC 20301-1200.

FOR FURTHER INFORMATION CONTACT: Dr. M. Peterson, telephone (202) 695-7116.

SUPPLEMENTARY INFORMATION: In FR Doc. 89-28334 appearing in the **Federal Register** on December 5, 1989 (54 FR 50243), the Office of the Assistant Secretary of Defense published a proposed rule on this subject. That proposed rule is revised by this proposed rule. This part is not a major rule as defined by Executive Order 12291. The proposed rule will not have an annual effect on the economy of $100 million or more; result in a major increase in the cost of prices for consumers, industries, State or local governments; or adversely effect competition, employment, investment, productivity or innovation. The proposed rule is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.); therefore, no Regulatory Flexibility Analysis was prepared.

List of Subjects in 32 CFR Part 58

Armed Forces reserves, DoD civilian employees, Government employees, Human Immunodeficiency Virus, HIV-1, Military personnel.

Accordingly, title 32, chapter I, subchapter B, is proposed to be amended by revising part 58 to read as follows:

PART 58—HUMAN IMMUNODEFICIENCY VIRUS (HIV-1)

Sec.
58.1 Purpose.
58.2 Applicability.
58.3 Definitions.
58.4 Policy.
58.5 Responsibilities.
58.6 Procedures.
Appendix A to Part 58—Administration of Officer Applicants.
Appendix B to Part 58—HIV-1 Testing of DoD Civilian Employees.
Appendix C to Part 58—Personnel Notification and Epidemiological Investigation.

Authority: 10 U.S.C. 113.

§ 58.1 Purpose.

This part supersedes DoD Directive 1438.4, Deputy Secretary of Defense Memorandum, "Policy on Identification, Surveillance, and Administrative of Personnel Infected with Human Immunodeficiency Virus (HIV)," August 4, 1988, Deputy Secretary of Defense Memorandum, "Recommendation Human Immunodeficiency Virus (HIV) Policies," March 8, 1988, Assistant Secretary of Defense (Health Affairs) Memorandum, "Policy on Clinical Evaluation, Staging and Disease Coding of Military Personnel Infected with Human Immunodeficiency Virus (HIV)," September 11, 1987, Assistant Secretary of Defense (Health Affairs) Memorandum, "The DoD HTLV-III Testing Program," December 5, 1985, to update policy, responsibilities, and procedures on identification, surveillance, and administration of civilian and military personnel infected with HIV-1, as well as DoD civilian employees for whom testing is required of a host nation.

§ 58.2 Applicability.

This part applies to the Office of the Secretary of Defense (OSD); the Military Departments (including their Reserve components); the Chairman, Joint Chiefs of Staff and Joint Staff; the Unified and Specified Commands; and the Defense Agencies (hereafter referred to collectively as "DoD Components"). The term "Military Services," as used herein, refers to the Army, Navy, Air Force, and Marine Corps.

§ 58.3 Definitions.

(a) *Human Immunodeficiency Virus-1.* The virus most commonly associated with the Acquired Immune Deficiency Syndrome (AIDS) in the United States.

(b) *HIV-1 and/or AIDS Education Program.* Any combination of information, education, and behavior-change strategies designed to facilitate behavioral alteration that will improve or protect health. Included are those activities intended to support or influence individuals in managing their own health through lifestyle decisions and self-care. Operationally, such programs include community, worksite, and clinical aspects using appropriate public health education methodologies through lifestyle decisions and self-care. Operationally, such programs include community, worksite, and clinical aspects using appropriate public health education methodologies.

(c) *Serologic Evidence of HIV-1 Infection.* A reactive result given by a Food and Drug Administration (FDA)-approved enzyme-linked immunosorbent assay (ELISA) serologic test that is confirmed by a reactive and diagnostic immunoelectrophoresis test (Western blot (WB)) test on two separate samples.

(d) *Host Nation.* A foreign nation to which DoD U.S. civilian employees are assigned to perform their official duties.

(e) *DoD Civilian Employees.* Current and prospective DoD U.S. civilian employees, including appropriated and nonappropriated fund personnel. This does not include members of the family of DoD civilian employees, employees of, or applicants for, positions with contractors performing work for the Department of Defense, or their families.

(f) *Epidemiological Assessment.* The process by which personal and confidential information on the possible modes of transmission of HIV-1 are obtained from an HIV-1 infected person. This information is used to determine if previous, present, or future contacts of the infected individual are at risk for infection with HIV-1 and to prevent further transmission of HIV-1.

§ 58.4 Policy.

It is DoD policy to:

(a) Deny eligibility for appointment or enlistment for Military Service to individuals with serologic evidence of HIV-1 infection.

(b) Screen active duty (AD) and Reserve component military personnel periodically for serologic evidence of HIV-1 infection.

(c) Refer AD personnel with serologic evidence of HIV-1 infection for a medical evaluation of fitness for continued service in the same manner as personnel with other progressive illnesses, as specified in DoD Directive

1332.18 [1]. Medical evaluation shall be conducted in accordance with the *Standard Clinical Protocol.*[2] Individuals with serologic evidence of HIV-1 infection who are fit for duty shall not be retired or separate solely on the basis of serologic evidence of HIV-1 infection. AD personnel with serological evidence of HIV-1 infection or who are ELISA repeatedly reactive, but WB negative or indeterminate, shall be advised to refrain from donating blood.

(d) Deny eligibility for extended AD (duty for a period of more than 30 days) to those Reserve component members with serologic evidence of HIV-1 infection (except under conditions of mobilization and on the decision of the Secretary of the Military Department concerned). Reserve component members who are not on extended AD or who are not on extended full-time National Guard duty, and who show serologic evidence of HIV-1 infection, shall be transferred involuntarily to the Standby Reserve only if they cannot be utilized in the Selected Reserve.

(e) Retire or separate AD or Reserve Service members infected with HIV-1 who are determined to be unfit for further duty, as implemented in DoD Directive 1332.18.

(f) Ensure the safety of the blood supply through policies of the Armed Services Blood Program Office, the FDA guidelines, and the accreditation requirements of the American Association of Blood Banks.

(g) Comply with applicable statutory limitations on the use of the information obtained from a Service member during, or as a result of, an epidemiologic assessment interview and the results obtained from laboratory tests for HIV-1.

(h) Control transmission of HIV-1 through an aggressive disease surveillance and health education program.

(i) Provide education and voluntary HIV-1 serologic screening for DoD healthcare beneficiaries (other than Service members).

(j) Comply with host-nation requirements of HIV-1 screening of DoD civilian employees, as described in this part.

§ 58.5 Responsibilities.

(a) The Assistant Secretary of Defense (Health Affairs) (ASD(HA)), in coordination with the Assistant Secretary of Defense (Force Management and Personnel) (ASD(FM&P)), the General Counsel of the Department of Defense (GC, DoD), and the Assistant Secretary of Defense (Reserve Affairs) (ASD(RA)), is responsible for establishing policies, procedures, and standards for the identification, surveillance, and administration of personnel infected with HIV-1. The ASD(HA) shall provide overall policy guidance and approval for the HIV-1 and/or AIDS education and information efforts and shall establish the HIV-1 and/or AIDS Information and Education Coordinating Committee.

(b) The Secretaries of the Military Departments shall establish Service policies, procedures, and standards for the identification, surveillance, education, and administration of personnel infected with HIV-1, based on and consistent with this part.

(c) The Assistant Secretary of Defense (Force Management and Personnel) (ASD(FM&P)) shall establish and revise policies governing HIV-1 screening of DoD civilian employees assigned to, performing official travel in, or deployed on ships with ports of call at host nations, in coordination with the ASD(HA), the Assistant Secretary of Defense (International Security Affairs) (ASD(ISA)), and the GC, DoD.

(d) The Assistant Secretary of Defense (International Security Affairs) (ASD(ISA)) shall identify or confirm host-nation HIV-1 screening requirements for DoD civilians, transmit this information to the ASD(FM&P), and coordinate requests for screening with the Department of State (DoS).

(e) The Heads of DoD Components shall implement HIV-1 screening policies and procedures for DoD civilian employees identified in § 58.5(c) and shall take the following actions:

(1) Report newly established host-nation HIV-1 screening requirements to the ASD(FM&P) and provide sufficient background information to support a decision. This reporting requirement is exempt from licensing in accordance with paragraph E.4.b. of DoD 7750.5-M [3].

(2) Develop and distribute policy implementing instructions.

(3) Establish procedures to notify individuals who are evaluated as HIV-1 seropositive and provide initial counseling to them.

§ 58.6 Procedures.

(a) Applicants for Military Service and, periodically, AD and Reserve component military personnel shall be screened for serologic evidence of HIV-1 infection. Testing and interpretation of results shall be in accordance with the procedures as described in the *HIV-1 Testing and Interpretation of Results* [4]. Test results shall be reported to the Reportable Disease Data Base as described in the Assistant Secretary of Defense (Health Affairs) Memorandum, "DoD Reportable Disease Database," December 30, 1985.

(b) Applicants for enlisted service shall be screened at the Military Entrance Processing Stations (MEPS) or the initial point of entry to Military Service. Applicants who enlist under a delayed enlistment program, but before entry on AD and who exhibit serologic evidence of HIV-1 infection, may be discharged due to erroneous enlistment.

(c) Officer candidates shall be screened during their preappointment and/or precontracting physical examination. The disposition of officer applicants who are ineligible for appointment due to serologic evidence of HIV-1 infection shall be in accordance with the procedures in Appendix A of this part.

(d) Applicants for Reserve components shall be screened during the normal entry physical examinations or in the preappointment programs established for officers. Those individuals with serologic evidence of HIV-1 infection who are required to meet accession medical fitness standards to enlist or be appointed are not eligible for Military Service with the Reserve components.

(e) Initial testing and periodic retesting of AD and Reserve component personnel shall be accomplished in the priority listed in *Disease Surveillance and Health Education* [5].

(f) AD personnel (including Acting Guard and/or Reserve) who exhibit serologic evidence of HIV-1 infection shall receive a medical evaluation. Guard and Reserve personnel, not on extended AD, must obtain a medical evaluation from a civilian physician.

(g) Each Military Service shall appoint an HIV-1 and/or AIDS education program coordinator to serve as the focal point for all HIV-1 and/or AIDS education program issues and to integrate the educational activities of the medical and personnel departments.

(h) An HIV-1 and/or AIDS Information and Education Coordinating Committee shall be established to enhance communication among the Military Services, recommend joint education policy and program actions, review education program implementation, and recommend methodologies and procedures for

[1] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161

[2] Forward requests for copies to the Office of the Assistant Secretary of Defense (Health Affairs), the Pentagon, Washington, DC 20301-1200.

[3] See footnote 1 to § 58.4(c).

[4] See footnote 2 to § 58.4(c).

[5] See footnote 2 to § 58.4(c).

program evaluation. That committee shall be chaired by the Office of the ASD(HA). Members shall include two representatives from the Office of the ASD(FM&P), and the HIV-1 and/or AIDS education program coordinator from each Military Service. Additional members shall represent the Armed Services Blood Program Office and, on an ad hoc basis, OASD(HA). Policy and program proposals shall be coordinated with the Secretaries of the Military Departments.

(i) Each Military Service shall prepare a plan for the implementation of a comprehensive HIV-1 and/or AIDS education program that includes specific objectives with measurable action steps. The plan shall address information, education, and behavior-change strategies, as described in *Disease Surveillance and Health Education*[6].

(j) Civilians may not be mandatorily tested for serologic evidence of HIV-1 infection except as necessary to comply with valid host-nation requirements for screening of DoD employees. Procedures for mandatory screening of DoD civilians shall be in accordance with appendix B of this part.

(k) The medical assessment of each exposure to, and/or case of, HIV-1 infection seen at a military medical treatment facility (MTF) shall include an epidemiological assessment of the potential transmission of HIV-1 to other persons at risk of infection, including sexual and other intimate contacts and family of the patient, and transfusion history. The occurrence of HIV-1 infection or serologic evidence of HIV-1 infection may not be used as a basis for any disciplinary action against an individual, except as described in the *Limitations on the Use of Information*[7].

(l) Each military medical service shall conduct an ongoing clinical evaluation of each AD Service member with serologic evidence of HIV-1 infection at least annually. CD4 lymphocyte percentages or counts shall be monitored at least every 6 months. Appropriate preventive medicine counseling shall also be provided to all individual patients, and public health education materials shall be made available to that medical services' beneficiary population. Each military medical service shall conduct longitudinal clinical evaluations of AD Service members with serologic evidence of HIV-1 infection and shall prepare internal reports to facilitate timely review and reassessment of current policy guidelines.

(m) All military MTF shall notify promptly the cognizant military health authority, when there is clinical or laboratory evidence indicative of infection with HIV-1, in accordance with Appendix C of this part.

(n) Each Military Department shall ensure that a mechanism is established to gather data on the epidemiology of HIV-1 infection of its members. Such epidemiological research shall be accomplished in a manner to ensure appropriate protection of information given by the Service member on the means of transmission.

(o) The Department of the Army, as the lead Agency for infectious disease research within the Department of Defense, shall budget for and fund tri-Military Department DoD HIV-1 research efforts in accordance with guidance provided by the ASD(HA). The research program shall focus on the epidemiology and natural history of HIV-1 infections in military and military associated populations; on improving the methods for rapid diagnosis and patient evaluation; and on studies of the immune response to HIV-1 infection, including the potential for increased risk in the military operational environment.

(p) Service members with serologic evidence of HIV-1 infection shall be assigned within the United States, including Alaska, Hawaii, and Puerto Rico, due to the high priority assigned to the continued medical evaluation of military personnel. The Secretaries of the Military Departments may restrict such individuals to nondeployable units or positions for purposes of force readiness. To protect the health and safety of Service members with serologic evidence of HIV-1 infection and of other Service members (and for no other reason), the Secretaries of the Military Departments may, on a case-by-case basis, limit assignment of HIV-1-infected individuals on the nature and location of the duties performed in accordance with operational requirements.

(q) AD and Reserve component personnel with serologic evidence of HIV-1 infection shall be retained or separated.

(r) The ASD(HA), in coordination with the Services, shall revise appendices A and C of this part, as appropriate, through publication in the **Federal Register**. The ASD(FM&P) shall revise appendix B of this part, as appropriate, through publication in the **Federal Register**. Revisions under this paragraph shall be in coordination with the GC, DoD.

Dated: September 12, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Appendix A to Part 58-Administration of Officer Applicants

Administration of officer applicant who are ineligible for appointment, due to serologic evidence of HIV-1 infection, shall be in accordance with the following provisions:

A. Enlisted members who are candidates for appointment through Officer Candidate School (OCS) or Officer Training School (OTS) programs shall be disenrolled immediately from the program. If OCS and/or OTS is the individual's initial entry training, the individual shall be discharged. If the sole basis for discharge is serologic evidence of HIV-1 infection, an honorable or entry-level discharge, as appropriate, shall be issued. A candidate who has completed initial entry training during the current period of service before entry into candidate status shall be administered in accordance with Service regulations for enlisted personnel.

B. Individuals in preappointment programs, such as Reserve Officer Training Corps (ROTC) and Health Professions Scholarship Program participants, shall be disenrollment to the end the academic term (i.e., semester, quarter, or similar period) in which serologic evidence of HIV-1 infection is confirmed. Disenrolled participants shall be permitted to retain any financial support through the end of the academic term in which the disenrollment is effected. Financial assistance received in these programs is not subject to recoupment if the sole basis for disenrollment is serologic evidence of HIV-1 infection.

C. Service Academy cadets and midshipmen and personnel attending the Uniformed Services University of the Health Sciences (USUHS) shall be separated from the respective Service academy or USUHS and discharged. The Secretary of the Service concerned, or the designated representative, may delay separation to the end of the current academic year. A cadet or midshipman granted such a delay in the final academic year, who is otherwise qualified, may be graduated without commission and, thereafter, discharged. If the sole basis for discharge is serologic evidence of HIV-1 infection, an honorable discharge shall be issued.

D. Commissioned officers in DoD-sponsored professional education programs leading to appointment in a professional military speciality (including, but not limited to, medical, dental, chaplain, and legal and/or judge advocate) shall be disenrolled from the program at the end of the academic term in which serologic evidence of HIV-1 infection is confirmed. Disenrolled officers shall be administered in accordance with Service regulations. Except as specifically prohibited by statute, any additional Service obligation incurred by participation in such programs shall be waived, and financial assistance received in these programs shall not be subject to recoupment. Periods spent by such officers in these programs shall be

[6] See footnote 2 to § 58.4(c).

[7] See footnote 2 to § 58.4(c).

applied fully toward satisfaction of any preexisting Service obligation.

E. All personnel disenrolled from officer programs who are to be separated shall be given appropriate counseling, to include preventive medicine counseling and advice to seek treatment from a civilian physician.

Appendix B to Part 58-HIV-1 Testing of DoD Civilian Employees

A. Requests for authority to screen DoD civillian employees for HIV-1 shall be directed to the ASD(FM&P). Only requests that are based on a host-nation HIV-1 screening requirement shall be accepted. Requests based on other concerns, such as sensitive foreign policy or medical health care issues, shall not be considered under this part. Approvals shall be provided in writing by the ASD(FM&P). Approvals shall apply to all DoD Components that may have activities located in the host nation.

B. Specific HIV-1 screening requirements may apply to DoD civilian employees currently assigned to positions in the host nation, and to prospective employees. When applied to prospective employees, HIV-1 screening shall be considered as a requirement imposed by another nation that must be met before the final decision to select the individual for a position or before approving temporary duty or detail to the host nation. The Department of Defense has made no official commitment for positions located in host nations with HIV-1 screening requirements to those individuals who refuse to cooperate with the screening requirements, or to those who cooperate and are diagnosed as HIV-1 seropositive.

C. DoD. civilian employees who refuse to cooperate with the screening requirement shall be treated, as follows:

1. Those who volunteered for the assignment, whether permanent or temporary, shall be retained in their official position without further action and without prejudice to employee benefits, career progression opportunity, or other personnel actions to which those employees entitled under applicable law or regulation.

2. Those who are obligated to accept assignment to the host nation under the terms or an employment agreement, regularly scheduled tour of duty, or similar and/or prior obligation, may be subjected to an appropriate adverse personnel action under the specific terms of the employment agreement or other authorities that may apply.

3. Host-nation screening requirements, which apply to DoD civilian employees currently located in the country, also must be observed. Appropriate personnel actions may be taken, without prejudice to employee rights and privileges to comply with the requirement.

D. Individuals who are not employed in the host nation, who accept the screening, and who are evaluated as HIV-1 seropositive will be denied the assignment on the basis that evidence of seronegativity is required by the host nation. If denied the assignment, such DoD employees shall be retained in their current positions without prejudice. Appropriate personnel actions may be taken, without prejudice to employee rights and privileges, on DoD civilian employees currently located in the host nation. In all cases, employees shall be given proper counseling and shall retain all the rights and benefits to which they are entitled, including accommodations for the handicapped as provided in the ASD(FM&P) Memorandum [1], "Information and Guidance on Human Immunodeficiency Virus (HIV)," January 22, 1988, Federal Personnel Manual (FPM) Bulletin 792-42 [2], "AIDS in the Workplace," March 24, 1988, and for employees in the United States, Title 29, United States Code, Section 794, "Section 504 of the Rehabilitation Act of 1973," as amended. Non-DoD employees should be referred to appropriate support service organizations.

E. Some host nations may not bar entry to HIV-1-seropositive DoD civilian employees, but may require reporting of such individuals to host-nation authorities. In such cases DoD civilian employees who are evaluated as HIV-1 seropositive shall be informed of the reporting requirements. They shall be counseled and given the option of declining the assignment and retaining their official positions without prejeduce or notification to the host nation. If assignment is accepted, the requesting authority shall release the HIV-1 seropositive result, as required. Employees currently located in the host nation may also decline to have seropositive results released. In such cases, they may request and shall be granted early return at Government expense or other appropriate personnel action without prejudice to employee rights and privileges.

F. A positive confirmatory test by WB must be accomplished on an individual if the screening test (ELISA) is positive. A civilian employee may not be identified as HIV-1 antibody positive, unless the confirmatory test (WB) is positive. The clinical standards in this part shall be observed during initial and confirmatory testing.

G. Procedures shall be established by DoD Components to protect the confidentiality of test results for all individuals, consistent with the ASD(FM&P) Memorandum and DoD Directive 5400.11.[3]

H. Tests shall be provided by the DoD Component at no cost to the DoD civilian employees, including applicants.

I. DoD civilian employees infected with HIV-1 shall be counseled appropriately.

Appendix C to Part 58-Personnel Notification and Epidemiological Investigation

A. Personnel Notification

1. On notification by a medical health authority of an individual with serologic or other laboratory or clinical evidence of HIV-1 infection, the cognizant military health authority shall undertake preventive medicine intervention, including counseling of the individual and others at risk of infection, such as his or her sexual contacts (who are military healthcare beneficiaries), on transmission of the virus. The cognizant military health authority shall coordinate with military and civilian blood bank organizations, and preventive medicine authorities to trace back possible exposure through blood transufusion or donation of infected blood ASD(A) Memorandum and refer appropriate case-contact information to the appropriate military or civilian health authority.

2. All individuals with serologic evidence of HIV-1 infection who are military health case beneficiaries shall be counseled by a physician or a designated healthcare provider on the significance of a positive antibody test. They shall be advised as to the mode of transmission of this virus, the appropriate precautions and personal hygiene measures required to minimize transmission through sexual activities and/or intimate contact with blood or blood products, and of the need to advise any past sexual partners of their infection. Women shall be advised of the risk of perintal transmission during past, current, and future pregnancies. The infected individuals shall be informed that they are ineligible to donate blood and shall be placed on a permanent donor deferral list.

3. Service members identified to be at risk shall be counseled and tested for serologic evidence of HIV-1 infection. Other DoD beneficiaries, such as retirees and family members, identified to be at risk shall be informed of their risk and offered serologic testing, clinical evaluation, and counseling. The names of individuals identified to be at risk who are not eligible for military healthcare shall be provided to civilian health authorities in the local area where the index case is identified, unless prohibited by the appropriate State or host-nation civilian health authority. Such notification shall comply with the Privacy Act of 1974, 5 U.S.C. 552a. Anonymity of the HIV-1 index case shall be maintained, unless reporting is required by civilian authorities.

4. Blood donors who demonstrate repeatedly reactive ELISA tests for HIV-1, but for who WB or other confirmatory test is negative or indeterminate, and who cannot be reentered into the blood donor pool shall be appropriately counseled.

B. Epidemiological Investigation

1. Epidemiological investigation shall attempt to determine potential contacts of patients who have serologic or other laboratory or clinical evidence of HIV-1 infection. The patient shall be informed of the importance of case-contract notification to interrupt disease transmission and shall be informed that contacts shall be advised of their potential exposure to HIV-1. Individuals at risk of infection include sexual contacts (male and female); children born to infected mothers; recipients of blood, blood products, organs, tissues, or sperm; and users of contaminated intravenous drug paraphernalia. Those individuals determined to be at risk who are identified and who are eligible for healthcare in the military medical system shall be notified. Additionally, the Secretaries of the Military Departments shall provide for the notification, either through local public health authorities or by DoD healthcare professionals, or the spouses of Reserve component members found to be HIV-1-infected. Such notifications shall

[1] See footnote 2 to § 58.4(c)

[2] See footnote 2 to § 58.4(c)

[3] See footnote 1 to § 58.4(c)

comply with the Privacy Act of 1974, 5 U.S.C. 552a. The Secretaries of the Military Departments shall designate all spouses (regardless of the Service affiliation of the HIV-1-infected Reservist) who are notified under the provision to receive serologic testing and counseling on a voluntary basis from MTFs under the Secretaries' jurisdiction.

2. Communicable disease reporting procedures of civil authorities shall be followed to the extent consistent with this part through liaison between the military public health authorities and the appropriate local, State, territorial, Federal, or host-nation health jurisdiction.

[FR Doc. 90-21912 Filed 9-14-90; 8:45 am]

BILLING CODE 3810-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW-FRL-3830-7]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is proposing to grant a petition submitted by Geological Reclamation Operations and Waste Systems (GROWS), Incorporated, Morrisville, Pennsylvania, to exclude certain solid wastes generated at its facility from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. This action responds to a delisting petition submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 268, 124, 270, and 271 of title 40 of the Code of Federal Regulations, and under 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists. Today's proposed decision is based on an evaluation of waste-specific information provided by the petitioner.

The Agency is also proposing the use of an organic leachate model and a fate and transport model and their application in evaluating the waste-specific information provided by the petitioner. These models have been used in evaluating the petition to predict the concentration of hazardous constituents released from the petitioned waste, once it is disposed of.

DATES: EPA is requesting public comments on today's proposed decision and on the applicability of the organic leachate and fate and transport models used to evaluate the petition. Comments will be accepted until November 1, 1990. Comments postmarked after the close of the comment period will be stamped "late."

Any person may request a hearing on this proposed decision and/or models used in the petition evaluation by filing a request with the Director, Permits and State Programs Division, Office of Solid Waste, whose address appears below, by October 2, 1990. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Send three copies of your comments to EPA. Two copies should be sent to the Docket Clerk, Office of Solid Waste (OS-305), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. A third copy should be sent to Jim Kent, Variances Section, Assistance Branch, PSPD/OSW (OS-343), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Identify your comments at the top with this regulatory docket number: "F-90-GREP-FFFFF."

Requests for a hearing should be addressed to the Director, Permits and State Programs Division, Office of Solid Waste (OS-340), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

The RCRA regulatory docket for this proposed rule is located at the U.S. Environmental Protection Agency, 401 M Street, SW. Washington, DC 20460, and is available for viewing (Room M2427) from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call (202) 475-9327 for appointments. The public may copy material from any regulatory docket at a cost of $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline, toll free at (800) 424-9346, or at (202) 382-3000. For technical information concerning this notice, contact Dr. Robert Kayser, Office of Solid Waste (OS-343), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-4206.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

On January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA, EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times, and is published in 40 CFR 261.31 and 261.32. These wastes are listed as hazardous because they typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in subpart C of part 261 (*i.e.*, ignitability, corrosivity, reactivity, and extraction procedure (EP) toxicity) or meet the criteria for listing contained in 40 CFR 261.11(a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be. For this reason, 40 CFR 260.20 and 260.22 provide and exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste.

To have their wastes excluded, petitioners must show that wastes generated at their facilities do not meet any of the criteria for which the wastes were listed. See 40 CFR 260.22(a) and the background documents for the listed wastes. In addition, the Hazardous and Solid Waste Amendments (HSWA) of 1984 require the Agency to consider any factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Accordingly, a petitioner also must demonstrate that the waste does not exhibit any of the hazardous waste characteristics (*i.e.*, ignitability, reactivity, corrosivity, and EP toxicity), and must present information for the Agency to determine whether the waste contains any other toxicants at hazardous levels. See 40 CFR 260.22(a), 42 U.S.C. 6921(f), and the background documents for the listed wastes. Although wastes which are "delisted" (*i.e.*, excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of hazardous waste, generators remain obligated under RCRA to determine whether or not their waste remains non-hazardous based on the hazardous waste characteristics.

In addition to wastes listed as hazardous in 40 CFR 261.31 and 261.32, residues from the treatment, storage, or disposal of listed hazardous wastes and mixtures containing hazardous wastes are also considered hazardous wastes. Such wastes are also eligible for exclusion and remain hazardous wastes until excluded. See 40 CFR 261.3 (c) and

(d)(2). The substantive standards for "delisting" a treatment residue or a mixture is the same as previously described for listed wastes.

B. Approach Used To Evaluate This Petition

This petition requests a delisting for a listed hazardous waste. In making the initial delisting determination, the Agency evaluated the petitioned waste against the listing criteria and factors cited in 40 CFR 261.11 (a)(2) and (a)(3). Based on this review, the Agency agrees with the petitioner that the waste is non-hazardous with respect to the original listing criteria. If the Agency had found, based on this review, that the waste remained hazardous based on the factors for which the waste was originally listed, EPA would have proposed to deny the petition. EPA then evaluated the waste with respect to other factors or criteria to assess whether there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. The Agency considered whether the waste is acutely toxic, and considered the toxicity of the constituents, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, and the quantities of waste generated.

For this delisting determination, the Agency used this information to identify plausible exposure routes for hazardous constituents present in the waste, and is proposing to use a particular fate and transport model to predict the concentration of hazardous constituents that may be released from the petitioned waste after disposal and to determine the potential impact of the unregulated disposal of GROWS's petitioned waste on human health and the environment. Specifically, the model was used to predict compliance-point concentrations which were then compared directly to the levels of regulatory concern for particular hazardous constituents.

EPA believes that this fate and transport model represents a reasonable worst-case waste disposal scenario for the petitioned waste, and that a reasonable worst-case senario is appropriate when evaluating whether a waste should be relieved of the protective management constraints of RCRA subtitle C. Because a delisted waste is no longer subject to hazardous waste control, the Agency is generally unable to predict and does not control how a waste will be managed after delisting. Therefore, EPA currently believes that it is inappropriate to consider extensive site-specific factors when applying the fate and transport model. For example, a generator may petition the Agency for delisting of a metal hydroxide sludge which is currently being managed in an on-site landfill and provide data on the nearest drinking water well, permeability of the aquifer, dispersivities, etc. If the Agency were to base its evaluation solely on these site-specific factors, the Agency might conclude that the waste, at that specific location, cannot affect the closest well, and the Agency might grant the petition. Upon promulgation of the exclusion, however, the generator is under no obligation to continue to manage the waste at the on-site landfill. In fact, it is likely that the generator will either choose to send the delisted waste off site immeidately, or will eventually reach the capacity of the on-site facility and subsequently send the waste off site to a facility which may have very different hydrogeological and exposure conditions.

The Agency also considers the applicability of ground-water monitoring data during the evaluation of delisting petitions. In this case, the Agency determined that it would be inappropriate to request ground-water monitoring data. The filter cake is currently disposed of off site in two non-dedicated landfills (located in Emelle, Alabama and Fort Wayne, Indiana). GROWS had previously disposed of its filter cake in a non-dedicated, on-site hazardous waste landfill which is now closed. (The GROWs landfill is not the subject of this petition). All three of these non-dedicated facilities contain wastes from numerous generators; therefore, any ground-water contamination would be characteristic of the total volume of waste disposed of at the disposal site. For example, the petitioned waste accounts for much less than one percent of the waste disposed of in the now-closed GROWS landfill. Therefore, the Agency believes that, in this case, the ground-water monitoring data would not be meaningful for an evaluation of the specific effect of the petitioned waste on ground water. Furthermore, the petitioned waste is the sludge generated after treatment of the collected landfill leachate, not the leachate itself. Thus ground-water monitoring data that characterizes the mobility of the untreated material from the GROWs landfill site (*i.e.*, ground-water data for the on-site units, including the "old" GROWS landfill and the other non-hazardous waste expansion areas) are not relevant. For this reason, the Agency did not request or evaluate ground-water monitoring data from GROWS.

Finally, the Hazardous and Solid Waste Amendments of 1984 specifically require the Agency to provide notice and an opportunity for comment before granting or denying a final exlusion. Thus, a final decision will not be made until all public comments (including those at public hearings, if any) on today's proposal are addressed.

II. Disposition of Petition

Geological Reclamation Operations and Waste System, Inc., Morrisville, PA

1. Petition for Exclusion

Geological Reclamaiton Operations and Waste Systems (GROWS), located in Morrisville, Pennsylvania, operates a commercial landfill and wastewater treatment plant. GROWS petitioned the Agency to exclude its wastewater treatment sludge filter cake resulting form the treatment of leachate originating, in part, from its closed landfill containing a mixture of solid wastes and hazardous wastes. The petition does not address the wastes disposed in the GROWS landfill or the grit generated during the physical removal (*i.e.*, screening) of heavy solids from the landfill leachate. GROWS' petition is for the following hazardous wastes: EPA Hazardous Waste No. F005—"The following spent non-halogenated solvents: Toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, benzene, 2-ethoxyethanol, and 2-nitropropane; all spent solvent mixture/blends containing, before use, a total of ten percent or more (by volume) of one or more of the above non-halogenated solvents or those solvents listed in F001, F002, or F004; and still bottoms from the recovery of these spent solvents and spent solvent mixtures;" EPA Hazardous Waste No. F006—"Wastewater treatment sludges form electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum;" EPA Hazardous Waste No. F007—"Spent cyanide plating bath solutions from electroplating operations;" EPA Hazardous Waste No. F009—"Spent stripping and cleaning bath solutions from electroplating operations where cyanides are used in the process;" EPA

Hazardous Waste No. F019—"Wastewater treatment sludges from chemical conversion coating of aluminum;" EPA Hazardous Waste No. K049—"Slop oil emulsion solids from the petroleum refining industry;" EPA Hazardous Waste No. K050—"Heat exchanger bundle cleaning sludge from the petroleum refining industry;" EPA Hazardous Waste No. K051—"API separator sludge form the petroleum refining industry;" EPA Hazardous Waste No. K052—"Thank bottoms (leaded) from the petroleum refining industry;" EPA Hazardous Waste No. K061—"Emission control dust/sludge from the primary production of steel in electric furnaces;" EPA Hazardous Waste No. K062—"Spent pickle liquor generated by steel finishing operations of facilities within the iron and steel industry (SIC codes 331 and 332);" EPA Hazardous Waste No. K084—"Wastewater treatment sludges generated during the production of veterinary pharmaceuticals form arsenic or organo-arsenic compounds;" EPA Hazardous Waste No. K101—"Distillation tar residues from the distillation of aniline-based compounds in the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds;" EPA Hazardous waste No. K102—"Residue from the use of activated carbon for decolorization in the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds;" and the following commercial chemical products, manufacturing chemical intermediates or off-specification commercial chemical products: U007, U012, U019, U031, U037, U042, U051, U052, U055, U057, U080, U107, U113, U122, U140, U147, U151, U154, U159, U161, U165, U188, U210, U220, U223, U226, U227, U228, and U239.

The listed constituents of concern for the above wastes are: toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, 2-ethoxyethanol, benzene, 2-nitropropane, cadmium, hexavalent chromium, nickel, cyanide (complexed), cyanide (salts), lead, arsenic, acrylamide, cyclohexanone, aniline, 1-butanol, chlorobenzene, 2-chloroethyl vinyl ether, creosote, cresol, cumene, methylene chloride, di-n-octyl phthalate, ethyl acrylate; formaldehyde, maleic anhydride, mercury, methanol, methyl isobutyl ketone, naphthalene, phenol, tetrachloroethylene, toluene diisocyanate, 1,1,1-trichloroethane, 1,1,2-trichloroethane, trichloroethylene, and xylene.

GROWS petitioned the Agency to exclude its wastewater treatment filter cake sludge becuase they consider the sludge to be a "third generation hazardous waste" (*i.e.*, a treatment residue derived from the treatment of leachate derived from a hazardous waste). GROWS also believes that its treatment process generates a non-hazardous waste. GROWS further believes that the waste is not hazardous for any other reason. Review of this petition included consideration of the original listing criteria, as well as the additional factors required by the Hazardous and Solid Waste Amendments (HSWA) of 1984. See section 222 of HSWA, 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(2)-(4). Today's proposal to grant this petition for delisting is the result of the Agency's evaluation of GROWS' petition.

2. Background

Grows petitioned the Agency to exclude its wastewater (leachate) treatment sludge filter cake on November 13, 1986. Additional information to complete the petition was submitted to the Agency on September 22, 1987 and April 7, 1988. In support of its petition, GROWS submitted (1) Detailed descriptions of its waste treatment process; (2) results from total constituent and EP toxicity analyses for the EP toxic metals, nickel, and cyanide; (3) results from total constituent analyses for reactive cyanide and reactive sulfide; (4) results from total oil and grease analyses on representative waste samples; (5) results from total constituent analyses for Appendix VIII hazardous constituents; and (6) results from characteristics testing for ignitability, corrosivity, and reactivity.

The "old" GROWS landfill began operation in 1970, and accepted municipal waste, demolition debris, and industrial residual waste materials. From 1977 to 1983, the "old" GROWS landfill accepted listed hazardous wastes on a case-by-case basis as approved by the Pennsylvania Department of Environmental Resources. The "old" GROWS landfill, which comprises approximately 57 acres, was closed in November, 1984. Less than three percent of the total volume disposed of in the "old" GROWS landfill consists of listed hazardous wastes.

A leachate collection system, consisting of underdrains, was installed beneath and around the perimeter of the "old" GROWS landfill. Additional leachate collection systems were also installed at several municipal waste disposal sites operating at GROWS' facility. Approximately 30,000 gallons per day of leachate from the "old" GROWS landfill and the other municipal waste landfills are pumped to one of two equalization impoundments, which have a combined storage capacity of 465,000 gallons. Effluent from the two equalization impoundments is pumped to a lime mix tank for clarification in order to promote the precipitation of the heavy metals and other inorganic materials. The clarified solids are periodically removed from the lime mix tank and pumped to any one of the four sludge holding tanks.

Effluent from the lime mix tank undergoes ammonia stripping. Effluent from the ammonia stripper is pumped to one of two activated sludge tanks (operating in parallel) for biological wastewater treatment. Excess bio-mass sludge is pumped to two of the four sludge holding tanks. Effluent from the activated sludge tanks undergoes secondary clarification, sand filtration, chlorination, storage, and discharge through a National Pollution Discharge Elimination System (NPDES) permitted outflow. Settled solids from the secondary clarifier are removed and pumped to one of the four sludge holding tanks. The sludges contained in the four sludge holding tanks are dewatered using a plate and frame filter press. Filtrate generated during the filter press operation is pumped back to either the equalization basins or ammonia stripping process. The dewatered sludge (*i.e.*, filter cake) is stored in 20 cubic yard roll-off containers. Although the filter cake was previously disposed of in the "old" GROWS landfill, the filter cake is currently being disposed of in two separate off-site nondedicated subtitle C landfills.

To collect representative samples from filter presses like the system at GROWS' landfill, petitioners are normally requested to collect a minimum of four composite samples comprised of independent grab samples collected over time (*e.g.*, grab samples collected every hour and composited by shift). See "Test Methods for Evaluating Solid Wastes: Physical/Chemical Methods," U.S. EPA, Office of Solid Waste and Emergency Response, Publication SW-846 (third edition), November 1986, and "Petitions to Delist Hazardous Wastes—A Guidance Manual," U.S. EPA, Office of Solid Waste, (EPA/530-SW-85-003), April 1985.

GROWS collected a total of eight composite samples of its wastewater treatment sludge filter cake. Four initial composite samples were collected between June 1983 and July 1984. The June 1983 composite sample was comprised of 48 grab samples of filter cake generated by a pilot-scale filter press (*i.e.*, a smaller version of the full-scale filter press) between June 3 and

June 9, 1983. The second composite sample was collected on April 16, 1984, from the full-scale filter press and was comprised of four grabs, each from one quadrant of a filter press plate. Using this sampling methodology, two additional composite samples were collected on May 29, 1984 and July 1, 1984. These four composite samples were analyzed for the total concentrations (*i.e.*, mass of a particular constituent per mass of waste) of the priority pollutants[1], EP toxicity concentrations (*i.e.*, mass of a particular constituent per unit volume of extract) of all the EP toxic metals and nickel, and the characteristics of hazardous wastes (*i.e.*, ignitability, corrosivity, and reactivity).

Four additional composite samples of waste were collected from the full-scale filter press between October 8, and October 15, 1987. Two composite samples were collected on October 8, and October 12, 1987 and consisted of material taken from the first three plates of the filter press. The other two composite samples were collected on October 14, and October 15, 1987 and consisted of material taken from each plate of the filter press. These four composite samples were analyzed for the total concentration of each of the Appendix VIII constituents[2] and the EP toxic metals, nickel, cyanide, reactive cyanide, sulfide, reactive sulfide, total oil and grease content, the characteristics of hazardous wastes, and the EP leachate concentrations of all the EP toxic metals, nickel, and cyanide.

GROWS claims that due to a consistent treatment process and adequate equalization impoundment capacity, the data obtained from the analyses of the eight composite samples are representative of any variation in the wastewater treatment sludge filter cake constituent concentrations. The Agency does not generally accept data obtained from pilot-scale treatment equipment (*e.g.*, pilot-scale filter press) unless the petition is for an upfront exclusion (*e.g.*, petitions for wastes which are not yet generated). Therefore, the Agency does not believe that the initial sample collected in June 1983 is fully representative of the constituent concentrations in the filter cake generated by the full-scale filter press; the Agency believes that the exchange of the pilot-scale filter press for the full-scale filter press represents a process modification, causing a variation in the moisture content of the waste and a change to the operating parameters of the filter press operation (*e.g.*, screen size, operating pressure, operating time).

The Agency believes that the remaining seven composite samples adequately characterize the wastewater treatment sludge filer cake generated during the sampling periods. The Agency, however, does have some concerns regarding possible variations in GROWS' wastewater treatment sludge filter cake constituent concentrations over time. These concerns are based primarily on the possibility that leachate quality (*i.e.*, composition) may change over time. As waste degradation progresses, concentrations of leaching constituents may change and new constituents may enter the leachate. For a discussion on how the Agency is addressing possible variation in leachate quality, see section 5—*Conclusion* and section 6—*Verification Testing Conditions*.

3. Agency Analysis

GROWS used SW-846 Method Numbers 7060 through 7760 and 9010 to quantify the total constituent concentrations of the EP toxic metals, nickel, and cyanide, and SW-846 Method Number 1310 to quantify the EP leachable concentrations of the EP toxic metals and nickel in their waste. GROWS used SW-846 Method Number 9030 to quantify the total constituent concentration of reactive sulfide. (Analysis for EP leachable concentration of sulfide, or reactive cyanide are not necessary because the Agency's level of regulatory concern is based on the total concentration of reactive sulfide and reactive cyanide.) GROWS used the applicable analytical protocol (*i.e.*, SW-846 test methods) to analyze for the priority pollutants and the appendix VIII hazardous constituents (see footnote No. 2). Table 1 presents the maximum total concentrations of all the EP toxic metals, nickel, cyanide, reactive cyanide, sulfide, and reactive sulfide in GROWS' waste. Table 2 presents the maximum EP leachate concentrations of each of the EP toxic metals, nickel, and cyanide. Table 3 presents the maximum concentrations of each of the organic appendix VIII hazardous constituents and/or other organic constituents (*e.g.*, P-, U-, F-listed) detected in the wastewater treatment sludge filter cake.

TABLE 1.—MAXIMUM TOTAL INORGANIC CONCENTRATIONS (PPM)

[Wastewater Treatment Sludge Filter Cake]

Constituents	Concentrations
Arsenic	1.8
Barium	17
Cadmium	<3.0
Chromium	6
Lead	<30.0
Mercury	<0.05
Selenium	<4.0
Silver	<3.0
Nickel	<20.0
Total Cyanide	0.81
Sulfide	<0.5
Reactive Cyanide	<0.5
Reactive Sulfide	<0.5

< Denotes that the constituent was not detected at the detection limit specified in the table.

TABLE 2.—MAXIMUM EP LEACHATE CONCENTRATIONS (PPM)

[Wastewater Treatment Sludge Filter Cake]

Constituents	Concentrations
Arsenic	<0.004
Barium	2.4
Cadmium	<0.008
Chromium	<0.06
Lead	0.1
Mercury	<0.001
Selenium	<0.004
Silver	0.04
Nickel	0.05
Total Cyanide	[1] 0.04

< Denotes that the constituent was not detected at the detection limit specified in the table.

[1] Calculated by assuming a dilution factor of twenty (based on 100 grams of sample and dilution with 2.0 liters of water) and a theoretical worst-case leaching of 100 percent.

TABLE 3.—MAXIMUM TOTAL ORGANIC CONCENTRATIONS (PPM)

[Wastewater Treatment Sludge Filter Cake]

Constituents	Concentrations
Acetone	0.4
Bis(2-ethylhexyl)phthalate	3.0
p-Dichlorobenzene	1.2
Methanol	5.1
Methyl Ethyl Ketone	0.11
Methyl Isobutyl Ketone	0.011

The Agency notes that no other 40 CFR Part 261 Appendix VIII or 40 CFR Part 264, Appendix IX constituents were detected in the wastewater treatment sludge filter cake using appropriate detection limits (per SW-846). These detection limits, and those presented in Tables 1 and 2, represent the lowest concentrations quantifiable by GROWS

[1] A subset of 40 CFR part 261, appendix VIII constituents which include volatile and semi-volatile acid extractable compounds and base/neutral extractable compounds.

[2] Some of the compounds listed in 40 CFR part 261, appendix VIII cannot be measured reliably due to physical or chemical restraints, methodological limitations, or because of a N.O.S. (not otherwise specified) entry for an entire class of chemicals on Appendix VIII. Appendix IX of 40 CFR part 264 is a tabulation of those Appendix VIII constituents which can be reliably quantified in ground water using SW-846 methods. GROWS' laboratory analyzed for the presence of all of the appendix IX constituents using appropriate SW-846 analytical protocols. GROWS' laboratory also attempted to quantify all other Appendix VIII constituents by comparing mass spectra of unidentified compounds (detected in the waste) to a computerized library of appendix VIII spectra. The Agency believes that GROWS' laboratory quantified as many of the Appendix VIII hazardous constituents as possible, using the best available technology.

when using the appropriate SW-846 analytical methods to analyze its waste. Detection limits may vary according to the waste and waste matrix being analyzed, *i.e.*, the "cleanliness" of waste matrices varies and "dirty" waste matrices may cause interferences, thus raising the detection limits. Using SW-846 Method Number 3540, GROWS determined that its waste had a maximum oil and grease content of 0.02 percent; therefore, the EP analyses did not have to be modified in accordance with the Oily Waste EP methodology (*i.e.*, wastes having more than one percent total oil and grease may either have significant concentrations of the constituents of concern in the oil phase, which may not be assessed using the standard EP leachate procedure, or the concentration of oil and grease may be sufficient to coat the solid phase of the sample and interfere with the leaching of metals from the sample). See SW-846 Method Number 1330. On the basis of test results provided by the petitioner, pursuant to 40 CFR 260.22, none of the analyzed samples exhibited the characteristics of ignitability, corrosivity, or reactivity. See 40 CFR 261.21, 261.22, and 261.23. GROWS submitted a signed certification stating that, based on current annual leachate treatment, their maximum annual generation rate of leachate treatment sludge will be 1,000 tons per year (approximately 1,000 cubic yards per year). The Agency may review a petitioner's estimates and, on occasion, has requested a petitioner to re-evaluate estimated waste volume. EPA accepts GROWS' certified estimate of 1,000 tons of wastewater treatment filter cake sludge.

EPA does not generally verify submitted test data before proposing delisting decisions. The sworn affidavit submitted with this petition binds the petitioner to present truthful and accurate results. The Agency, however, conducts a spot-check sampling and analysis program to verify the representative nature of the data for some percentage of the submitted petitions and, as a part of this program, conducted a spot-check sampling visit at GROWS' facility. The results of this visit, including chemical analyses of waste samples from GROWS, are discussed in this notice.

4. Agency Evaluation

The Agency considered the appropriateness of alternative disposal scenarios for filter cake wastes and decided that disposal in a landfill is the most reasonable, worst-case scenario. Under a landfill disposal scenario, the major exposure route of concern for any hazardous constituents would be ingestion of contaminated ground water. The Agency, therefore, evaluated the petitioned waste using its vertical and horizontal spread (VHS) landfill model which predicts the potential for ground-water contamination from wastes that are landfilled. See 50 FR 7882 (February 26, 1985), 50 FR 48896 (November 27, 1985), and the RCRA public docket for these notices for a detailed description of theVHS model and its parameters. This modeling approach, which includes a ground-water transport scenario, was used with conservative, generic parameters to predict reasonable worst-case contaminant levels in ground water at a hypothetical receptor well or compliance point (*i.e.*, the model estimates the ability of a toxicant within the aquifer to dilute for a specific volume of waste). In addition, the Agency used its organic leachate model (OLM) to estimate the leachable portion of the organic constituents in the petitioned waste. See 50 FR 48953 (November 27, 1985), 51 FR 41084 (November 13, 1986), and the RCRA public docket for these notices for a detailed description of the OLM and its parameters. The results of the OLM analysis were used in conjunction with the VHS model to estimate the potential impact of the organic constituents on the underlying ground water. The Agency requests comments on the use of the OLM and VHS model as applied to the evaluation of GROWS' waste.

Specifically, the agency used the VHS model to evaluate the mobility of barium, cyanide, lead, nickel, and silver from GROWS' leachate treatment sludge filter cake. The Agency's evaluation, using the maximum annual waste volume of 1,000 cubic yards and the maximum reported EP leachate concentrations, generated the compliance-point concentrations shown in Table 4. The Agency did not evaluate the mobility of the remaining inorganic constituents (*i.e.*, arsenic, cadmium, chromium, mercury, and selenium) from GROWS' waste because they were not detected in the EP extract using the appropriate SW-846 analytical methods (see Table 2). The Agency believes that it is inappropriate to evaluate non-detectable concentrations of a constitutent of concern in its modeling efforts if the non-detectable value was obtained using the appropriate analytical method. If a constituent cannot be detected (when using the appropriate analytical method) the Agency asumes that the constituent is not present and therefore does not present a threat to either human health or the environment.

TABLE 4.—VHS Model: Calculated Compliance-Point Concentrations (ppm) Listed and Non-Listed Constituents

[Wastewater Treatment Sludge Filter Cake]

Constituents	Compliance-Point concentrations	Levels of regulatory concern [1]
Barium	0.15	1.00
Cyanide	0.0025	0.70
Lead	0.0063	0.05
Nickel	0.0031	0.70
Silver	0.0025	0.05

[1] See "Docket Report on Health-Based Regulatory Levels and Solubilities Used in the Evaluation of Delisting Petitions," April 1990, located in the RCRA public docket.

The filter cake exhibited barium, cyanide, lead, nickel, and silver levels at the compliance point below the health-based levels used in delisting decision making. Additionally, the total constituent concentrations of reactive cyanide and reactive sulfide are below the Agency's interim standards of 250 ppm and 500 ppm, respectively. See "Interim Agency Thresholds for Toxic Gas Generation," July 12, 1985, internal Agency memorandum in the RCRA public docket.

The Agency also evaluated the mobility of the six Appendix VIII and P- and U-listed constituents detected in GROWS' waste using the VHS model. The Agency used the OLM to predict leachable concentrations of each of these detected consituents. The resulting leachable concentrations and the estimated maximum annual volume of waste (*i.e.*, 1,000 cubic yards) were then used as inputs in the VHS model to assess the potential impacts of these constituents upon the ground water. The calculated compliance-point concentrations for those constituents listed in Table 3 are shown in Table 5.

TABLE 5.—OLM/VHS Model: Calculated Compliance-Point Concentrations (ppm)

[Wastewater Treatment Sludge Filter Cake]

Constituents	Compliance-Point concentrations	Levels of regulatory concern [1]
Acetone	0.012	4.0
Bis (2-ethylhexyl)phthalate	0.0002	0.003
p-Dichlorobenzene	0.00077	0.075
Methanol	0.073	20.0
Methyl Ethyl Ketone	0.0032	2.0
Methyl Isobutyl Ketone	0.00023	2.0

[1] See "Docket Report on Health-Based Regulatory Levels and Solubilities Used in the Evaluation of Delisting Petitions, " April 1990, located in the RCRA public docket.

The concentrations of acetone, bis(2-ethylhexyl)phyhalate, p-dichlorobenzene, methanol, methyl ethyl ketone, and methyl isobutyl ketone at the compliance-point were below the appropriate health-based levels. These organic compounds, therefore, are not of regulatory concern.

On the basis of test results submitted by the petitioner, pursuant to § 260.22, the Agency concludes that the waste does not exhibit any of the characteristics of ignitability, corrosivity or reactivity. See 40 CFR 261.21, 261.22, 261.23.

On June 30, 1987, staff under contract to EPA conducted a site visit to GROWS as part of the Agency's spot-check and analysis program. A total of two composite samples (each comprised of two grab samples) were collected from GROWS' 20 cubic yard roll-off container. The 20 cubic yard roll-off container was divided into two sections and two full-depth core samples were collected from each section and then composited by section. The Agency analyzed the two composite samples for the total concentrations and the EP leachate concentrations of the EP toxic metals, nickel, and cyanide. The samples were analyzed for total concentrations of the priority pollutants, total oil and grease content, ignitability, corrosivity, and reactivity.

The maximum reported total concentrations for all of the EP toxic metals, nickel, and cyanide are presented in Table 6. The maximum reported EP leachate concentrations for each of the EP toxic metals, nickel, and cyanide (calculated) are presented in Table 7.

TABLE 6.—MAXIMUM TOTAL INORGANIC CONCENTRATIONS (PPM) AGENCY SPOT-CHECK VISIT SAMPLES

[Wastewater Treatment Sludge Filter Cake]

Constituents	Total concentrations
Arsenic	3.6
Barium	55.0
Cadmium	<0.5
Chromium	6.0
Lead	13.0
Mercury	0.17
Selenium	<0.5
Silver	<0.5
Nickel	15.0
Total Cyanide	4.85

< Denotes that the constituent was not detected at the detection limit specified in the table.

TABLE 7.—MAXIMUM EP LEACHATE CONCENTRATIONS (PPM) AGENCY SPOT-CHECK VISIT SAMPLES

[Wastewater Treatment Sludge Filter Cake]

Constituents	EP leachate concentrations
Arsenic	<0.25
Barium	<2.0
Cadmium	<0.05
Chromium	<0.2
Lead	<0.25
Mercury	<0.001
Selenium	<0.02
Silver	<0.025
Nickel	<0.2
Total Cyanide	[1] 0.242

< Denotes that the constituent was not detected at the detection limit specified in the table.

[1] Calculated by assuming a dilution factor of twenty (based on 100 grams of sample and dilution with 2.0 liters of water) and a theoretical worst-case leaching of 100 percent.

When the Agency conducted the spot-check sampling visit, the samples were routinely analyzed for the presence of the priority pollutants. Results of the Agency's spot-check sampling analyses indicated that no priority pollutants in the form of volatile or semi-volatile organic constituents, priority pollutant pesticides, or polychlorinated biphenyls, other than those presented in Table 8, were detected using SW-846 Method Numbers 8240, 8270, and 8080, respectively. Table 8 presents the maximum concentrations for the priority pollutants actually detected in GROWS' waste.

TABLE 8.—MAXIMUM CONCENTRATIONS (MG/KG) PRIORITY POLLUTANT CONSTITUENTS SPOT-CHECK VISIT SAMPLES

[Wastewater Treatment Sludge Filter Cake]

Constituents	Maximum concentrations
N-Nitrosodiphenylamine	0.62
Bis(2-ethylhexyl) phthalate	0.97
Di-n-octyl phthalate	0.065
Fluoranthene	0.05
Pyrene	0.052

A comparison of GROWS' sampling data with the Agency's spot-check data revealed variations in the total constituent concentrations reported in the two data sets. In addition to the variation in constituent concentrations expected to occur due to the changing quality of leachate over time, the Agency believes that, in part, some of the variation between the Agency's and GROWS' analytical data resulted because: (1) Grows' samples were collected over the course of one year while the Agency's samples were collected on one day; (2) GROWS' samples were composites comprised of at least four grab samples collected over each sampling day, while the Agency's samples were composites of two full-core samples of wastewater treatment sludge filter cake generated on one day; and, (3) the analyses were conducted by different laboratories. Therefore, variation between GROWS' sampling data and the Agency's sampling data is expected because of the possible changes in the quality of the leachate over time and minor differences between sampling and analytical procedures used by GROWS' and the Agency.

The Agency evaluated the mobility of the organic constituents using the VHS model. The Agency used the OLM to predict leachable concentrations of the organic constituents detected during the spot-check visit. Table 9 presents the calculated compliance-point concentrations.[3]

TABLE 9.—VHS MODEL: CALCULATED COMPLIANCE-POINT CONCENTRATIONS (PPM) AGENCY SPOT-CHECK SAMPLES

[Wastewater Treatment Sludge Filter Cake]

Constituents	Compliance point concentrations	Levels of regulatory concern [1]
N-Nitrosodiphenylamine	3.8OE-04	7.OE-03
Bis(2-ethylhexyl) phthalate	9.25E-05	3.OE-03
Di-n-octyl phthalate	3.14E-05	6.OE-01
Fluoranthene	1.O6E-05	2.OE-01
Pyrene	8.36E-06	1.OE+00

[1] See "Docket Report on Health-Based Regulatory Levels and Solubilities Used in the Evaluation of Delisting Petitions," April 1990, located in the RCRA public docket.

The predicted compliance-point concentrations for n-nitrosodiphenylamine, bis(2-ethylhexyl)phthalate, di-n-octyl phthalate, fluoranthene, and pyrene do not exceed the appropriate health-based levels; therefore, these constitutents are not of regulatory concern.

The Agency did not use the VHS model to evaluate the mobility of any of the EP toxic metals or nickel because these constitutents were not detected in the EP leachate (see Table 7). Additionally, the Agency did not use the VHS model to evaluate the mobility of

[3] The E term is a variation of "scientific notation" (in base 10 exponential form) and is used in this table and throughout this notice to represent very large or small numbers. For example, 3.80E-04 is equivalent to $3.8 \times 10_4$ and represents the number 0.000380.

cyanide because the theoretical maximum EP leachate value for cyanide (0.242 ppm) is less than the health-based level of 0.7 ppm for cyanide. Furthermore, on the basis of test results obtained by the Agency, the Agency concludes that the waste does not exhibit any of the characteristics of ignitability, corrosibity, or reactivity.

5. Conclusion

The Agency believes that GROWS' leachate treatment system, upon meeting certain verification testing requirements, can treat the leachate originating from both the "old" GROWS landfill and the other non-hazardous landfills (located at GROWS' facility) to produce a non-hazardous filter cake waste. The Agency believes that the sampling procedures used by GROWS were adequate, and that the samples are representative of the day-to-day variations in constituent concentrations found in the wastewater treatment sludge filter cake generated at the particular time the samples were collected.

As stated in section 2 of today's notice, the Agency is concerned with the possible variation that may occur over time in both the types of constituents present in the wastewater treatment sludge filter cake and their concentrations. For instance, the total concentration data for the organics collected by GROWS (see Table 3) indicated that only methanol, bis(2-ethylhexyl)phthalate, acetone, methyl ethyl ketone, p-dichlorobenzene, and methyl isobutyl ketone were present in the waste collected in October 1987. Yet total constituent data collected by the Agency on June 30, 1987 (see Table 8), indicated the presence of four new constituents in the wastewater treatment sludge filter cake. Furthermore, the concentration of bis(2-ethylhexyl)phthalate detected on June 30, 1987, was lower than that detected during the October 1987 sampling. The Agency, based on the data submitted to date, is confident that GROWS' treatment system is presently capable of treating the leachate to produce a non-hazardous filter cake waste. Furthermore, the landfill containing the hazardous waste has been closed and new hazardous wastes are no longer being disposed of. The Agency, however, is concerned whether the system will always be able to adequately treat new hazardous constituents or higher concentrations of the detected constituents that may occur over time. As a result, the Agency is proposing to incorporate continuous verification testing requirements into the exclusion to provide further assurance that filter cake generated in the future meets the delisting levels (see section 6—Verification Testing Conditions).

The Agency, therefore, is proposing that GROWS' filter cake waste be considered non-hazardous, once it meets certain verification testing requirements, because it should not present a hazard to either human health or the environment. The Agency proposes to grant a conditional exclusion to Geological Reclamation Operations and Waste Systems, Incorporated, located in Morrisville, Pennsylvania, for its wastewater treatment sludge filter cake resulting from the treatment of leachate collected from GROWS' facility. If the proposed rule becomes effective and the conditions of the exclusion are met, the wastewater treatment sludge filter cake would no longer be subject to regulation under 40 CFR parts 262 through 268 or the permitting standards of 40 CFR part 270.

6. Verification Testing Conditions

If a final exclusion is granted, the petitioner will be required to show that the wastewater treatment sludge filter cake meets the Agency's verification testing limitations (*i.e.*, "delisting levels"). These proposed conditions are specific to the exclusion petitioned for by GROWS.

This proposed exclusion is conditional upon the following:

(1) *Testing:* Sample collection and analyses, including quality control (QC) procedures, must be performed according to SW-846 methodologies.

(A) *Sample collection:* Each batch of waste generated over a four-week period must be collected in containers with a maximum capacity of 20-cubic yards. At the end of the four-week period, each container must be divided into four quadrants and a single, full-depth core sample shall be collected from each quadrant. All of the full-depth core samples then must be composited under laboratory conditions to produce one representative composite sample for the four-week period.

(B) *Sample analysis:* Each four-week composite sample must be analyzed for all of the constituents listed in Condition (3). The analytical data, including quality control information, must be compiled and maintained on site for a minimum of three years. These data must be furnished upon request by any employee or representative of EPA or the state of Pennsylvania.

(2) *Waste holding:* The dewatered filter cake waste must be stored as hazardous until the verification analyses are completed.

If the four-week composite sample does not exceed any of the delisting levels set in Condition (3), the filter cake waste corresponding to this sample may be managed and disposed of in accordance with all applicable solid waste regulations. If the four-week composite sample exceeds any of the delisting levels set in Condition (3), the filter cake waste generated during the time period corresponding to the four-week composite sample must be retreated until it meets these levels (analyses must be repeated) or managed and disposed of in accordance with subtitle C of RCRA.

Filter cake waste which is generated but for which analyses are not complete or valid must be managed and disposed of in accordance with subtitle C of RCRA, until valid analyses demonstrate that the waste meets the delisting levels.

The purpose of this condition is to ensure that any filter cake which contains hazardous levels of the specific constituents listed in Condition (3) will be managed and disposed of in accordance with subtitle C of RCRA. Holding the filter cake waste until characterization is complete will protect against improper handling of hazardous material.

Condition (3), as listed below, provides the list of constituents for which GROWS must test the petitioned filter cake waste, as well as the levels at which (or below which) the waste will be considered non-hazardous.

(3) *Delisting levels:* If the concentrations in the four-week composite sample of the filter cake waste for any of the hazardous constituents listed below exceed their respective maximum allowable concentrations (ppm) also listed below, the four-week batch of failing filter cake waste must either be re-treated until it meets these levels or managed and disposed of in accordance with subtitle C of RCRA.

(A) Inorganics (Leachable):	
Arsenic	0.79
Barium	15.9
Cadmium	0.16
Chromium	0.79
Cyanide	11.1
Lead	0.79
Mercury	0.032
Selenium	0.16
Silver	0.79
Nickel	11.1

Leachable metal concentrations must be measured in the filter cake leachate as per 40 CFR § 261.24. Cyanide extractions must be conducted using distilled water in place of the leaching media per 40 CFR § 261.24.

(B) Organics:	
Acetone	2.02E+03
Acetophenone	3.53E+04
Acetonitrile; Methyl cyanide	2.43E+01
Acrolein	1.38E+02
Acrylonitrile	6.26E−04
Aldrin	5.27E−03
Aniline	8.72E−01
Anthracene	3.01E−02
Benzene	3.47E+00
Benzo[a]anthracene	5.78E-01
Benzo[b]fluoranthene	6.41E-01
Benzo[k]fluoranthene	3.04E+03
Benzo[a]pyrene	1.51E-01
gamma-BHC; Lindane	5.90E-01
Bis(2-chloroethyl) ether	6.94E-04

Bis(2-ethylhexyl) phthalate	1.64E+02
Bromodichloromethane	2.94E+03
Bromoform; Tribromomethane	3.76E+03
Butyl benzyl phthalate	2.49E+05
Carbon disulfide	4.98E+04
Carbon tetrachloride	5.49E+00
Chlordane	7.51E+01
p-Chloroaniline	1.85E+02
Chlorobenzene	5.95E+02
Cholorobenzilate	1.68E+03
p-Choloro-m-cresol; 4-chloro-3-methyl-Phenol	5.18E+02
Chloroform	1.94E+00
2-Chlorophenol	1.72E+02
Chrysene	5.92E+01
Cresol	4.91E+03
2,4-D; 2,4-Dichlorophenoxyacetic acid	4.17E+02
4,4'-DDD; DDD	2.33E+00
4,4'-DDE; DDE	3.86E+00
4,4'-DDT; DDT	1.21E+01
Dibenz[a,h]anthracene	2.86E-02
Dibromochloromethane; Chlorodibromomethane	3.05E+03
1,2-Dibromo-3-chloropropane	4.09E-02
1,2-Dibromoethane; Ethylene dibromide	2.37E-E+03
Di-n-butyl phthalate	9.84E+05
O-Dichlorobenzene; 1,2-Dichlorobenzene	1.95E+04
m-Dichlorobenzene; 1,3-Dichlorobenzene	1.87E+05
p-Dichlorobenzene; 1,4-Dichlorobenzene	1.03E+03
3,3'-Dichlorobenzidine	2.21E-01
Dichlorodifluoromethane	4.15E+05
1,1-Dichloroethane	4.45E-02
1,2-Dichloroethane; Ethylene dichloride	1.45E+00
1,1-Dichloroethylene	4.96E+00
trans-1,2-Dichloroethylene	1.42E+02
2,4-Dichlorophenol	1.69E+02
1,2-Dichloropropane	2.73E+00
1,3-1,2-Dichloropropane27301,3-Dichloropropens (total cis and trans isomers)	2.32E-02
Dieldrin	5.04E-03
Diethyl phthalate	1.00E+06
Dimethoate	1.32E+00
7,12-Dimethylbenz[a]anthracene	1.46E-02
2,4-Dimethylphenol	4.87E+01
Dimethyl phthalate	1.00E+06
m-Dinitrobenzene	5.14E+00
4,6-Dinitro-cresol	2.00E+02
2,4-Dinitrophenol	8.96E+01
Dinitrotoluene (total of 2,4- and 2,6-isomers)	4.54E-03
Dinoseb; DNBP	5.26E+02
Di-n-octyl phathalate	1.34E+05
1,4-Dioxane	7.89E-02
Diphenylamine	4.81E+04
Disulfoton	3.34E+00
Endosulfan I and Endosulfan II (total)	7.74E+01
Endrin	3.92E+00
Ethylbenzene	1.94E+04
Fluoranthene	1.16E+05
Fluorene	4.09E+01
Heptachlor	1.31E+01
Heptachlor epoxide	3.26E+00
Hexachlorobenzene	1.02E+00
Hexachlorobutadiene	2.01E+01
Hexachlorocyclopentadiene	3.23E+04
Hexachloroethane	1.15E+01
Hexachlorophene; 2,2'-methylenebis [3,4,6-trichlorophenol]	1.22E+04
Indeno (1,2,3-cd) pyrene	1.16E+02
Isobutyl alcohol; Isobutanol	3.22E+04
Isophorone	2.86E+00
Methacrylonitrile; 2-methyl-2-Propenenitrile	5.77E-01
Methoxychlor	1.03E+05
Methylbromide; Bromomethane	1.41E+02
Methyl chloride; Chloromethane	3.22E+04
Methylene Chloride; Dichloromethane	9.07E-01
Methyl ethyl ketone; 2-Butanone	1.50E+03
Methyl methacrylate	5.08E+05
Methyl parathion; Phosphorothioic acid	5.27E+01
4-Methyl-2-pentanone; Methyl isolbutyl ketone	6.40E+03
Naphthalene	1.00E+06
Nitrobenzene	2.56E+01
N-Nitrosodi-n-butylamine	8.15E-05
N-Nitrosodiethylamine	2.00E-07
N-Nitrosodimethylamine	2.19E-05
N-Nitrosodiphenylamine	4.55E+01
N-Nitrosodipropylamine; Di-n-propylnitrosamine;	5.02E-05
Nitrosopyrrolidine; N-Nitrosopyrrolidine; 1-nitroso-Pyrrolidine	3.06E-05
Plychlorinated biphenyls; PCBs	4.77E+01
Pentachlorobenzene	8.91E+03
Pentachloronitrobenzene	2.82E+00
Pentachlorophenol	1.14E+04
Phenanthrene	5.46E+01
Phenol	8.00E+04
Pronamide	2.13E+05
Pyrene	1.00E+06
Pyridine	1.31E+01
Silvex; 2,4,5-TP; 2-(2,4,5-trichlorophenoxy)-Propanoic acid	3.87E+01
Styrene	9.14E+00
2,4,5-T; 2,4,5-Trichlorophenoxyacetic acid	6.63E+03
1,2,4,5-Tetrachlorobenzene	2.19E+02
1,2,2,2-Tetrachloroethane	2.28E-02
Tetrachloroethene; Tetrachloroethylene	1.34E+01
2,3,4,6-Tetrachlorophenol	1.17E+04
Tetraethyl dithiopyrophosphate	2.51E+02
Toluene	4.58E+04
Toxaphene	3.09E+02
1,2,4-Trichlorobenzene	4.75E+04
1,1,1-Trichloroethane	8.70E+02
1,1,2-Trichloroethane	9.03E-02
Trichloroethylene; Trichloroethene	4.47E+00
Trichlorofluoromethane	3.31E+05
2,4,5-Trichlorophenol	8.20E+04
2,4,6-Trichlorophenol	1.38E+00
1,2,3-Trichloropropane	5.46E+02
sym-Trinitrobenzene	2.17E+00
Vinyl chloride	7.11E-01
Xylene (total)	8.49E+05

The Agency is proposing that GROWS be required to test each four-week composite sample of wastewater treatment sludge filter cake prior to its disposal to verify that, despite possible changes in the quality of landfill leachate (*e.g.*, new constituents, increased concentrations of previously detected constitutents), the leachate treatment process is able to continuously treat the leachate to produce a non-hazardous filter cake waste.

Condition (3)(B) requires testing for the organic constituents from 40 CFR part 261, appendix VIII, for which the Agency has established health-based levels, and which the Agency believes can be reliably quantified using SW-846 methods. This list was drawn from appendix IX to 40 CFR part 264, which is a list of constituents for ground-water analysis developed based on analytical feasibility.

The Agency believes that it is appropriate to set maximum allowable levels (*i.e.*, delisting levels) for allconstituents included in the verification testing. For inorganic consituents, the Agency established maximum allowable concentrations for leachable levels using the BHS model and a maximum annual waste generation rate of 1,000 cubic yards. For organic constituents having an applicable health-based level, the Agency calculated the maximum allowable concentrations using the OLM and VHS model and the maximum annual waste generation rate of 1,000 cubic yards. (The calculations are available in the RCRA public docket.)

The Agency is not proposing to require GROWS to anlayze each four-week composite sample for the presence of chlorinated dioxins and furans (listed on Appendix VIII) for the following reasons. First, analytical results from analyses of both the untreated leachate and the filter cake waste indicated that no chlorinated dioxins or furans were present. Second, dioxins are extremely insoluble in water and are not typically expected inleachate or sludges resulting from the treatment of leachate. Third, no known dixoin contaminated wastes were accepted for disposal of in the "old" GROWS landfill. Fourth, GROWS' analyses of the untreated leachate and the treated filter cake waste showed that the constituents likely to be associated with dioxins (*e.g.* 2,4,5-T or trichlorophenols) were not present. Therefore, EPA believes that the inclusion of a conditional testing requirement for chlorinated dioxins and furans is not necessary or appropriate because chlorinated dioxins or furans are unlikely to be present in the treated filter cake waste.

Although, in this specific case, the Agency does not believe it is appropriate to require GROWS to analyze for chlorinated dioxins and furans, the Agency requests comments on whether, and on what basis, the following condition should be included in the verification testing requirements.

(3)(C) Chlorinated dioxins and furans: 2,3,7,8-Tetrachlorodibenzo-p-dioxin equivalents 1×10^{-6}

The filter cake waste must be analyzed for the tetra-, pentahexa-, and heptachlorodibenzo-p-dioxins, and the tetra-, penta-, hexa-, and heptachlorodibenzofurans to determine the 2,3,7,8-tetrachlorodibenzo-p-dioxin equivalent concentration. The analysis must be conducted using Methods 8290, a high resolution gas chromatography/high resolution mass spectrometry method, and must achieve practical quantitation limits of 15 parts per trillion (ppt) for the tetra- and penta- homologs, and 37 ppt for the hexa- and hepta- homologs.

As presented in this condition, the Agency would set maximum allowable waste concentrations for 2,3,7,8-tetrachlorodibenzo-p-dioxin equivalent concentrations (or 2,3,7,8-TCDD equivalents). 2,3,7,8-TCDD equivalents

are calculated as described in the docket for this notice.

Such a condition would specify that the petitioner use Method 8290 (a high resolution gas chromatography/high resolution mass spectrometry analytical method) and achieve certain practical quantitation limits (PQLs) when analyzing the petitioned filter cake waste for dixons and furans. As dicussed in other dioxin-related exclusions (see for example 53 FR 31, January 4, 1988), the Agency believes that it is appropriate to establish maximum acceptable quantitation limits for the dioxins and furans because the cited method is extremely sensitive. Therefore, in order to ensure that sufficiently low levels of dioxins and furans are detected, EPA would specify PQLs for these analyses. Based on other dioxin analyses completed using Method 8290, EPA believes these PQLs, would be appropriate if a condition for chlorinated dioxins and furans was considered necessary as a result of comments on this proposal.

The Agency is also considering whether to require GROWS to analyze for constituents for which health-based levels have not been established, yet which can be quantified using SW-846 test methods. [When the Agency did not have a health-based level for a specific constituent, the OLM and VHS models could not be used to calculate the constituent's maximum allowable concentration.] Specifically, the Agency is considering whether to add any constituents from Table 10 to Condition (3)(B). Because these constituents do not have health-based levels, the delisting level would be established at the constituent's Practical Quantitation Limit (PQL) when using the appropriate SW-846 test method for each chemical.[4] In these cases, the Agency used the constituent's Practical Quantitation Limit (PQL) as the maximum allowable concentration for that specific constituents in the waste. The Agency believes that, in the absence of a health-based level, the use of the constituent's PQL as the maximum allowable concentration is a reasonable approach to protect human health and the environment.

The Agency currently believes that analyzing every four-week composit sample of filter cake waste for the extensive list of chemicals already listed in the proposed Condition (3)(B) is adquate to protect human health and the environment. Condition (3)(B) already contains common representative constituents from all classes of organic chemicals including chlorinated solvents, aliphatic hydrocarbons, non-halogenated solvents, polychlorinated biphenyls (PCBs), polyaromatic hydrocarbons (PAHs), pesticide derivatives, numerous benzene derivatives, phthalate plasticizers, and a wide variety of other toxic substances that might be formed as by-products in the production, use, or degradation of commercial chemicals (*e.g.*, nitrosoamines). Condition (3)(B) also contains all compounds which are currently regulated or proposed for Agency believes that the fact that health-based numbers are available for these constituents is a good indicator that the substances are the more toxic and prevalent substances of concern to the Agency. Therefore, the Agency requests comments whether any of the chemicals on Table 10 should be added to the list of chemicals in Condition (3)(B).

TABLE 10.—CONSTITUENTS WITHOUT HEALTH-BASED LEVELS

Constituents	POL (mg/kg)
Acenaphthene	6.60E−01
Acenaphthylene	6.60E−01
2-Acetylaminofluorene	1.30E+00
Allyl chloride; 3-chloropropene	1.00E−02
4-Aminobiphenyl	1.30E+00
Aramite	1.30E+00
Benzo[ghi]perylene	6.60E−01
Benzyl alcohol	1.30E+00
alpha-BHC	2.00E+00
beta-BHC	4.00E+00
delta-BHC	6.00E+00
Bis(2-chloroethoxy) methane	6.60E−01
Bis(2-chloro-1-methyethyl) ether	6.60E−01
4-Bromophenyl phenyl ether	6.60E−01
Chloroethane; Ethyl chloride chloride	1.00E−02
2-Chloronaphthalene	6.60E−01
4-Chlorophenyl phenyl ether	6.60E−01
Chloroprene	1,00E−02
Diallate	6.60E−01
trans-1,4-Dichloro-2-butene	1.00E−01
2,6-Dichlorophenol	6.60E−01
0,0-Diethyl 0-2-pyrazinyl phosphorothioate	6.60E−01
p-(Dimethylamino)azobenzene	6.60E−01
3,3'-Dimethylbenzidine;	6.60E+00
alpha, alpha-Dimethylphenethylamine	6.60E−01
Endosulfan sulfate	6.60E−01
Endrin aldehyde	6.60E−01
Ethyl methacrylate	1.00E−02
Ethyl methanesulfonate	1.30E+00
Famphur	1.30E+00
Hexachloropropene; 1,1,2,3,3,3-hexachloro-1-Propene	6.60E−01
2-Hexanone	5.00E−02
Isodrin	1.30E+00
Isosafrole	6.60E−01
Kepone	1.30E+00
Methapyrilene	6.60E+00
3-Methylcholanthrene	6.60E−01
Methylene bromide; Dibromomethane	1.00E−02
Methyl iodide; Iodomethane	1.00E−02

TABLE 10.—CONSTITUENTS WITHOUT HEALTH-BASED LEVELS—Continued

Constituents	POL (mg/kg)
Methyl methanesulfonate	6.60E−01
Methylnaphthalene; 2-methyl-Naphthalene	6.60E−01
1,4-Naphthoquinone	6.60E−01
1-Naphthylamine; 1-Naphthalenamine	6.60E−01
2-Naphthylamine; 2-Naphthalenamine	6.60E−01
o-Nitroaniline; 2-nitro-Benzenamine	3.30E+00
m-Nitroaniline; 3-nitro-Benzenamine	3.30E+00
p-Nitroaniline; 4-nitro-Benzenamine	1.30E+00
o-Nitrophenol; 2-nitro-Phenol	6.60E−01
p-Nitrophenol; 4-nitro-Phenol	3.30E+00
4-Nitroquinoline 1-oxide	2.60E+00
N-Nitrosomethylethylamine	6.60E−01
N-Nitrosomorpholine; 4-nitroso-Morpholine	6.60E−01
N-Nitrosoperidine; 1-nitroso-Piperidine	1.30E+00
5-Nitro-o-toluidine; 2-methyl-5-nitro-Benzenamine	6.60E−01
Parathion	6.60E−01
Pentachloroethane	6.60E−01
Phenacetin; N-(4-ethoxyphenyl)Acetamide	1.30E+00
p-Phenylenediamine; 1,4-Benzenediamine	6.60E−01
Phorate; Phosphorodithioic acid	6.60E−01
2-Picoline; 2-methyl-Pyridine	6.60E−01
Propionitrile; Ethyl cyanide; Propanenitrile	1.00E−01
Safrole	6.60E−01
1,1,1,2-Tetrachloroethane	1.00E−02
o-Toluidine; 2-methyl-Benzenamine	6.60E−01
O,O,O-Triethyl phosphorothioate	6.60E−01
Vinyl acetate	5.00E−02

If made final, the exclusion will only apply to the processes and waste volume covered by the original demonstration. The facility would require a new exclusion if its treatment processes are significantly altered such that a change in waste composition or increase in waste volume might occur. Accordingly, the facility would need to file a new petition for the altered waste. The facility must treat waste generated from changed processes as hazardous until a new exclusion is granted.

Although management of the waste covered by this petition would be relieved from subtitle C jurisdiction upon final promulgation of an exclusion, the generator of a delisted waste must either treat, store, or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site storage, treatment, or disposal facility, either of which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste. Alternatively, the delisted waste may be delivered to a facility that beneficially uses or reuses, or legitimately recycles or reclaims the waste, or treats the waste prior to such beneficial use, reuse, recycling, or reclamation.

[4] Practical Quantitation Limits are the lowest concentrations of analytes in solid-sludge matrices that can be reliably determined within specified limits of precision and accuracy by the SW-846 analytical methods ur der routine laboratory operating conditions.

III. Effective Date

This rule, if finally promulgated, will become effective immediately upon such final promulgation. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule, if finalized, would reduce the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after promulgation and the fact that a six-month deadline is not necessary to achieve the purpose of section 3010, EPA believes that this exclusion should be effective immediately upon final promulgation. These reasons also provide a basis for making this rule effective immediately, upon promulgation, under the Administrative Procedures Act, pursuant to 5 U.S.C. 553(d).

IV. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This proposal to grant an exclusion is not major, since its effect, if promulgated, would be to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction would be achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling this facility to treat its waste as non-hazardous. There is no additional impact, therefore, due to today's rule. This proposal is not a major regulation; therefore, no Regulatory Impact Analysis is required.

V. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator or delegated representative may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment, if promulgated, will not have an adverse economic impact on small entities since its effect would be to reduce the overall costs of EPA's hazardous waste regulations and would be limited to one facility. Accordingly, I hereby certify that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VI. Paperwork Reduction Act

Information collection and recordkeeping requirements associated with this proposed rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511, 44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2050–0053.

List of Subjects in 40 CFR Part 261

Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Dated: September 5, 1990.

Jeffery D. Denit,

Deputy Director, Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. §§ 6905, 6912(a), 6921, 6922, and 6938.

2. In Tables 1, 2, and 3, of appendix IX of part 261 add the following wastestreams in alphabetical order by facility to read as follows: Appendix IX—Wastes Excluded Under §§ 260.20 and 260.22.

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
*	*	*
Geological Reclamation Operations and Systems, Inc...	Morrisville, Pennsylvania:	Wastewater treatment sludge filter cake generated from the treatment of leachate derived from EPA Hazardous Waste Nos: F005, F006, F007, F009, and F019 (generated at a maximum annual rate of 1,000 cubic yards). This exclusion was published on [insert date of publication]. This exclusion does not address the wastes disposed of in the "old" GROWS Landfill or the grit generated during the removal of heavy solids from the landfill leachate. To ensure that hazardous constituents are not present in the filter cake at levels of regulatory concern, GROWS must implement a testing program for the petitioned waste. This testing program must meet the conditions listed below in order for the exclusion to be valid: (1) *Testing:* Sample collection and analyses, including quality control (QC) procedures, must be performed according to SW-846 methodologies. (A) *Sample Collection:* Each batch of waste generated over a four-week period must be collected in containers with a maximum capacity of 20-cubic yards. At the end of the four-week period, each container must be divided into four quadrants and a single, full-depth core sample shall be collected from each quadrant. All of the full-depth core samples then must be composited under laboratory conditions to produce one representative composite sample for the four-week period. (B) *Sample Analysis:* Each four-week composite sample must be analyzed for all of the constituents listed in Condition (3). The analytical data, including quality control information, must be compiled and maintained on site for a minimum of three years. These data must be furnished upon request by any employee or representative of EPA or state of Pennsylvania. (2) *Waste Holding:* The dewatered filter cake waste must be stored as hazardous until the verification analyses are completed.

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description

If the four-week composite sample does not exceed any of the delisting levels set in Condition (3), the filter cake waste corresponding to this sample may be managed and disposed of in accordance with all applicable solid waste regulations. If the four-week composite sample exceeds any of the delisting levels set in Condition (3), the filter cake waste generated during the time period corresponding to the four-week composite sample must be retreated until it meets these levels (analyses must be repeated) or managed and disposed of in accordance with Subtitle C of RCRA.

Filter cake waste which is generated but for which analyses are not complete or valid must be managed and disposed of in accordance with Subtitle C of RCRA, until valid analyses demonstrate that the waste meets the delisting levels.

(3) *Delisting Levels:* If the concentrations in the four-week composite sample of the filter cake waste for any of the hazardous constituents listed below exceed their respective maximum allowable concentrations (ppm) also listed below, the four-week batch of failing filter cake waste must either be retreated until it meets these levels or managed and disposed of in accordance with Subtitle C of RCRA.

(A) Inorganics (Leachable):

Arsenic	0.79
Barium	15.9
Cadmium	0.16
Chromium	0.79
Cyanide	11.1
Lead	0.79
Mercury	0.032
Selenium	0.16
Silver	0.79
Nickel	11.1

Leachable metal concentrations must be measured in the filter cake leachate as per 40 CFR § 261.24. Cyanide extractions must be conducted using distilled water in place of the leaching media per 40 CFR § 261.24.

(B) Organics:

Acetone	2.02E+03
Acetophenone	3.53E+04
Acetonitrile; Methyl cyanide	2.43E+01
Acrolein	1.38E+02
Acrylonitrile	6.26E−04
Aldrin	5.27E−03
Aniline	8.72E−01
Anthracene	3.01E+02
Benzene	3.47E+00
Benzo[a]anthracene	5.78E−01
Benzo[b]fluoranthene	6.41E−01
Benzo[k]fluoranthene	3.04E+03
Benzo[a]pyrene	1.51E−01
gamma-BHC; Lindane	5.90E−01
Bis(2-chloroethyl)ether	6.94E−04
Bis(2-ethylhexyl) phthalate	1.64E+02
Bromodichloromethane	2.94E+03
Bromoform; Tribromomethane	3.76E+03
Butyl benzyl phthalate	2.49E+05
Carbon disulfide	4.98E+04
Carbon tetrachloride	5.49E+00
Chlordane	7.51E+01
p-Chloroaniline	1.85E+02
Chlorobenzene	5.95+02
Chlorobenzilate	1.68E+03
p-Chloro-m-cresol	5.18E+02
Chloroform	1.94E+00
2-Chlorophenol	1.72E+02
Chrysene	5.92E+01
Cresol	4.91E+03
2,4-D; 2,4-Dichlorophenoxy-acetic acid	4.17E+02
4,4'-DDD; DDD	2.33E+00
4,4'-DDE; DDE	3.86E+00
4,4'-DDT; DDT	1.21E+01
Dibenz[a,h]anthracene	2.86E−02
Dibromochloromethane; Chlorodibromomethane.	3.05E+03
1,2-Dibromo-3-chloropropane	4.09E−02
1,2-Dibromoethane; Ethylene dibromide	2.37E−03
Di-n-butyl phthalate	9.84E+05
0-Dichlorobenzene; 1,2-Dichlorobenzene	1.95E+04
m-Dichlorobenzene; 1,3-Dichlorobenzene	1.87E+05
p-Dichlorobenzene; 1,4-Dichlorobenzene	1.03E+03
3,3'-Dichlorobenzidine	2.21E−01
Dichlorodifluoromethana	4.15E+05
1,1-Dichloroethane	4.45E−02
1,2-Dichloroethane; Ethylene dichloride	1.45E+00
1,1-Dichloroethylene	4.96E+00
trans-1,2-Dichloroethylene	1.42E+02
2,4-Dichlorophenol	1.69E+02

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description	
		1,2-Dichloropropane	2.73E+00
		1,3-Dichloropropene (total cis and trans isomers).	2.32E-02
		Dieldrin	5.04E-03
		Diethyl phthalate	1.00E+06
		Dimethoate	1.32E+00
		7,12-Dimethylbenz[a]-anthracene	1.46E-02
		2,4-Dimethylphenol	4.87E+01
		Dimethyl phthalate	1.00E+06
		m-Dinitrobenzene	5.14E+00
		4,6-Dinitro-o-cresol	2.00E+02
		2,4-Dinitrophenol	8.96E+01
		Dinitrotoluene (total of-2,4- and 2,6- isomers	4.54E-03
		Dinoseb; DNBP	5.26E+02
		Di-n-octyl phthalate	1.34E+05
		1,4-Dioxane	7.89E-02
		Diphenylamine	4.81E+04
		Disulfoton	3.34E+00
		Endosulfan I and Endosulfan II (total)	7.74E+01
		Endrin	3.92E+00
		Ethylbenzene	1.94E+04
		Fluoranthene	1.16E+05
		Fluorene	4.09E+01
		Heptachlor	1.31E+01
		Heptachlor epoxide	3.26E+00
		Hexachlorobenzene	1.02E+00
		Hexachlorobutadiene	2.01E+01
		Hexachlorocyclopentadiene	3.23E+04
		Hexachloroethane	1.15E+01
		Hexachlorophene	1.22E+04
		Indeno(1,2,3-cd)pyrene	1.16E+02
		Isobutyl alcohol; Isobutanol	3.22E+04
		Isophorone	2.86E+00
		Methacrylonitrile; 2-methyl-2-Propenenitrile	5.77E-01
		Methoxychlor	1.03E+05
		Methylbromide; Bromomethane	1.41E+02
		Methyl chloride; Chloromethane	3.22E+04
		Methylene chloride; Dichloromethane	9.07E-01
		Methyl ethyl ketone; 2-Butanone	1.50E+03
		Methyl methacrylate	5.08E+05
		Methyl parathion; Phosphorothioic acid	5.27E+01
		4-Methyl-2-pentanone; Methyl isobutyl ketone	6.40E+03
		Naphthalene	1.00E+06
		Nitrobenzene	2.56E+01
		N-Nitrosodi-n-butylamine	8.15E-05
		N-Nitrosodiethylamine	2.00E-07
		N-Nitrosodimethylamine	2.19E-05
		N-Nitrosodiphenylamine	4.55E+01
		N-Nitrosodipropylamine; Di-n-propylnitrosamine; N-Nitrosodi-n-propylamine.	5.02E-05
		Nitrosopyrrolidine; N-Nitrosopyrrolidine; 1-nitroso-Pyrrolidine.	3.06E 05
		Polychlorinated biphenyls;	4.77E+01
		Pentachlorobenzene	8.91E+03
		Pentachloronitrobenzene	2.82E+00
		Pentachlorophenol	1.14E+04
		Phenanthrene	5.46E+01
		Phenol	8.00E+04
		Pronamide	2.13E+05
		Pyrene	1.00E+06
		Pyridine	1.31E+01
		Silvex; 2,4,5-TP; 2-(2,4,5-trichlorophenoxy)-Propanoic acid.	3.87E+01
		Styrene	9.14E+00
		2,4,5-T; 2,4,5-Trichlorophenoxyacetic acid	6.63E+03
		1,2,4,5-Tetrachlorobenzene	2.19E+02
		1,1,2,2-Tetrachloroethane	2.28E-02
		Tetrachloroethene; Tetrachloroethylene	1.34E+01
		2,3,4,6-Tetrachlorophenol	1.17E+04
		Tetraethyl dithio-pyrophosphate	2.51E+02
		Toluene	4.58E+04
		Toxaphene	3.09E+02
		1,2,4-Trichlorobenzene	4.75E+04
		1,1,1-Trichloroethane	8.70E+02
		1,1,2-Trichloroethane	9.03E-02
		Trichloroethylene; Trichloroethene	4.47E+00
		Trichlorofluoromethane	3.31E+05
		2,4,5-Trichlorophenol	8.20E+04
		2,4,6-Trichlorophenol	1.38E+00
		1,2,3-Trichloropropane	5.46E+02

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description	
		sym-Trinitrobenzene	2.17E+00
		Vinyl chloride	7.11E−01
		Xylene (total)	8.49E+05
* * *	* * *	* * *	

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
* * *	* * *	* * *
Geological Reclamation Operations and Systems, Inc..	Morrisville, Pennsylvania	Wastewater treatment sludge filter cake generated from the treatment of leachate derived from EPA Hazardous Waste Nos: K049, K050, K051, K052, K061, K062, K084, K101, and K102 (generated at a maximum annual rate of 1,000 cubic yards). This exclusion was published on [insert date of publication]. This exclusion does not address the wastes disposed of in the "old" GROWS Landfill or the grit generated during the removal of heavy solids from the landfill leachate. To ensure that hazardous constituents are not present in the filter cake at levels of regulatory concern, GROWS must implement a testing program for the petitioned waste. This exclusion is conditional upon all of the conditions specified for this facility in Table 1 of Appendix IX to Part 261, "Wastes Excluded from Non-Specific Sources."
* * *	* * *	* * *

TABLE 3.—WASTES EXCLUDED FROM COMMERCIAL CHEMICAL PRODUCTS, OFF-SPECIFICATION SPECIES, CONTAINER RESIDUES, AND SOIL RESIDUES THEREOF

Facility	Address	Waste description
Geological Reclamation Operations and Systems, Inc.	Morrisville, Pennsylvania	Wastewater treatment sludge filter cake generated from the treatment of leachate derived from EPA Hazardous Waste Nos: U007, U012, U019, U031, U037, U042, U051, U052, U055, U057, U080, U107, U113, U122, U140, U147, U151, U154, U159, U161, U165, U188, U210, U220, U223, U226, U227, U228, and U239 (generated at a maximum annual rate of 1,000 cubic yards). This exclusion was published on [insert date of publication]. This exclusion does not address the wastes disposed of in the "old" GROWS Landfill or the grit generated during the removal of heavy solids from the landfill leachate. To ensure that hazardous constituents are not present in the filter cake at levels of regulatory concern, GROWS must implement a testing program for the petitioned waste. This exclusion is conditional upon all of the conditions specified for this facility in Table 1 of Appendix IX to Part 261, "Wastes Excluded from Non-Specific Sources."
* * *	* * *	* * *

[FR Doc. 90-21897 Filed 9-14-90; 8:45 am]
BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB42

Endangered and Threatened Wildlife and Plants; Proposed Threatened Status for the Plant Schoepfia arenaria

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine *Schoepfia arenaria*, a small evergreen tree, to be a threatened species pursuant to the Endangered Species Act (Act) of 1973, as amended. Historically, *Schoepfia arenaria* was known from the coastal forests of northern Puerto Rico. Deforestation for industrial and urban development has extirpated the species from most of these areas. This endemic plant is currently threatened by proposed development projects in Isabela and by illegal home construction in Piñones. This proposal, if made final, would implement the Federal protection and recovery provisions afforded by the Act for *Schoepfia arenaria*. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by November 16, 1990. Public hearing requests must be received by November 1, 1990.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boquerón, Puerto Rico 00622. Comments and materials received will be available for public inspection, by appointment, at this office during business hours, and at the Service's Southeast Regional Office, Suite 1282, 75 Spring Street, SW., Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Ms. Marelisa T. Rivera at the Caribbean Field Office address (809/851-7297) or Mr. Tom Turnispeed at the Atlanta Regional Office address (404/331-3583 or FTS 841-3583).

SUPPLEMENTARY INFORMATION:

Background

Schoepfia arenaria was first collected in Puerto Rico by Amos Arthur Heller in 1899 from sandy coastal thickets at San Jośe Lagoon, Santurce (Little et al. 1974), but it was described by Britton (Urban 1907). San Jośe Lagoon was the source of specimens collected by Holdridge in 1939 and by L.E. Gregory in 1939.

However, urban and industrial expansion has resulted in the elimination of this population. Today it is known from Isabela, Piñones, Fajardo and the Rio Abajo Commonwealth forest.

Schoepfia arenaria is an evergreen shrub or small tree up to 20 feet (7 m) tall with several trunks from the base up to 4 inches (10 cm) in diameter. The leaves are simple, alternate, without stipules, with petioles ⅛ inch (4 mm) long; the upper surface is green and slightly shiny, and the lower surface is light green. *Schoepfia arenaria* has been observed with flowers mainly in spring and fall, and with fruits in summer and winter. Usually two or three light yellow tubular-shaped flowers are borne on the end of the stalk in the leaf bases. The fruit is elliptic, one-seeded, shiny red, and ½ inch (12 mm) in diameter. The wood is light brown and hard.

Schoepfia arenaria is found in low elevation evergreen and semi-evergreen forests (subtropical moist forest life zone) of the limestone hills of northern Puerto Rico. In the Isabela area approximately 100 individuals are known from the wooded upper slopes of the hills to the west of the mouth of the Guajataca Gorge. Individuals of all size classes have been reported. Hills in this area were destroyed for the construction of Highway 2 and the area is under intense development pressure for both rural and urban development. The construction of a resort development, including 7 hotels, 5 golf courses, 36 tennis courts and 1,300 housing units, threatens the area.

In Piñones Commonwealth Forest about 30 mature plants and numerous saplings and seedlings of *Schoepfia arenaria* are known from Punta Maldonado. The land invasion for house construction, the encroachment of the illegal dumping of trash and the introduction of domestic animals threatens the area. In Piñones Commonwealth Forest, this species was also known from Punta Vacia Talega, last seen by Woodbury in 1981 (Department of Natural Resources 1990).

This species is also found in limestone hills at El Convento, Fajardo (property owned by the Commonwealth of Puerto Rico for the governor's beach house). In this area there are approximately 50 individuals. In the Rio Abajo Commonwealth Forest one individual was found in 1985 at "cuesta de los perros" (C. Laboy, pers. comm.).

Schoepfia arenaria was recommended for Federal listing by the Smithsonian Institution (Ayensu and DeFilipps 1978). The species was included among the plants being considered as endangered or threatened species by the Service, as published in the **Federal Register** (45 FR 82480) dated December 15, 1980; the November 28, 1983, update (48 FR 53680) of the 1980 notice; and revised notices of September 27, 1985 (50 FR 39526) and February 21, 1990 (55 FR 6184). The species was designated Category 1 (species for which the Service has substantial information supporting the appropriateness of proposing to list them as endangered or threatened) in each of the four notices.

In a notice published in the **Federal Register** on February 15, 1983 (48 FR 6752), the Service reported the earlier acceptance of the new taxa in the Smithsonian's 1978 book as under petition within the context of section 4(b)(3)(A) of the Act, as amended in 1982. The Service subsequently made petition findings in each October from 1983 through 1989 that listing *Schoepfia arenaria* was warranted but precluded by other pending listing actions of a higher priority, and that additional data on vulnerability and threats were still being gathered. This proposed rule constitutes the final 1-year finding in accordance with section 4(b)(3)(B)(ii) of the Act.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1532 *et seq.*) 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. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Schoepfia arenaria* Urban & Britton are as follows:

A. The present or threatened destruction, modification, or curtailment of its habitat or range. Destruction and modification of habitat have been, and continue to be, significant factors reducing the numbers of *Schoepfia arenaria.* Deforestation for construction, including urban, industrial and tourist development, the leveling of limestone hills for construction material, random cutting and yam harvesting have all contributed to the species' decline.

B. Overutilization for commercial, recreational, scientific, or educational purposes. Taking for these purposes has not been a documented factor in the decline of this species. However, its ornamental potential could result in future taking.

C. Disease or predation. Disease and predation have not been documented as factors in the decline of this species.

D. The inadequacy of existing regulatory mechanisms. The Commonwealth of Puerto Rico has adopted a regulation that recognizes and provides protection for certain Commonwealth listed species. However, *Schoepfia arenaria* is not yet on the Commonwealth list. Federal listing would provide immediate protection and, if the species is ultimately placed on the Commonwealth list, enhance its protection and possibilities for funding needed research.

E. Other natural or manmade factors affecting its continued existence. One of the most important factors affecting the continued survival of *Schoepfia arenaria* is its limited distribution.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Schoepfia arenaria* as threatened. The species is restricted to only a few sites in coastal thickets and limestone hills of northern Puerto Rico, all of which are subject to habitat destruction and modification by development projects. However, because plants of all sizes and ages have been observed, it appears that natural reproduction is offsetting some losses and that the species is not in imminent danger of becoming extinct. Threatened status, therefore, seems an accurate assessment of the species' condition. The reasons for not proposing critical habitat for *Schoepfia arenaria* are discussed below in the "Critical Habitat" section.

Critical Habitat

Section 4(a)(3) of the Act, as amended requires that to the maximum extend prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. The number of individuals of *Schoepfia arenaria* is sufficiently small that vandalism could seriously affect the survival of the species. The Service believes that Federal involvement in the areas where this plant occurs can be identified without the designation of critical habitat. All involved parties and landowners have been notified of the location and importance of protecting this species' habitat. Protection of this species' habitat will also be addressed through the recovery process and through the section 7 jeopardy standard.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, Commonwealth, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the Commonwealth, and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may adversely affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. No critical habitat is being proposed for *Schoepfia arenaria*, as discussed above. Federal involvement is not anticipated where the species is known to occur.

The Act and its implementing regulations found at 50 CFR 17.71 and 17.72 set forth a series of general trade prohibitions and exceptions that apply to all threatened plants. All trade prohibitions of Section 9(a)(2) of the Act, implemented by 50 CFR 17.71, would apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course a commercial activity, sell or offer for sale this species in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jurisdiction. Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. In addition, for endangered plants, the 1988 amendments (Pub. L. 100-478) to the Act prohibit the malicious damage or destruction on Federal lands and the removal, cutting, digging up, or damaging or destroying of endangered plants in knowing violation of any Commonwealth law or regulation, including Commonwealth criminal trespass law. The 1988 amendments do not reflect this protection for threatened plants. Certain exceptions can apply to agents of the Service and Commonwealth conservation agencies.

The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened species under certain circumstances. However, it is anticipated that few trade permits for *Schoepfia arenaria* will ever be sought or issued, since the species is not known to be in cultivation and is uncommon in the world. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, P.O. Box 3507, Arlington, Virginia 22203-3507 (703/358-2104).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurae and as effective as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Schoepfia arenaria;*

(2) The location of any additional populations of *Schoepfia arenaria*, and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities in the subject areas and their possible impacts on *Schoepfia arenaria*.

Final promulgation of the regulations on *Schoepfia arenaria* will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the publication date of the proposal. Such requests must be made in writing and addressed to the Field Supervisor, Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boquerón, Puerto Rico 00622.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Ayensu, E.S., and R.A. Defilipps. 1978. Endangered and threatened plants of the United States. Smithsonian Institution and World Wildlife Fund, Washington, DC xv + 403 pp.

Department of Natural Resources. 1990. Natural Heritage Program, San Juan, P.R.

Little, E.L., R.O. Woodbury, and F.H. Wadsworth. 1974. Trees of Puerto Rico and the Virgin Islands. U.S. Department of Agriculture, Washington, DC 1024 pp.

Urban, I. 1907. Symb. Ant. 5:181.

Author

The primary author of this proposed rule is Ms. Marelisa Rivera, Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boquerón, Puerto Rico 00622 (809/851-7297).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1543; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500, unless otherwise noted.

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order, under Olacaceae to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
*	*	*	*	*	*	
Olacaceae—Olax family:						
Schoepfia arenaria	None	U.S.A. (PR)	T		NA	NA
*	*	*	*	*	*	

Dated: August 10, 1990.

Bruce Blanchard,

Acting Director, Fish and Wildlife Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 663

[Docket No. 900941-0241]

RIN 0648-AC43

Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NOAA issues this proposed rule to implement conservation and management measures as prescribed in Amendment 4 to the Pacific Coast Groundfish Fishery Management Plan (FMP). This rule would: (1) Update and reorganize the FMP and revise the FMP's goals and objectives; (2) revise the operational definition of optimum yield and establish framwork procedures to specify allowable harvest levels for any species; (3) revise and provide new framwork administrative procedures for establishing and ajusting management measures based on resource conservation, social, and economic factors; (4) delete certain outdated management measures and revise other measures to meet current needs of the fishery; (5) revise the process for issuing experimental fishing permits; (6) provide a process for acknowledging scientific research; and (7) establish a process by which state regulations can be reviewed for consistency with the FMP, the Magnuson Act, and other applicable Federal law.

DATES: Comments on the proposed rule must be received on or before November 1, 1990.

ADDRESSES: Comments on the proposed rule, Amendment 4, or supporting documents should be sent to Mr. Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, Washington 98115-0070; or Mr. E. Charles Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 S. Ferry Street, Terminal Island, California 90731-7415.

Copies of Amendment 4, the supplemental environmental impact statement, and the regulatory impact review are available from Mr. Larry Six, Executive Director, Pacific Fishery Management Council, Metro Center, Suite 420, 2000 SW First Avenue, Portland, Oregon 97201-5344.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206-526-6140, or Rodney R. McInnis at 213-514-6199.

SUPPLEMENTARY INFORMATION:

Background

Amendment 4 to the FMP was prepared by the Pacific Fishery Management Council (Council) under the provisions of the Magnuson Fishery Conservation and Management Act (Magnuson Act) as amended, 16 U.S.C. 1801 *et seq.* A notice of availablility for the proposed Amendment was filed with the Office of the **Federal Register** on August 15, 1990 (published 55 FR 34034; August 21, 1990). Copies of Amendment 4 are available from the Council upon request at the address above.

The domestic and foreign groundfish fisheries in the Exclusive Economic Zone (EEZ) of the United States (3 to 200 miles offshore) in the Pacific Ocean off the coasts of California, Washington, and Oregon are managed under the FMP. The FMP was developed by the Council under the Magnuson Act, approved by the Assistant Administrator for Fisheries, NOAA, on January 4, 1982, and became effective on September 30, 1982. Implementing regulations were published in the **Federal Register** on October 5, 1982 (47 FR 43964), and appear at 50 CFR Parts 611 and 663. The FMP has been amended three times.

The Pacific coast groundfish fishery is the largest fishery managed by the Council in terms of landings and value. The fishery has become more competitive, with greater numbers of vessels competing for stable or declining amounts of fish. As a result, management of the fishery has become more complex and controversial. The orginal FMP contained numerous management measures and administrative procedures that have become outdated as fishing effort has increased. Pressure has grown for management of the fishery to be more flexible and responsive to rapid changes in stock conditions, markets, fleet movements, and a variety of biological, social, and economic issues. Of special concern, is the ability of management to respond quickly to the potentially large number of vessels that may shift from the Alaskan groundfish fishery to the Pacific coast groundfish fishery in response to progressively restrictive management or to the implementation of a limited entry regime in Alaskan waters.

Although the original FMP provided limited flexibility to modify management measures to prevent biological stress on a stock, it contained no flexible provisions for making management adjustments for social or economic reasons other then by amending the FMP. This amendment, among other things, provides framwork administrative procedures for implementing, modifying, or deleting management measures for all these reasons. It reorganizes and updates the FMP and responds to a variety of problems that the Council has identified during the past several years.

Description of Amendment 4

The major changes to the FMP and its implementing regulations are described below. Numerous minor changes in regulations, including some definitions, are not described in the preamble but appear in the proposed rule.

1. Goals and Objectives

Amendment 4 revises the FMP's goals and objectives to clarify the Council's intent for management of the Pacific coast groundfish fishery. The goals of the FMP remain essentially unchanged, but are now listed in order of priority with conservation of groundfish stocks and their habitat first, followed by maximizing the value of the groundfish resource as a whole, achieving the maximum biological yield, promoting year-round availability of quality seafood to the consumer, and promoting recreational fishing opportunities. The operational objectives specified, not in priority order, are identified in the FMP for the first time. These objectives are intended to facilitate greater understanding of the Council's actions by the fishing industry and public as well as providing guidance to the Council for the development of specific management policies.

2. Optimum Yield

Amendment 4 changes the definition and application of optimum yield (OY) from species-specific numerical OYs for six species of groundfish and a single non-numerical OY for the remaining 70 or more species, to a single, non-numerical OY for all groundfish stocks covered by the FMP. The annual non-numerical OY is the amount of Pacific groundfish that will be harvested each year under the management measures in effect. The amendment removes a restriction that limited increases in Acceptable Biological Catch (ABC) and OY to no more than 30 per cent annually, thus allowing both ABC and OY to reflect more accurately actual changes in stock abundance. Although the amendment removes OY as a numerical harvest limitation, it provides a framework process for developing and implementing numerical harvest guidelines or quotas if necessary to restrict harvest. Thus, numerical harvest guidelines can be implemented, adjusted, or removed from any species or species group without having to amend the FMP. This represents a significant increase in flexibility and improves the ability of the Council to react to changes in resource conservation needs.

3. Annual Specifications.

Amendment 4 streamlines the process for developing and implementing annual specifications of ABC, harvest guidelines, quotas, and the annual apportionment and inseason adjustment of numerical harvest limits among domestic harvesting (DAH) (which consists of domestic harvesting and processing (DAP) and joint venture harvesting and processing (JVP)), foreign fishing (TALFF), and a reserve. The amendment provides greater flexibility to make timely inseason adjustments to DAP, DAH, JVP, TALFF, and the reserve by removing the current requirement that restricts the inseason reassessment of domestic processing intent and reapportionment to July 1 and August 1, respectively. Instead, the Regional Director is authorized to begin the reassessment and reapportionment process at whatever time is appropriate based on the progress of the fishery. It also replaces the requirement that two notices be published in the **Federal Register** to implement a reapportionment with a provision for a single **Federal Register** notice. The reserve is redefined so that it also will apply when there is a JVP but no TALFF, and clarified so that when DAP is greater than 80 percent of the harvest guideline or quota, the reserve will be the remaining percentage. Finally, the process for implementing annual specifications is shortened by replacing the preliminary notice of annual specifications in the **Federal Register** with the Council's more direct process for informing the public and soliciting public comment. Thus, annual specifications will be implemented at the beginning of each fishing year by publication of a single notice in the **Federal Register.**

4. Management Measures

Amendment 4 introduced two new frameworks and a new set of administrative procedures for implementing management measures that are intended to bring additional flexibility and to provide for timely implementation.

The first new framework is the procedure for classifying and adjusting what the FMP defines as "routine" management measures. "Routine" management measures are those that the Council determines are likely to be adjusted on an annual or more frequent basis. Measures are classified as "routine" by the Council through either the full or abbreviated rulemaking process described below. For a measure to be classified as "routine," the Council must determine that the measure is of the type normally used to address the issue at hand and may require further adjustment to achieve its purpose with accuracy.

As in the case of all proposed management measures, prior to classifying measures as "routine," the Council will analyze the need for the measures, their impacts and the rationale for their use. Once a management measure has been classified as "routine" through the appropriate rulemaking procedure, it may be modified thereafter through the single meeting "notice" procedure (see paragraph B. below) only if: (1) The modification is proposed for the same purpose as the original measure; and (2) the impacts of the modification are within the scope of the impacts analyzed when the measure was originally classified as "routine." The analysis of impacts need not be repeated when the measure is subsequently modified, if the Council determines that impacts do not differ substantially from those contained in the original analysis.

Experience gained from management of the Pacific coast groundfish fishery indicates that certain measures usually require modification on a frequent basis to ensure that they meet their stated purpose with accuracy. These measures are commercial trip landing limits and trip frequency limits, including landing frequency and notification requirements, and recreational bag limits as they have been applied to specific species, species groups, sizes of fish, and gear types. The purpose of trip landing and frequency limits has consistently been either to stretch the duration of the commercial fishery so as not to disturb traditional fishing and marketing patterns, to reduce discards and wastage, or to discourage targeted fishing while allowing small incidental catches when attainment of a harvest guideline or quota is imminent. For the recreational fishery, bag and size limits have been imposed to spread the available catch over a large number of anglers, to avoid waste, and to provide consistency with state regulations.

Accordingly, Amendment 4 initially classifies the measures listed below by species and gear type as "routine" measures due to the long history of their usage in the fishery and the extensive knowledge of their impacts. All of these measures are in effect for the 1990 season, and their usage is expected to continue in the future. Amendment 4 eliminates specific recreational bag and size limits for ling cod and rockfish from the FMP, designates them as "routine," and contemplates their future

implementation and adjustment through the appropriate process established by this amendment.

Trip landing and frequency limits

widow rockfish—all gear
Sebastes complex—all gear
yellowtail rockfish—all gear
Pacific ocean perch—all gear
sablefish (including size limits)
trawl gear
nontrawl gear

Recreational bag and size limits

lingcod
rockfish

Any measure designated as "routine" for one specific species, species group, or gear type may not be treated as "routine" for a different species, species group or gear type without first having been classified as "routine" through the appropriate rulemaking process.

The council will conduct a continuing review of landings of those species for which harvest guidelines, quotas or specific "routine" management measures have been implemented, and will make projections of the landings at various times throughout the year. If in the course of this review it becomes apparent that the rate of landings is substantially different than anticipated and that the current "routine" management measures will not achieve the annual management objectives, the Council may recommend inseason adjustments to those measures. Such adjustments may be implemented through the single meeting "notice" procedure.

The second new framework, the socio-economic framework, responds to a major deficiency in the current FMP due to the absence of a mechanism, other than amending the FMP, for implementing management measures that respond to social and economic fishery management issues. Amendment 4 provides for timely implementation of management measures that address social and economic issues by means of the administrative process described above, and providing the required criteria and analytical requirements listed in the FMP have been met.

Amendment 4 also revises the existing "points of concern" framework for implementing management measures that respond to resource conservation concerns by eliminating the current FMP requirement that calls for a determination that a stock or group of stocks either suffers from or would potentially suffer from "biological stress" in the absence of fishing restrictions. Instead, the "points of concern" review process is now invoked immediately when one or more of the criteria that define a "point of concern" is met. Thus, the Council's scientific advisors no longer have to struggle to define "biological stress" precisely.

The amendment establishes four different sets of administrative procedures for developing and implementing management measures based on whether the measures are intended for permanent effect or frequent adjustment, and on the degree to which the Council has provided opportunities for prior public review and comment and has analyzed the scope of impacts resulting from the proposed measure. The four procedures are as follows:

A. *Automatic Actions*—Automatic actions may be initiated by the Regional Director, National Marine Fisheries Service (NMFS), without prior public notice, opportunity to comment, or a Council meeting. They are nondiscretionary and the impacts previously must have been taken into account. Examples include fishery, season, or gear type closures when a quota has been projected to have been attained. The Secretary will publish a single "notice" in the **Federal Register** making the action effective.

B. *"Notice" Actions Requiring at Least One Council Meeting and One* **Federal Register** *Notice*—These include all management actions other than "automatic actions" that are either nondiscretionary or for which the scope of probable impacts has been previously analyzed. These actions are intended to have temporary effect and are expected to need frequent adjustment. They may be recommended at a single Council meeting (usually November), although it is preferable that the Council provide as much advance information to the public as possible concerning the issues it will be considering at its decision meeting. The primary examples are those management actions defined as "routine" according to the criteria in the appendix to this rule. The possibility of implementing these actions and the impacts of these actions will have been previously analyzed when they were designated as "routine" actions. Interested parties will have had the opportunity to comment on them at that time. In addition, interested parties will have received notice (through Council mailings or through the Council agenda published in the **Federal Register**) that these actions will be considered and discussed at the Council meeting, and they will have the opportunity to provide written or oral comments to the Council before or at the meeting. This extensive opportunity for public participation and comment, and the need to implement these measures in a timely manner, may serve as good cause to waive the need for additional notice and prior public comment.

C. *Abbreviated Rulemaking Actions Normally Requiring at Least Two Council Meetings and One* **Federal Register** *"Rule"*—These include all management actions intended to have permanent effect, which are discretionary, and for which the impacts have not been previously analyzed. Also included is the initial classification of a management measure as "routine." Examples include changes to or imposition of gear regulations, or imposition of trip landing and frequency limits or recreational bag limits for the first time on any species or species group, or gear type. The Council will develop and analyze the proposed management actions over the span of at least two Council meetings (usually September and November), and provide the public advance notice of the availability of both the proposals and the analyses and opportunity to comment on them prior to and at the second Council meeting. If the Northwest Regional Director, NMFS (Regional Director) (note: The Northwest Regional Director will act upon the recommendation of the Southwest Regional Director, NMFS, for fisheries occurring primarily or exclusively seaward of California), approves the Council's recommendation, the Secretary is expected to waive for good cause the requirement for additional prior notice and comment in the **Federal Register** and to publish a "final rule" in the **Federal Register**. If the management measure is designated as "routine" under this procedure, initial implementation and specific adjustments of that measure can subsequently be announced in the **Federal Register** by "notice" as described in the previous paragraphs.

Nothing in this section C. prevents the Secretary from exercising the right to provide an opportunity for prior notice and comment in the **Federal Register**, if appropriate, but presumes that the Council process described below will adequately satisfy that requirement.

The primary purpose of the previous two categories of abbreviated notice and rulemaking procedures is to accommodate the Council's September-November meeting schedule for developing annual management recommendations, to satisfy the Secretary's responsibilities under the Administrative Procedure Act (APA), and to address the need to implement management measures by January 1 of each fishing year.

D. *Full Rulemaking Actions Normally Requiring at Least Two Council*

Meetings and Two **Federal Register** *Notices of Rulemaking (Regulatory Amendment)*—These include any proposed management measure that is highly controversial or any measure that directly allocates the resource. The Council normally will follow the two meeting procedure described above for the abbreviated rulemaking category. The Secretary will publish a "proposed rule" in the **Federal Register** with an appropriate period for public comment followed by publication of a "final rule" in the **Federal Register.**

It should be noted that the two Council meeting process refers to two decision meetings, the first meeting to develop proposed management measures and their alternatives, the second meeting to make a final recommendation to the Secretary. For the Council to have adequate information to identify proposed management measures for public comment at the first meeting, the identification of issues and the development of proposals normally must begin at a prior Council meeting, usually the July Council meeting.

Amendment 4 contemplates that the public will be represented and involved in the groundfish management process in a variety of ways. The Council has thirteen voting members and five nonvoting members. Voting members are the state fishery directors of California, Oregon, Washington, and Idaho, the Regional Director of NMFS, and eight individuals who are knowledgeable about Pacific Coast fisheries and who are appointed by the Secretary of Commerce from lists submitted by the governors of the constituent states. Nonvoting members are the Regional Director of the U.S. Fish and Wildlife Service, the Commander of the Coast Guard District, the Executive Director of the Pacific States Marine Fisheries Commission, a representative from the U.S. Department of State, and a representative of the State of Alaska.

Several Council committees composed of non-Council members also have substantial involvement in managing the groundfish resource. The Scientific and Statistical Committee has thirteen members charged with development, collection, and evaluation of statistical, biological, economic, social, and other scientific information relevant to the Council's development and amendment of fishery management plans. Another committee, the Groundfish Management Team, has eight members representing the state fisheries, departments of California, Oregon, and Washington, and the Northwest and Southwest Regions of NMFS. The Groundfish Advisory Subpanel (as of March, 1990) had thirteen members: two processors, a consumer, three charter boat operators, a pot fisherman, three trawlers, a California commercial fisherman, a sport fisherman, and a longliner. The Council's Enforcement Consultants committee includes representatives of state enforcement agencies in California, Oregon, and Washington, NMFS, and the U.S. Coast Guard.

The Council usually considers groundfish management issues at meetings held in January, April, July, September, and November of each year. All meetings of the Council and its committees are open to the public. Meeting notices including a list of issues to be considered are published in the **Federal Register.** The Council also maintains a master mailing list of approximately 2,000 names of individuals and organizations that includes vessel owners, processors, fishermen's organizations, and fisheries service industries such as fisheries consultants, joint venture companies, and port managers. Persons on the mailing list receive Council meeting notices that describe issues to be considered, the Council newsletter, and draft and final fishery management plans, amendments, and regulations.

Interested persons regularly attend Council meetings and obtain descriptions and analyses of the proposals being considered. The Council members, scientific advisors, and industry advisors discuss proposals in open meetings. Chairmen of the various committees discuss their committee's deliberations at the Council meetings. Portions of each meeting are specifically set aside to receive public comment, and the public is invited and regularly avails itself of the opportunity to make both oral and written comments, and to discuss with Council members the options under consideration. Thus the public has had the opportunity to obtain written reports and analyses from the Council, attend meetings of various groups, and listen to scientists, managers, and industry representatives discuss the proposals. They therefore have substantial information on which to base their comments. The public is expressly requested to comment on these alternate procedures, particularly those in Section C. above. Views and supporting rationale are invited on whether they offer adequate opportunity for public participation and whether they are consistent with the APA (5 U.S.C. 553).

5. Reporting Requirements/Permits

Although Amendment 4 does not implement immediately any new reporting requirements, it does authorize rulemaking to issue rules at some future date that might be necessary to monitor and enforce existing fishing regulations on vessels that process their catch at sea. These measures could include requirements for a Federal permit, logbooks, reporting, and observers. Because no *new* reporting requirements or collections of information are being proposed at this time, this proposed rule is not subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (PRA). At such time as regulations are proposed, they will be submitted to OMB for review and approval as required by the PRA.

6. Experimental Fishing Permits

Amendment 4 streamlines the process for issuing experimental fishing permits by providing authority to the Regional Director to review each application and make a preliminary determination whether the application contains all of the required information and constitutes a valid experimental program. If the Regional Director finds any application does not warrant further consideration, he may reject the application, notifying both the applicant and the Council of his reasons. Currently, the Regional Director must publish a notice of all applications in the **Federal Register** and consult formally with the Council regardless of the merit of the application. This provision will assure that only requests with merit are published in the **Federal Register** and considered by the Council. Several other administrative issues also are clarified by Amendment 4.

7. Consistency of State Regulations

The current FMP contains a finding that the State of California regulations pertaining to commercial fishing for groundfish with set nets south of 38° N. latitude were consistent with the FMP, Magnuson Act, and other applicable law. However, since the FMP was implemented in 1982, the State of California has changed its set net regulations numerous times. Thus, it is no longer appropriate to presume their consistency either with the FMP or with the Magnuson Act. Amendment 4 establishes a process by which the State of California, or any other West Coast state, may request that the Council review for consistency state regulations that the state intends to apply to fishing vessels registered under the laws of the state fishing for groundfish in the EEZ. The outcome of the review can be either a proposal for Federal regulations, a finding of consistency without Federal regulations, or a finding of

inconsistency. A finding of consistency is intended to be supportive of the states in their efforts to enforce their own regulations on their own licensed vessels in the EEZ, and to provide an alternative to the need for duplicative Federal regulations in some circumstances, especially when the majority of the fishery occurs in state waters.

8. Scientific Research

Amendment 4 provides guidelines for determining what fishing activities in the EEZ can be defined as scientific research, establishes a procedure for Secretarial acknowledgement of scientific research, and authorizes the sale of catch taken during scientific research activities to offset all or part of the cost of carrying out the research.

9. Other Changes

The current FMP and implementing regulations contain a number of provisions that can only be changed by FMP amendment or by specific procedures contained in the FMP. Amendment 4 streamlines the current FMP and provides greater flexibility by removing some provisions from the FMP, retaining them in the regulations, and deleting the specific procedures for change. Instead, these provisions may be modified or deleted through either the "points of concern" or the socio-economic frameworks in the same manner as all other management measures. These changes provide greater flexibility to consider, among other things, changes to species designated as "prohibited", the application of incidental allowances in foreign and joint venture fisheries, and changes to incidental groundfish retention limits by domestic fishermen fishing in non-groundfish fisheries. Joint venture and foreign fishing for Pacific whiting continues to be prohibited south of 39° N. latitude and this area cannot be opened without an FMP amendment.

Another change is the removal of the provision to allocate the last 10 per cent of the sablefish OY equally between trawl and non-trawl gear if the sablefish OY is projected to be taken before the end of the fishing year. All future sablefish allocations will be determined through the socio-economic framework and by regulatory amendment (i.e., full rulemaking). Until such time as the Council recommends and the Secretary approves and implements a new sablefish allocation, the current 58 percent trawl:42 percent non-trawl allocation (55 FR 3748, February 5, 1990) remains in effect.

The regulation that imposed a trip limit for Pacific ocean perch also has been removed, because it has been shifted to the "routine" category of management measures.

Management measures that currently regulate the Pacific coast groundfish fishery have been implemented either by regulation or by notice in the **Federal Register**. Many management measures currently implemented by regulation are not changed by this amendment and will continue in effect. These measures are listed in Chapter 12 of Amendment 4. Some measures that currently are regulations are deleted by the amendment, but will be repromulgated as notices following implementation of the amendment. An example of this is recreational bag limits for ling cod and rockfish. Amendment 4 classifies these measures as "routine" measures and authorizes their implementation and adjustment by notice. Some management measures, i.e. trip limits for widow rockfish, sablefish, the *Sebastes* complex, Pacific ocean perch, and yellowtail rockfish are currently in effect as notices, and will stay in effect until superseded, modified, or rescinded. All notices currently in effect will remain in effect until the Council modifies or rescinds them under the procedures of Amendment 4, unless the amendment itself, or its implementing regulations supersedes, modifies, or rescinds them.

Classification

The Magnuson Act at 16 U.S.C. 1854 (a)(1)(D)(ii) requires the Secretary of Commerce (Secretary) to publish regulations proposed by a Council within 15 days of the receipt of the amendment and proposed regulations. At this time, the Secretary has not determined that the amendment these rules would implement is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making that determination, will take into account the information, views, and comments received during the comment period.

The Council prepared a supplementary environmental impact statement (SEIS) for the amendment that discusses the impact on the environment as a result of this rule. A copy of the SEIS may be obtained from the Council (see **ADDRESSES**).

The Under Secretary for Oceans and Atmosphere, NOAA, has initially determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. This determination is based on the regulatory impact review, that demonstrates positive net short-term and long-term economic benefits to the fishery under the proposed amendment. The proposed rule is not expected to have an annual impact of $100 million or more; nor to lead to an increase in costs or prices to consumers, individual industries, Federal, State, or local government agencies, or geographic regions; nor to have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete in domestic or expert markets. A copy of this review may be obtained from the Council (see **ADDRESSES**).

The proposed rule is exempt from the procedures of E.O. 12291 under Section 8(a)(2) of that order. Deadlines imposed under the Magnuson Act, as amended, required the Secretary to file this proposed rule 15 days after its receipt. The proposed rule is being reported to the Director, OMB, with an explanation of why it is not possible to follow the procedures of the order.

The General Counsel of the Department of Commerce has certified to the Small Business Administration (SBA) that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. This certification is based on the regulatory impact review and the analysis contained in Amendment 4 that determined that the administrative and framework processes proposed by the amendment, by themselves, would not have any significant economic effects because they do not institute any significant new management measures at this time. Economic benefits can be expected due to increased flexibility to establish management measures that will reduce discards and wastage and that are designed to extract maximum economic benefits from the fishery while maintaining the maximum sustainable yield from the resource. It is possible that some management measures in the future, especially resource allocations proposed under the socio-economic framework, will be found to have significant economic impacts on a substantial number of small entities. However, the amendment establishes a process for analysis and extensive public review and comment on these measures and the analysis at the time the measures are proposed. At that time the requirements of the Regulatory Flexibility Act will be complied with and the required analyses prepared, made available for public comment, and provided to the Small Business Administration. Required information will be published in the **Federal Register**. A copy of the regulatory

impact review may be obtained from the Council at the address listed above.

This rule contains no new collection of information requirements subject to the PRA, although the amendment provides authority to implement regulations for certain types of future collections of information. At such time that a future collection of information is proposed, it will be submitted to OMB for approval. This rule, however, involves collections of information subject to the PRA previously approved by OMB (OMB Control Nos. 0648-0203 and 0648-0243).

The Council determined that this rule will be implemented in a manner that is consistent, to the maximum extent practicable, with the approved coastal zone management programs of California, Oregon, and Washington. Letters have been sent to all of the States listed above stating that the Council concluded that Amendment 4 is consistent to the maximum extent practicable with the State's coastal zone management program. The responsible State agencies are reviewing this finding under section 307 of the Coastal Zone Management Act.

In 1989, NMFS initiated consultation under section 7 of the Endangered Species Act on the potential impacts of its marine mammal exemption program and related Pacific coast groundfish fishing activities on endangered and threatened species. The July 5, 1989, NMFS biological opinion concluded that the program was not likely to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS. Since that opinion, two additional species have been listed as threatened by NMFS. Therefore, NMFS reinitiated consultation to assess the effects of the FMP and Amendment 4 on these species. The August 10, 1990, biological opinion concluded that the action is not likely to jeopardize the continued existence of any endangered or threatened species. A July 3, 1989, U.S. Fish and Wildlife Service (FWS) biological opinion on the exemption program and related fishing activities concluded that the program was not likely to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of FWS. The FMP falls within the scope of activities considered in the FWS consultation and Amendment 4 does not modify the action in such a manner that causes an effect to listed species or critical habitat not considered in the FWS opinion. Therefore, reinitiation of Section 7 consultation with FWS was not required.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

List of Subjects in 50 CFR Part 611

Fish, Fisheries, Foreign relations, Vessel permits and fees, Reporting and recordkeeping requirements.

List of Subjects in 50 CFR Part 663

Administrative practice and procedure, Fish, Fisheries, Fishing, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 11, 1990.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR Parts 611 and 663 are proposed to be amended as follows:

PART 611—FOREIGN FISHING [AMENDED]

1. The authority citation for part 611 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 611.70, paragraph (e)(1) is removed; paragraphs (e)(2) and (3) are redesignated as (e)(1) and (2), respectively; paragraphs (a), (b)(3), (c), (d), the introductory text of newly designated (e)(1), newly designated paragraph (e)(2), (f), (g)(2), (h)(1) and (j)(1)(ii)(B) and (j)(4)(i) are revised; new introductory text to paragraphs (e) and (g) is added, as follows:

§ 611.70 Pacific coast groundfish fishery.

(a) *Purpose.* This subpart regulates all foreign fishing for groundfish conducted under a Governing International Fishery Agreement within the EEZ seaward of the States of Washington, Oregon, and California. For regulations governing fishing for groundfish in the same area by vessels of the United States, and for procedures to modify the regulations in this § 611.70, see Part 663 of this chapter.

(b) * * *

(3) *Foreign fishing vessel (FFV)* means any fishing vessel other than a vessel of the United States (as defined at § 620.2), except those foreign vessels engaged in recreational fishing (as defined at § 611.2).

* * * * *

(c) *Authorized amounts.* The total allowable levels of foreign fishing (TALFF), joint venture processing (JVP), incidental catch and retention allowance percentages, amounts of fish set aside as reserves, and the estimated domestic annual harvest (DAH) and domestic annual processing (DAP) are published in the **Federal Register** prior to the beginning of each fishing season, and during the season if these amounts are modified, to reflect changes in resource conditions and performance of the U.S. industry. Procedures for setting or changing these specifications and corresponding incidental allowances appear in 50 CFR part 663, appendix II G, H, I, and J. Current TALFF and JVP amounts are available from the Regional Director.

(1) *Incidental allowances.* Incidental allowances are published in the **Federal Register**, concurrent with the annual specifications of JVP or TALFF, to reflect changes in resource conditions and performance of the U.S. industry. Unless otherwise specified under paragraph (d) below, incidental allowances are percentages that determine the maximum amount of incidental species that may be retained in the joint venture or caught in the directed foreign fishery.

(i) In the directed foreign fishery, the incidental allowance for a species or species group is determined by applying the incidental percentage to a nation's allocation of TALFF.

(ii) In the joint venture for Pacific whiting, the incidental percentages are applied to each 5,000 metric tons (mt) of Pacific whiting received by vessels of a foreign nation from U.S. vessels. If the retained amount of an individual species or species complex reaches the specified percentage, no further amount of that species or species complex may be retained until vessels of that nation have received a full 5,000 mt of Pacific whiting. In a joint venture for any other species, the application of incidental allowances will be determined by the Regional Director, in consultation with the Council, on a case-by-case basis.

(d) *Modifications to authorized foreign fishing.* The definitions, authorized amounts (including the amounts and applications of incidental allowances), and management measures in this section (including seasons, areas, gear restrictions, and reporting and recordkeeping requirements) for the directed or joint venture fisheries may be established, modified, or deleted according to the procedures at 50 CFR part 663 and its Appendix or under the conditions and restrictions of a foreign vessel permit, except for certain areas closed to the directed and joint venture fisheries for Pacific whiting at subparagraphs (g)(1)(i) through (iii) and (g)(2), which will remain closed.

(e) *Fishery closures.* In addition to the provisions at § 611.13, the catching or receipt of any species or species

complex is prohibited after: the applicable open season has ended; a harvest guideline or quota for the target species has been or is projected to be reached; or, the fishery has been closed under this section, Part 663, or under the conditions and restrictions of a foreign fishing permit.

(1) *Directed fishery.* Catching any species or species complex is prohibited after the vessels of a foreign nation have caught or are projected to have caught:

* * *

(2) *Joint venture fishery.*

(i) The receipt of any species of U.S.-harvested fish is prohibited after the JVP quota for the target species has been or is projected to be received.

(ii) The retention of a species or species complex of U.S.-harvested fish having an incidental retention allowance is prohibited after the maximum incidental retention allowance for that species or species complex has been or is projected to be retained.

(f) *Seasons.* Unless otherwise specified according to paragraph (d) above, the following provisions apply:

(1) *Directed fishery.* Directed foreign fishing authorized under this subpart may begin at 0701 G.M.T. (0001 Pacific Daylight Time) June 1 and will end not later than 0800 GMT on November 1 (2400 Pacific Standard Time on October 31).

(2) *Joint venture fishery.* There is no season restriction.

(g) *Closed areas.* Unless otherwise specified according to paragraph (d) above (which does not allow deletion of the closed areas in paragraphs (1)(i), (ii), and (iii) or (2)(i) for Pacific whiting fisheries), the following provisions apply:

(1) * * *

(2) *Joint venture fishery.* No U.S.-harvested fish may be received or processed south of 39° N. latitude.

(h) *Gear restrictions—directed fishery.*

(1) Except as authorized under paragraph (h)(2) of this section or as otherwise specified under paragraph (d) above, gear other than a pelagic trawl with a minimum stretched mesh size of 100 mm, measured between the inside of one knot and the inside of the opposing knot when wet, is prohibited. Liners must not be used in the codend of the trawl. Devices or methods of gear use that have the effect of reducing the mesh size in the codend are prohibited. Fishing on the seabed is prohibited.

* * * * *

(j) *Reports and recordkeeping.*

(1) * * *

(ii) * * *

(B) For the purposes of this § 611.70, the product disposition code "P" (referenced in Appendix G to Subpart A of Part 611) must *not* be used in the RECREP. The only disposition codes required in this report are "D" (for discarded), "K" (for retained), and, if specifically authorized in the vessel permit conditions and restrictions, "R" (for fish that are returned to a U.S. vessel).

* * * * *

(4) *Logs.*

(i) The owner and operator of each foreign fishing vessel must maintain logs in accordance with the requirements of § 611.9, as modified by the regulations in this § 611.70 and the conditions and restrictions of that vessel's foreign fishing permit.

* * * * *

PART 663—PACIFIC COAST GROUNDFISH FISHERY [AMENDED]

3. The authority citation for part 663 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

4. The table of contents to part 663 is revised as follows:

Subpart A—General Provisions

Sec.
663.1 Purpose and scope.
663.2 Definitions.
663.3 Relation to other laws.
663.4 Recordkeeping and reporting.
663.5 Management subareas.
663.6 Vessel identification.
663.7 Prohibitions.
663.8 Facilitation of enforcement.
663.9 Penalties.
663.10 Experimental fisheries.

Subpart B—Management Measures

663.21 General.
663.22 Gear restrictions.
663.23 Catch restrictions.
663.24 Restrictions on other fisheries.
663.25 Scientific research.

Appendix to Part 663—Groundfish Management Procedures

§ 663.1 [Amended]

5. In § 663.1, paragraph (b) is revised and paragraph (d) is added, as follows:

§ 663.1 Purpose and scope.

* * * * *

(b) Regulations governing fishing for groundfish by fishing vessels other than vessels of the United States are published at 50 CFR Part 611, Subparts A, B, and E (§ 611.70).

* * * * *

(d) The general provisions in this subpart may be modified according to the procedures described in the Appendix to this part.

* * * * *

§ 663.2 [Amended]

6. In § 663.2, in the definition for groundfish, the asterisks preceding jack mackerel, Pacific whiting, sablefish, Pacific ocean perch, shortbelly rockfish, and widow rockfish, and the paragraph starting with "Note" at the end of the species list are removed (but the list is not republished here). Also in § 663.2, the definitions for acceptable biological catch, commercial fishing, trip limit, and maximum sustainable yield are revised; definitions for closure, Council, domestic annual harvest, domestic annual processing, harvest guideline, joint venture processing, optimum yield, overfishing, prohibited species, quota, reserve, round weight, Stock Assessment and Fishery Evaluation (SAFE) document, target fishing, and total allowable level of foreign fishing are added in alphabetical order; and within the definition of fishing gear—paragraph (r) is removed, paragraphs (j) through (g), (s), and (t) are redesignated as (n) through (u), (v), and (w), respectively; paragraphs (g) through (i) are redesignated as (i) through (k) and paragraphs (e) and (f) are redesignated as (f) and (g), respectively; paragraph (b) and newly redesignated paragraphs (i), (j), (n), (p), and (u) are revised, and paragraphs (e), (h), (l), and (m) are added, as follows:

§ 663.2 Definitions

Acceptable biological catch (ABC) is a biologically based estimate of the amount of fish that may be harvested from the fishery each year without jeopardizing the resource. It is a seasonally determined catch that may differ from maximum sustainable yield (MSY) for biological reasons. It may be lower or higher than MSY in some years for species with fluctuating recruitment. The ABC may be modified to incorporate biological safety factors and risk assessment due to uncertainty. Lacking other biological justification, the ABC is defined as the MSY exploitation rate multiplied by the exploitable biomass for the relevant time period.

Closure, when referring to closure of a fishery, means that taking and retaining, possession, or landing the particular species or species group is prohibited.

Commercial fishing means (a) fishing by a person who possesses a commercial fishing license or is required by law to possess such license issued by one of the states or the Federal government as a prerequisite to taking, landing and/or sale; or (b) fishing which results in or can be reasonably expected to result in sale, barter, trade or other disposition of fish for other than personal consumption.

Council means the Pacific Fishery Management Council, including its Groundfish Management Team (GMT), Scientific and Statistical Committee (SSC), Groundfish Advisory Subpanel (GAP), and any other committee established by the Council.

Domestic Annual Harvest (DAH) means the estimated total harvest of groundfish by U.S. fishermen. It includes the portion expected to be utilized by domestic processors (DAP) and the estimated portion, if any, that will be delivered to foreign processors (JVP) permitted to reserve U.S.-harvested groundfish in the EEZ.

Domestic Annual Processing (DAP) means the estimated annual amount of U.S. harvest that domestic processors are expected to process and the amount of fish that will be harvested but not processed (e.g., marketed as fresh whole fish, used for private consumption, or used for bait).

* * * * *

Fishing gear:

* * * * *

(b) *Bottom trawl* means a trawl in which the otter boards or the footrope of the net are in contact with the seabed. It includes Danish and Scottish seine gear. It also includes pair trawls fished on bottom.

* * * * *

(e) *Commercial vertical hook-and-line* means commercial fishing with hook-and-line gear that involves a single line anchored at the bottom and buoyed at the surface so as to fish vertically.

* * * * *

(h) *Fixed gear (anchored nontrawl gear)* means longline, trap or pot, set net, and stationary hook-and-line (including commercial vertical hook-and-line) gears.

(i) *Gillnet* means a rectangular net that is set upright in the water.

(j) *Hook-and-line* means one or more hooks attached to one or more lines. It may be stationary (commercial vertical hook-and-line) or mobile (troll).

* * * * *

(l) *Mesh size* means the opening between opposing knots. Minimum mesh size means the smallest distance allowed between the inside of one knot to the inside of the opposing knot, regardless of twine size.

(m) *Nontrawl gear* means all legal commercial groundfish gear other than trawl gear.

(n) *Pelagic (midwater or off-bottom) trawl* means a trawl in which the otter boards may be in contact with the seabed but the footrope of the net remains above the seabed. It includes pair trawls if fished in midwater.

* * * * *

(p) *Roller trawl (bobbin trawl)* means a trawl net with footropes equipped with rollers or bobbins made of wood, steel, rubber, plastic, or other hard material that keep the footrope above the seabed, thereby protecting the net.

* * * * *

(u) *Trap (or pot)* means a portable, enclosed device with one or more gates or entrances and one or more lines attached to surface floats.

* * * * *

Harvest guideline means a specified numerical harvest objective which is not a quota. Attainment of a harvest guideline does not require closure of a fishery.

* * * * *

Joint Venture Processing (JVP) is the estimated portion of DAH that exceeds the capacity and intent of U.S. processors to utilize, or for which domestic markets are not available, that is expected to be harvested by U.S. fishermen and delivered to foreign processors in the EEZ.

* * * * *

Maximum sustainable yield (MSY) means an estimate of the largest average annual catch or yield that can be taken over a significant period of time from each stock under prevailing ecological and environmental conditions. It may be presented as a range of values. One MSY may be specified for a group of species in a mixed-species fishery. Since MSY is a long-term average, it need not be specified annually, but may be reassessed periodically based on the best scientific information available.

Optimum yield (OY), for the purposes of this FMP, means all the fish that can be taken under regulations and/or notices authorized by the Pacific Coast Groundfish Plan and promulgated by the Secretary.

Overfishing means a level or rate of fishing mortality that jeopardizes the long-term capacity of a stock or stock complex to produce MSY on a continuing basis.

* * * * *

Prohibited species means those species and species groups whose retention is prohibited unless authorized by other applicable law (for example, to allow for examination by an authorized observer or to return tagged fish as specified by the tagging agency).

Quota means a numerical harvest objective, the attainment (or expected attainment) of which causes closure of the fishery for that species or species group.

* * * * *

Reserve means a portion of the harvest guideline or quota set aside at the beginning of the year to allow for uncertainties in preseason estimates of DAP and JVP.

Round weight means the weight of the whole fish before processing. All weights are in round weight or round weight equivalents unless specified otherwise.

Stock Assessment and Fishery Evaluation (SAFE) Document means the document prepard by the Council that provides a summary of the most recent biological condition of species in the fishery management unit, and the social and economic condition of the recreational and commercial fishing industries and the fish processing industry. It summarizes, on a periodic basis, the best available information concerning the past, present, and possible future condition of the stocks and fisheries managed by the Pacific Coast Groundfish Plan.

Target fishing means fishing for the primary purpose of catching a particular species or species group (the target species).

Total Allowance Level of Foreign Fishing (TALFF) means the amount of fish surplus to domestic needs and available for foreign harvest. It is a quota determined by deducting the DAH and reserve, if any, from a species harvest guideline or quota.

Trip limit means the total allowable amount of a groundfish species or species complex by weight, or by percentage of weight of fish on board, which may be taken and retained, possessed, or landed from a single fishing trip.

§ 663.3 [Amended]

7. IN § 663.3, paragraphs (b) (2) and (3) are amended by changing the words "Pacific Fishery Management Council's" to "Council's".

§ 663.4 [Amended]

8. In § 663.4, paragraph (a) is revised to read as follows:

§ 663.4 Recordkeeping and reporting.

(a) This part recognizes that catch and effort data necessary for implementing the Pacific Coast Groundfish Plan are collected by the States of Washington, Oregon, and California under existing State data collection requirements. Telephone surveys of domestic industry (see Appendices G, H, and I of this part) will be conducted biannually by the NMFS to determine amounts of fish that will be made available to foreign fishing and joint venture processing (OMB Approval No. 0648–0243). No additional Federal reports are required of fishermen or processors as long as the

data collection and reporting systems operated by State agencies continue to provide the Secretary with statistical information adequate for management.

* * * * *

§ 663.5 [Amended]

9. In § 663.5, paragraph (a) introductory text is revised as follows:

§ 663.5 Management subareas

(a) The fishery management area is divided into subareas for the regulation of groundfish fishing, with the following designations and boundaries, which may be changed under the procedures in the appendix to this part:

* * * * *

§ 663.7 [Amended]

10. In § 663.7, paragraph (b) is revised; in paragraph (c), the phrase "and § 663.22(c)" is added before the period; in paragraph (e), the reference "§ 663.26" is changed to read "§ 663.22"; in paragraph (f), "possess," is added after "retain," and the references "§ 663.27" and "§ 663.28" are changed to read "§ 663.23" and "§ 663.24", respectively; and, in paragraph (m), the reference "§ 663.26" is changed to read "§ 663.22", as follows:

§ 663.7 Prohibitions

* * * * *

(b) Retain any prohibited species (defined at § 663.23(d)) caught by means of fishing gear authorized under this part, unless authorized by 50 CFR Parts 301, 371 or 661, or other applicable law; prohibited species must be returned to the sea as soon as practicable with a minimum of injury when caught and brought aboard;

* * * * *

§ 663.10 [Amended]

11. In § 663.10, paragraphs (b) (4) through (8) are redesignated as (b) (5) through (9), respectively; newly redesignated (b)(7), (b)(9) and paragraphs (a), (c)(1) introductory text, (c)(1)(i), (c)(2), (c)(3) introductory text, (c)(3)(vi), (c)(4) introductory text, (c)(4) (i), (vi), and (vii), and (h) are revised; and new paragraphs (b)(4), (b)(10), and (c)(4)(viii) are added as follows:

§ 663.10 Experimental Fisheries.

(a) *General.* The Regional Director may authorize, for limited experimental purposes, the target or incidental harvest of groundfish managed by the Pacific Coast Groundfish Plan that would otherwise be prohibited. No experimental fishing may be conducted unless authorized by an experimental fishing permit (EFP) issued by the Regional Director to the participating vessel in accordance with the criteria and procedures specified in this section. EFPs will be issued without charge.

* * * * *

(b) * * *

(4) Valid justification explaining why issuance of the EFP is warranted;

* * * * *

(7) A description of the species (target and incidental) to be harvested under the EFP and the amount(s) of such harvest necessary to conduct the experiment;

* * * * *

(9) The signature of the applicant.

(10) The Regional Director may request from an applicant additional information necessary to make the determinations required under this section (OMB Approval No. 0648–0203). An incomplete application will not be considered until corrected in writing. An applicant for an EFP need not be the owner or operator of the vessel(s) for which the EFP is requested.

(c) *Issuance.* (1) The Regional Director will review each application and will make a preliminary determination whether the application contains all of the required information and constitutes a valid experimental program appropriate for further consideration. If the Regional Director finds any application does not warrant further consideration, both the applicant and the Council will be notified in writing of the reasons for the decision. If the Regional Director determines any application warrants further consideration, a notice of receipt of the application will be published in the **Federal Register** with a brief description of the proposal, and interested persons will be given an opportunity to comment. The notice may establish a cut-off date for receipt of additional applications to participate in the same or a similar experiment. The Regional Director also will forward copies of the application to the Council, the U.S. Coast Guard, and the fishery management agencies of Oregon, Washington, California, and Idaho, accompanied by the following information:

(i) The current utilization of domestic annual harvesting and processing capacity (including existing experimental harvesting, if any) of the target and incidental species;

* * * * *

(2) If the application is complete and warrants further consideration, the Regional Director will consult with the Council and the directors of the state fishery management agencies concerning the permit application. The Council shall notify the applicant in advance of the meeting, if any, at which the application will be considered, and invite the applicant to appear in support of the application if the applicant desires.

(3) As soon as practicable after receiving responses from the agencies identified above, or after the consultation, if any, in paragraph 663.10(c)(2) above, the Regional Director shall notify the applicant in writing of the decision to grant or deny the EFP, and, if denied, the reasons for the denial. Grounds for denial of an EFP include, but are not limited to, the following:

(i) * * *

(vi) The activity proposed under the EFP could create a significant enforcement problem.

(4) The decision of the Regional Director to grant or deny an EFP is the final action of the agency. If the permit is granted, the Regional Director will publish a notice in the **Federal Register** describing the experimental fishing to be conducted under the EFP. The Regional Director may attach terms and conditions to the EFP consistent with the purpose of the experiment, including but not limited to:

(i) The maximum amount of each species that can be harvested and landed during the term of the EFP, including trip limitations, where appropriate;

* * * * *

(vi) Reasonable data reporting requirements (OMB Approval No. 0648–0203);

(vii) Such other conditions as may be necessary to assure compliance with the purposes of the EFP consistent with the objectives of the Pacific Coast Groundfish Plan; and

(viii) Provisions for public release of data obtained under the EFP.

* * * * *

(h) *Sanctions.* Failure of a permittee to comply with the terms and conditions of an EFP shall be grounds for revocation, suspension, or modification of the EFP with respect to all persons and vessels conducting activities under the EFP. Any action taken to revoke, suspend, or modify an EFP will be governed by 15 CFR part 904, subpart D.

§ 663.21 [Amended]

12. Section 663.21 is revised to read, as follows:

§ 663.21 General

(a) The Secretary will establish and adjust management specifications and measures annually and during the fishing year according to the procedures described in the Appendix to this part.

Management actions will be announced by publication in the **Federal Register** under the procedures described in the Appendix.

(b) Federal Register notices establishing and adjusting management specifications and measures will remain in effect until the expiration date stated in the notice, or until rescinded, modified, or superseded.

(c) Nothing contained in this part limits the authority of the Secretary to issue emergency regulations under Section 305(e) of the Magnuson Act, 16 U.S.C. 1855(e).

§§ 663.22, 663.23, 663.24, 663.25 [Removed]

13. Sections 663.22, 663.23, 663.24, and 663.25 are removed.

§ 663.26 [Redesignated as § 663.22 and Amended]

14. Section 663.26 is redesignated as § 663.22; in newly redesignated § 663.22, paragraphs (a) and (e) are revised; paragraphs (c), (d), (f), and (g) are removed; paragraphs (b)(7)(A) and (B) are corrected by redesignating them as (b)(7)(i) and (ii), respectively; paragraphs (e) and (h) are redesignated as (g) and (f), respectively; and new paragraphs (c) and (d) are added, as follows:

§ 663.22 Gear restrictions

(a) *General.* The following types of fishing gear are authorized, with the restrictions set forth in this section: trawl (bottom, pelagic, and roller), hook-and-line, longline, pot or trap, set net, trammel net, and spear.

* * * * *

(c) *Fixed gear.* Fixed gear (longline, pot, set net and stationary hook-and-line gear, including commercial vertical hook-and-line gear) must be:

(1) marked at the surface, at each terminal end, with a pole, flag, light, radar reflector, and a buoy clearly identifying the owner; and

(2) attended at least once every seven days. (d) *Set nets.* Fishing for groundfish with set nets is prohibited in the fishery management area north of 38°00′ N. latitude.

(e) *Traps or pots.* Traps must have biodegradable escape panels constructed with #21 or smaller untreated cotton twine in such a manner that an opening at least 8 inches in diameter results when the twine deteriorates.

* * * * *

§ 663.27 [Redesignated as § 663.23 and Amended]

15. Section 663.27 is redesignated as § 663.23; in newly redesignated § 663.23, paragraph (a) is removed and reserved, paragraph (b)(2) is removed and reserved and (b)(3) is removed, and paragraphs (c) and (d) are added as follows:

§ 663.23 Catch restrictions. * * *

(a) *Recreational fishing.* [Reserved.]

(b) * * *

(2) [Reserved.]

(c) *Routine management measures.* In addition to the catch restrictions in this section 663.23, other catch restrictions may be imposed and announced by a single notice in the **Federal Register** if they first have been designated as "routine" according to the applicable procedures in section III of the Appendix to this part. The following catch restrictions are designated as routine:

(1) *Commercial trip landing and frequency limits:*

(i) widow rockfish—all gear;
(ii) *Sebastes* complex—all gear;
(iii) yellowtail rockfish—all gear;
(iv) Pacific ocean perch—all gear;
(v) sablefish (including size limits)—trawl and nontrawl gears.

(2) *Recreational bag and size limits:*

(i) lingcod—all gear;
(ii) rockfish—all gear.

(d) *Prohibited species.* Groundfish species or species groups under the Pacific Coast Groundfish Plan for which quotas have been achieved and the fishery closed are prohibited species.

In addition, the following are prohibited species:

(1) Any species of salmonid.
(2) Pacific halibut.
(3) Dungeness crab caught seaward of Washington or Oregon.

§ 663.28 [Redesignated as § 663.24 and Amended]

16. Section 663.28 is redesignated as § 663.24 and paragraph (a) is revised as follows:

§ 663.24 Restrictions on other fisheries

(a) *Pink shrimp.* The trip limit for a vessel engaged in fishing for pink shrimp is 1,500 pounds (multiplied by the number of days of the fishing trip) of groundfish species other than Pacific whiting, shortbelly rockfish, or arrowtooth flounder (which are not limited under this paragraph).

* * * * *

§ 663.29 [Redesignated as § 663.25 and Amended]

17. Section 663.29 is redesignated as § 663.25, the word "will" in the second sentence is changed as "should", and, in the last sentence, the words "Pacific Fishery Management Council" are changed to "Council".

18. An Appendix is added to part 663 as follows:

Appendix to Part 663—Groundfish Management Procedures

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I. Introduction

Amendment 4 to the Pacific Coast Groundfish Fishery Management Plan ("Amendment 4") amends the Pacific Council's 1982 Pacific Coast Groundfish Fishery Management Plan (the "original FMP") to provide flexibility to modify annual and inseason management specifications and measures for social and economic as well as biological reasons. Under Amendment 4, management specifications and measures may be adjusted annually or during the fishing year according to the framework procedures described below. Management decisions made under the framework procedures are intended to

be implemented without the need for a plan amendment. More detail concerning the procedures and their rationale appears in Chapters 5 and 6 of Amendment 4.

II. Specification and Apportionment of Harvest Levels

Each fishing year the Council will assess the biological, social, and economic condition of the Pacific coast groundfish fishery and will make its assessment available to the public in the form of the Stock Assessment and Fishery Evaluation (SAFE) document described in section II.A. Based upon the most recent stock assessments, the Council will develop estimates of the acceptable biological catch (ABC) for each major species or species group and identify those species or species groups that it proposes be managed by the establishment of numerical harvest levels. The specification of numerical harvest levels includes the estimation of ABC, the establishment of harvest guidelines or quotas for specific species or species groups, and the apportionment of numerical specifications to domestic annual processing (DAP), joint venture processing (JVP), domestic annual harvest (DAH), total allowable level of foreign fishing (TALFF), and the reserve. The specification of numerical harvest levels is the process of designating and adjusting overall numerical limits for a species or species group either throughout the entire fishery management area or throughout specified subareas. The process normally occurs annually between September and November, but can occur under specified circumstances at other times of the fishing year. Numerical limits that allocate the resource or that apply to one segment of the fishery and not another are imposed through the socio-economic framework process described in Section III rather than the specification process.

The annual specification process, in general terms, proceeds chronologically as follows:

1. Determine the ABC for each major species or species group.
2. Identify any species or species groups which may require special attention or individual management with numerical harvest limits in order to address or prevent resource conservation issues or issues of social, economic, or ecological concern identified by the Council. Examples of these issues include, but are not limted to, rebuilding stocks, achieving equitable resource allocation, increasing overall social and economic benefits, and providing for foreign and joint venture fishing for species not fully utilized by U.S. fish processors.
3. Based on ABCs, recommend the establishment of either a numerical harvest guideline or quota for each species or species group requiring individual management.
4. Recommend the apportionment or numerical specifications between DAP, JVP, DAH, TALFF, and the reserve.

Section II describes the steps in this process

A. Stock Assessment and Fishery Evaluation (SAFE) Document

For the purpose of providing the best available scientific information to the Council for developing ABCs, determining the need for individual species or species group management, setting and adjusting numerical harvest levels, assessing social and economic conditions in the fishery, and updating the appendices of the FMP, a SAFE document is prepared annually. Not all species and species groups can be re-evaluated every year due to limited state and federal resources. However, the SAFE document will, at a minimum, contain the following information:

1. A report on the current status of Washington, Oregon, and California groundfish resources, by major species or species group.
2. Estimates of MSY and ABC for major species or species groups.
3. Catch statistics (landings and value).
4. Recommendations of species or species groups for individual management by harvest guidelines or quotas.
5. A brief history of the harvesting sector of the fishery.
6. A brief history of regional groundfish management.
7. A summary of the most recent economic information available, including number of vessels and economic characterstics by gear type.
8. Other relevant biological, social, economic, and ecological information that may be useful to the Council.

The Safe document is normally completed late in the year, generally late October, when the most current stock assessment and fisheries performance information is available. The Council will make the SAFE document available to the public by such means as mailing lists and newsletters, and will provide copies upon request.

B. Establishment and Adjustment of Acceptable Biological Catch (ABC)

As part of the process of establishing annual specifications and apportionments described in Section II.H., the Council will determine the annual ABC for each major species or species group. ABCs do not act as harvest limits, but provide the biological basis for any numerical harvest levels that the Council recommends be established. ABCs may be established for the fishery management area as a whole or for specified subareas as appropriate. ABCs may be adjusted inseason only for the reasons specified in section II.I.(a).

All ABCs will remain in effect until revised and, whether revised or not, will be announced at the beginning of each fishing year along with all other annual specifications. In some cases, there will be no new information on the condition of a species or species group. In other cases, new information might continue to support a previous assessment. Therefore, ABCs may remain unchanged over a period of years.

C. Identification of Species or Species Groups for Individual Management by Numerical Harvest Guideline or Quota

After reviewing the most current stock assessment information, considering public comment, and taking into account the goals and objectives of the FMP, the Council may determine that certain species or species groups require individual management by numerical harvest guidelines or quotas. Conversely, the Council may determine that a quota or harvest guideline is no longer necessary. Both harvest guidelines and quotas are harvest objectives for a specific species or species group. They are most commonly necessary when resource conservation concerns require the exercise of harvest restraint or when necessary either to apportion the resource to DAP, JVP, DAH, TALFF, and reserve, or to allocate the harvest among different segments of the fishery.

Harvest guidelines are specified numerical harvest objectives that differ from quotas in that closure of a fishery (i.e., prohibition of retention, possession, or landing) is not automatically required upon attainment of a harvest guideline. A harvest guideline may be either a range or a point estimate.

Quotas are specified numerical harvest objectives the attainment of which results in automatic closure of the fishery for that species or species group. Retention, possession, or landing of a species or species group after attainment of its quota is prohibited. A quota is a single numerical value, not a range.

Both harvest guidelines and quotas may be specified for the fishery

management area as a whole or for specific subareas.

Before recommending that a species or species group be designated for individual management by either a harvest guideline or quota, the Council should determine whether one or more of the conditions listed below exists in the fishery:

1. Based on the most current stock assessment and expected harvest rates in the fishery, the species or species group is in need of special protection or more cautious exploitation than that provided by current management measures.

2. The species or species group can effectively be managed as a unit.

3. Based on the most current stock assessment and expected harvest rates in the fishery, failure to impose a numerical limitation would likely result in a "point of concern" (as defined in Section III) being reached before the end of the year.

4. A harvestable stock surplus to domestic needs exists and the Council intends to recommend an apportionment of the numerical specification to JVP or TALFF. Any TALFF must be a quota. DAH, DAP and JVP may be either quotas or harvest guidelines. The apportionments to JVP and TALFF may be changed inseason due to reapportionment of the reserve and excess DAH or DAP consistent with the procedures in section II.I.(c) or to changes in ABC resulting from correction of a technical error (see section II.I.(a)).

5. Through the framework processes described in Section III.B.(c) the Council has recommended a direct allocation of the resource among different segments of the fishery.

D. Guidelines for Choosing Between a Harvest Guideline or Quota

Normally, the recommendation to manage a species or species group with a harvest guideline or quota will be made in conjunction with the ABC determination for the upcoming year. Harvest guidelines and quotas in effect at the end of the fishing year will carry over into the subsequent year in the absence of a recommendation for change by the Council.

Generally, a harvest guideline will be used rather than a quota when one or more of the following exists:

1. A minimal level of additional protection or caution is believed to be sufficient;

2. Incidental catches in groundfish fisheries, or other fisheries not regulated by this FMP, are unavoidable and significant;

3. Unavoidable incidental catch would occur after a quota is reached and further landings are prohibited, resulting in the discard and wastage of significant quantities of fish;

4. Data are insufficient to adequately estimate status of stocks or inseason landings;

5. Harvest in excess of a harvest guideline is not expected to result in overfishing or to prevent adherence to a rebuilding program adopted by the Council and approved by the Secretary.

Generally a quota will be used rather than a harvest guideline when one or more of the following exists:

1. It is necessary to prevent overfishing or to adhere to a rebuilding program adopted by the Council and approved by the Secretary.

2. An overall quota is necessary to achieve resource allocations established through the frameworks described in Section III.

Unless otherwise specified by Amendment 4, all regulations and notices authorized by the original FMP and in effect at the time Amendment 4 is implemented are intended to continue in effect until changed. This includes the designation of species or species groups that are managed with a harvest guideline or quota. Under the original FMP, two species or species groups (the *Sebastes* complex and yellowtail rockfish north of Coos Bay, Oregon) were managed by harvest guidelines and six species (sablefish, Pacific ocean perch in the Columbia and Vancouver subareas, widow rockfish, Pacific whiting, shortbelly rockfish, and jack mackerel north of 30° N. latitude) were managed by numerical OYs, or quotas. Consistent with the intent of Amendment 4 and the original FMP, those species and species groups will continue to be managed as they were under the original FMP until such time as any changes are recommended by the Council and approved by the Secretary.

It is expected that the Council will, from time to time, find it necessary to add new species or species groups, change quota managed species to harvest guideline management and the converse, revise areas to which harvest guidelines and quotas will apply, or remove some species form management by numerical specifications. All of these actions may be recommended provided they are consistent with the guidelines and procedures in Amendment 4.

E. Guidelines for Determining the Numerical Specification of a Harvest Guideline or Quota

The determination of the actual numerical specification of a harvest guideline or quota is analogous to the determination of OY under the Magnuson Act and under the original FMP. The foundation for the Council's recommendation is the ABC for a species or species group. The numerical specification of a harvest guideline or quota is an adjustment from the ABC, either up or down, based upon social, economic, or ecological considerations. For example, the Council may recommend a harvest guideline or quota lower than ABC to speed up a stock rebuilding process or to account for estimates of discards. Conversely, the Council may recommend a numerical specification higher than ABC to mitigate abrupt adverse economic impacts in the face of the need to reduce harvests on a declining stock. However, if the Council chooses to recommend a harvest guideline or quota higher than ABC, it will consider the following factors in making its determination:

1. Exploitable biomass and spawning biomass relative to MSY levels for the species or species group under consideration.

2. Fishing mortality rate relative to MSY levels for the species under consideration.

3. In the case of species normally taken in mixed catches, the relative contribution of the species to the total catch.

4. The impact, if any, of the proposed increase on other groundfish species or species groups.

5. The magnitude of incoming recruitment.

6. The impact of harvest higher than ABC on the potential for future harvests to achieve the goals and objectives of the FMP.

The original FMP limited increases in OY, inseason and from year to year, to a maximum of 30 percent. Amendment 4 removes this restriction because it limited the Council's ability to utilize the best available biological information. Both ABC and numerical specifications based upon ABC should reflect the most current and best biological information as well as the most current information on the social and economic condition of the fishery.

In recommending a numerical specification, the Council generally will ensure that the harvest at that level will prevent overfishing and that any stock rebuilding program adopted by the Council and approved by the Secretary is not adversely affected. However, the Council may consider circumstances where reductions in future yield or even overfishing of a single species in a multiple species complex may be justified if increased benefits from the fishery as a whole will outweigh the loss

from future reduced yield from the single species and the goals and objectives of the FMP can continue to be achieved in future years.

For species with harvest guidelines, the Council will monitor catch rates throughout the year and project when, and if, a harvest guideline will be reached. Upon determining that a harvest guideline is likely to be reached prematurely if harvest rates are not curtailed, a "point of concern" occurs, triggering a mandatory review of the stock status and harvest patterns as specified in Section III.B.(b). Based on the results of that review the Council will recommend that continued harvest either be allowed with no additional restrictions, be allowed with additional restrictions to further reduce harvest, or be discontinued and the fishery closed.

F. Stock Rebuilding Programs

When a stock falls below the level which will produce MSY, and is expected to stay below this level unless fishing mortality is reduced, the Council will review and determine if there is the need for more restricitve management measures (including harvest guidelines and quotas) to protect the stock and allow it to rebuild to more productive levels. Rebuilding objectives may be established by the Council on a case by case basis, taking into account the ABC, MSY, spawner recruit relationships, growth and maturation rates, age of recruitment, anticipated or assessed year class strength and age structure of the population, economic importance, and any other relevant social, economic, biological, or ecological factors. Appropriate measures to achieve the stated objectives will be determined by the Council based on those factors. More specific details relating to an operational definition of overfishing and the appropriate criteria that might result in the Council being required to develop and implement a stock rebuilding program for stocks of Pacific coast groundfish are being developed as Amendment 5 to the FMP in response to the NOAA operational guidelines (50 CFR Part 602 guidelines).

In certain limited situations a stock may be fished down to a spawning biomass below the level which will produce MSY and maintained at that level if justified in writing and approved by the Secretary.

When the Council determines a rebuilding program is necessary, it shall develop a plan based upon the best available scientific information. The plan should specify the time required for rebuilding and anticipate, to the extent practicable, the harvest restrictions necessary to achieve rebuilding. The Council will hold public hearings on the plan which, if adopted, will be forwarded to the Secretary for review, approval, and implementation. The Secretary will publish a proposed rule implementing the plan in the **Federal Register** seeking public comment, following which, if approved, the Secretary will publish a final rule implementing the plan in the **Federal Register**.

In the event that the Secretary disagrees with the Council's recommended rebuilding program, he may recommend that the Council consider alternative measures or provide a more complete rationale for the recommendation. The Council will consider the Secretary's comments and may reaffirm its choice of the proposed action and provide the requested justification, or may recommend alternative measures.

If the Council establishes a rebuilding program, it will periodically review the effectiveness of the rebuilding measures and may revise the measures or objectives, taking into account the best scientific information available, and using the procedures described in section II.F.

Amendment 4 continues in effect a 20-year rebuilding program for Pacific ocean perch (POP) established by the original FMP.

G. Establishing and Adjusting DAP, JVP, DAH and TALFF Apportionments

When the entire amount of fish available for harvest will not be processed by U.S. (domestic) processors and it can be harvested without significantly impacting another species that is fully utilized by the U.S. industry, any quantity of fish excess to DAP may be made available for JVP. If DAH (i.e., the sum of DAP and JVP) is less than the amount of fish available for harvest, any further remainder may be apportioned to the foreign directed fishery as TALFF. When it is determined that quantities of a species or species group exist that are surplus to domestic processing needs, the Council will consider recommending a numerical harvest guideline or quota for the purpose of further apportionment to DAP, JVP, DAH, TALFF, and the reserve.

Prior to the next year's fishing season (usually about September of the preceding year), NMFS will conduct a survey of domestic processors and joint venture operations to estimate processing capacity, planned utilization, and related information. The DAP, the estimate of domestic annual processing needs derived from the survey and subsequent public testimony, is subtracted first from the harvest guideline or quota. If after subtracting the DAP, any harvestable quantity of fish remains and is requested for joint venture operations, the amount requested may be specified for JVP after providing for the reserve. The sum of DAP and JVP is DAH, an estimate of the total domestic annual harvest. Any remainder may be made available for foreign fishing as TALFF. TALFF is that quantity of fish surplus to DAH and the reserve. TALFF will always be a quota. DAH, DAP, and JVP may be either a quota or harvest guideline.

A reserve will be set aside at the beginning of the year for any species with a JVP or TALFF. The reserve allows for uncertainties regarding estimates of DAP and DAH by providing a buffer for the domestic industry, should its processing or harvesting needs exceed initial estimates. At the beginning of the year the reserve will equal 20 percent of the quota or harvest guideline for a species, unless DAP is greater than 80 percent of the harvest guideline or quota. In that case, the reserve will be the difference between the harvest guideline or quota and DAP. The reserve may be released during the year to DAH (DAP and/or JVP) or TALFF, with highest priority to DAP followed by JVP, and lastly TALFF.

Generally, NMFS will present the results of the domestic and joint venture processing survey to the Council for consultation and public comment concurrent with the Council's consideration of annual specifications. The Council may adopt recommendations for annual apportionments for implementation in accordance with the annual procedures for developing and implementing annual specifications described in Section II.H. Apportionments may be adjusted inseason following the procedures in section II.I.(c).

H. Procedure for Developing and Implementing Annual Specifications and Apportionments

Annually, the Council will develop recommendations for the specification of ABCs, identification of species or species groups for management by numerical harvest guidelines and quotas, specification of the numerical harvest guidelines and quotas, and apportionments to DAP, JVP, DAH, TALFF, and the reserve over the span of two Council meetings.

The Council will develop preliminary recommendations at the first of two meetings (usually in September) based upon the best stock assessment information available to the Council at the time and consideration of public

comment. After the first meeting, the Council will provide a summary of its preliminary recommendations and their basis to the public through its mailing list, as well as providing copies of the information at the Council office and to the public upon request. The Council will notify the public of its intent to develop final recommendations at its second meeting (usually November) and solicit public comment both before and at its second meeting.

At its second meeting, the Council will again consider the best available stock assessment information, which should be contained in the recently completed SAFE report, and consider public testimony before adopting final recommendations to the Secretary. Following the second meeting the Council will submit its recommendations along with the rationale and supporting information to the Secretary for review and implementation.

Upon receipt of the Council's recommendations, supporting rationale and information, the Secretary will review the submission and, if approved, publish a notice in the **Federal Register** making the Council's recommendations effective January 1 of the upcoming fishing year.

In the event that the Secretary disapproves one or more of the Council's recommendations, he may implement those portions approved and notify the Council in writing of the disapproved portions along with the reasons for disapproval. The Council may either provide additional rationale or information to support its original recommendation, if required, or may submit alternative recommendations with supporting rationale. In the absence of an approved recommendation at the beginning of the fishing year, the current specifications in effect at the end of the previous fishing year will remain in effect until modified, superseded, or rescinded.

I. Inseason Procedures to Establish and Adjust Specifications and Apportionments

(a) Inseason Adjustments to ABCs

New stock assessment information may become available inseason that supports a determination that an ABC no longer accurately describes the status of a particular species or species group. However, adjustments will only be made during the annual specifications process and a revised ABC announced at the beginning of the next fishing year. The only exception is in the case where the ABC announced at the beginning of the fishing year is found to have resulted from incorrect data or from computational errors. If the Council finds that such an error has occurred, it may recommend that the Secretary publish a notice in the **Federal Register** revising the ABC at the earliest possible date.

(b) Inseason Establishment and Adjustment of Harvest Guidelines and Quotas

Harvest guidelines may be established and adjusted inseason: (1) for resource conservation through the "points of concern" framework described in Section III.B.(b); (2) in response to a technical correction to ABC described in Section II.I.(a); or (3) under the socio-economic framework described in Section III.B.(c).

Quotas, except for apportionments to DAP, JVP, DAH, TALFF, and reserve, may be established and adjusted inseason only for resource conservation or in response to a technical correction to ABC.

(c) Inseason Apportionment and Adjustments to DAP, JVP, DAH, TALFF, and Reserve

It may become necessary inseason to adjust DAP, JVP, DAH, TALFF, and the reserve to respond to the establishment or adjustment of a harvest guideline or quota, revisions to ABC, an inseason reassessment of DAP and JVP needs, or an inseason release of the reserve. Therefore, a DAH reassessment process with a mechanism to make adjustments to apportionments within DAH (to DAP and/or JVP) or to TALFF, and to release the reserve is required to achieve full utilization of certain stocks and to ensure that the preference for domestic processing is achieved.

Amendment 4 revises the DAH reassessment process so that it may be initiated at any time during the year that NMFS or the Council determines appropriate. The process begins with NMFS reassessing the needs of the domestic processing industry and updating its previous estimate of domestic processing intent. Based upon this reassessment, all or part of the reserve may be apportioned among DAH, DAP, JVP, and TALFF with domestic needs met first (and with DAP having priority over JVP). If the domestic industry does not intend to harvest the entire reserve, the remainder may be made available to TALFF.

In addition to apportionment of the reserve, further adjustments may be made if the reassessment indicates that the domestic industry will not use the quantities designated for DAH. In this case, surplus DAP could be made available to JVP or surplus DAH to TALFF.

Following reassessment of the DAH, the NMFS Regional Director will consult with the Council, if practicable, before publishing a notice in the **Federal Register** seeking public comment for a reasonable period of time on the proposed adjustments to the apportionments. After receiving public comment, the Regional Director will publish a final notice in the **Federal Register** announcing the effectiveness of the adjustments.

Sometimes the pace of the fisheries may be so rapid that failure to act quickly to make adjustments to apportionments would ultimately result in the inability of the fishery to take advantage of an adjustment. In such cases where rapid action is necessary to prevent underutilization of the resource, the Regional Director may immediately publish a notice in the **Federal Register** making the adjustments effective and seek public comment for a reasonable period of time afterwards. If insufficient time exists to consult with the Council, the Regional Director will inform the Council in writing of actions taken within two weeks of the effective date.

J. Incidental Allowances in Joint Venture and Foreign Fisheries

Unless otherwise specified, incidental allowances for bycatch in the joint venture or foreign fisheries are percentages that determine the maximum amount of incidental species that may be retained in the joint venture or caught in the foreign fishery. Incidental allowances may be established or changed at any time during the year, but are published at least annually, concurrent with the annual specifications of JVP and TALFF.

The Council may choose to use factors other than percentages in specifying incidental allowances or may change the way incidental allowances are applied (for example, to 5,000 metric ton increments of Pacific whiting received in the joint venture; or based on retention in the joint venture and catch in the foreign fishery). Incidental species or species groups may be defined as necessary to obtain the best results for management of the fishery.

The Regional Director may establish or modify incidental species allowances to reflect changes in the condition of the resource and performance of the U.S. industry. The Regional Director will consult with the Council, consider public testimony received, and consider the following factors before establishing or changing incidental allowances: (1) Observed rates in the previous joint

venture or foreign directed fishery, as applicable; (2) current estimates of relative abundance and availability of species caught incidentally; (3) ability of the foreign vessels to take JVP or TALFF; (4) past and projected foreign and U.S. fishing effort; (5) status of stocks; (6) impacts on the domestic industry; and (7) other relevant information. With the exception of initiation by the Regional Director, changes will be made following the same procedures as for annual or inseason changes to the specifications in sections II.H. and II.I.(c).

III. Management Measures

A. Overview

The regulatory measures available to manage the Pacific coast groundfish fisheries include but are not limited to harvest guidelines, quotas, landing limits, trip frequency limits, gear restrictions (escape panels or ports, codend mesh size, etc.), time/area closures, prohibited species, bag and size limits, permits, other forms of effort control, allocation, reporting requirements, and onboard observers.

Amendment 4 establishes three framework procedures through which the Council is able to recommend the establishment and adjustment of specific management measures for the Pacific coast groundfish fishery. The first framework establishes a procedure for classifying and adjusting "routine" management measures. The "points of concern" framework allows the Council to develop management measures that respond to resource conservation issues; the "socio-economic" framework allows the Council to develop management measures in response to social, economic, and ecological issues that affect the fishing community. Associated with each framework is a set of criteria that form the basis for Council recommendations and with which Council recommendations will be consistent.

Amendment 4 also establishes a general process for developing and implementing management measures that normally will occur over the span of at least two Council meetings, with an exception that provides for more timely Council consideration under certain specific conditions. This process is explained in more detail in section III.B.

Amendment 4 contemplates that the Secretary will publish management measures recommended by the Council in the **Federal Register** as either "notices" or "regulations." Generally management measures of broad applicability and permanent effectiveness are intended to be published as "regulations"; those measures more narrow in their applicability and which are meant to be effective only during the current fishing year, or even of shorter duration, and which might also require frequent adjustment, are intended to be published as "notices."

Amendment 4 also contemplates that the public will be represented and involved in the groundfish management process in a variety of ways.

The Council has thirteen voting members and five nonvoting members. Voting members are the state fishery directors of California, Oregon, Washington, and Idaho, the Northwest and Southwest Regional Directors of the National Marine Fisheries Service, and eight individuals who are knowledgeable about Pacific Coast fisheries and who are appointed by the Secretary of Commerce from lists submitted by the governors of the constituent states. Nonvoting members are the Regional Director of the U.S. Fish and Wildlife Service, the Commander of the Coast Guard District, the Executive Director of the Pacific Marine Fisheries Commission, a representative from the U.S. Department of State, and a representative of the State of Alaska.

Several Council committees composed on non-Council members also have substantial involvement in managing the groundfish resource. The Scientific and Statistical Committee has thirteen members charged with development, collection, and evaluation of statistical, biological, economic, social, and other scientific information relevant to the Council's development and amendment of fishery management plans. Another committee, the Groundfish Management Team, has eight members representing the state fisheries department of California, Oregon, and Washington, and the Northwest and Southwest Regions of the National Marine Fisheries Service. The Groundfish Advisory Subpanel (as of March, 1990) had thirteen members identified as representing the following interests: two processors, a consumer, three charter boat operators, a pot fisherman, three trawlers, California commercial fisherman, a sport fisherman, and a longliner. The Council's Enforcement Consultants committee inlcudes representatives of state enforcement agencies in California, Oregon, and Washington, the National Marine Fisheries Service, and the U.S. Coast Guard.

The Council usually considers groundfish management issues at meetings held in January, April, July, September, and November of each year. All meetings of the Council and its committees are open to the public. Meeting notices, including a list of issues to be considered, are published in the **Federal Register**. The Council also maintains a master mailing list of approximately 2,000 names of individuals and organizations that includes vessel owners, processors, fishermen's organizations, and fisheries service industries such as fisheries consultants, joint venture companies, and port managers. Persons on the mailing list receive Council meeting notices and agendas, the Council newsletter, and draft and final fishery management plans, amendments, and regulations.

Interested persons regularly attend Council meetings and obtain descripitons and analyses of the proposals being considered. The Council members, scientific advisors, and industry advisors discuss proposals in open meetings. Portions of each meeting are specifically set aside to receive public comment, and the public is invited and regularly avails itself of the opportunity to make both oral and written comments, and to discuss with Council members the options under consideration.

B. General Procedures for Establishing and Adjusting Management Measures

Management measures are normally imposed, adjusted, or removed at the beginning of the fishing year, but may, if the Council determines it necessary, be imposed, adjusted or removed at any time during the year. Management measures may be imposed for resource conservation, social or economic reasons consistent with the criteria, procedures, goals, and objectives set forth in Amendment 4.

Because the potential actions that may be taken under the two frameworks established by Amendment 4 cover a wide range, analyses of biological, social, and economic impacts will be considered at the time a particular change is proposed. As a result, the time required to take action under either framework will vary depending on the nature of the action, its impacts on the fishing industry, the resources, the environment, and the review of these impacts by interested parties. Satisfaction of the legal requirements of other applicable law (e.g. the Administrative Procedure Act, Regulatory Flexibility Act, Executive Order 12291) for actions taken under this framework requires analysis and public comment before measures may be implemented by the Secretary.

Amendment 4 establishes four different categories of management

actions, each of which requires a slightly different process. According to the provisions in Amendment 4, management measures may be established, adjusted, or removed using any of the four procedures. The four basic categories of management actions are as follows:

1. Automatic Actions

Automatic management actions may be initiated by the Regional Director without prior public notice, opportunity to comment, or a Council meeting. These actions are non-discretionary and the impacts previously must have been taken into account. Example include fishery, season, or gear type closures when a quota has been projected to have been attained. The Secretary will publish a single "notice" in the **Federal Register** making the action effective.

2. "Notice" Actions Requiring at Least One Council Meeting and One Federal Register Notice

These include all management actions other than "automatic" actions that are either non-discretionary or for which the scope of probable impacts has been previously analyzed. These actions are intended to have temporary effect and are expected to need frequent adjustment. They may be recommended at a single Council meeting (usually November), although it is preferable that the Council provide as much advance information to the public as possible concerning the issues it will be considering at its decision meeting. The primary examples are those management actions defined as "routine" according to the criteria in Section III.B.(a). If the Council's recommendations are approved, the Secretary will publish a single "notice" in the **Federal Register** making the action effective.

3. Abbreviated Rulemaking Actions Normally Requiring at Least Two Council Meetings and One Federal Register "Rule"

These include all management actions: (1) Being classified as "routine," or (2) intended to have permanent effect and which are discretionary, and for which the impacts have not been previously analyzed. Examples include changes to or imposition of some gear regulations, or imposition of trip landing or frequency limits for the first time on any species or species group, or gear type. The Council will develop and analyze the proposed management actions over the span of at least two Council meetings (usually September and November) and provide the public advance notice of the availability of both the proposals and the analysis and opportunity to comment on them prior to and at the second Council meeting. If the Regional Director approves the Council's recommendation, the Secretary is expected to waive for good cause the requirement for prior notice and comment in the **Federal Register** and publish a "final rule" in the **Federal Register**, which will remain in effect until amended. If a management measure is designated as "routine" by "final rule" under this procedure, specific adjustments of that measure can subsequently by announced in the **Federal Register** by "notice" as described in the previous paragraph. Nothing in this section III.B.3. prevents the Secretary from deciding to provide additional opportunity for prior notice and comment in the **Federal Register**, if appropriate, but presumes that the Council process will adequately satisfy that requirement.

Note: The primary purpose of the previous two categories of procedures is to accommodate the Council's September-November meeting schedule for developing annual management recommendations, to satisfy the Secretary's responsibilities under the Administrative Procedure Act, and to address the need to implement management measures by January 1 of each fishing year. It should also be noted that the two Council meeting process refers to two decision meetings, the first meeting to develop proposed management measures and their alternatives, the second meeting to make a final recommendation to the Secretary. For the Council to have adequate information to identify proposed management measures for public comment at the first meeting, the identification of issues and the development of proposals normally must begin at a prior Council meeting, usually the July Council meeting.

4. Full Rulemaking Actions Normally Requiring at Least Two Council Meetings and Two Federal Register Notices of Rulemaking (Regulatory Amendment)

These include any proposed management measure that is highly controversial or any measure that directly allocates the resource. The Council normally will follow the two meeting procedure described for the abbreviated rulemaking category. The Secretary will publish a proposed rule in the **Federal Register** with an appropriate period for public comment, followed by publication of a final rule in the **Federal Register**.

Management measures recommended to address a resource conservation issue must be based upon the establishment of a "point of concern" and consistent with the specific procedures and criteria listed in section III.B.(b).

Management measures recommended to address social or economic issues must be consistent with the specific procedures and criteria described in section III.B.(c).

(a) *Routine Management Measures*

"Routine" management measures are those that the Council determines are likely to be adjusted on an annual or more frequent basis. Measures are classified as "routine" by the Council through either the full or abbreviated rulemaking process (III.B.3 or III.B.4. above). For a measure to be classified as "routine," the Council will determine that the measure is of the type normally used to address the issue at hand and may require further adjustment to achieve its purpose with accuracy.

As in the case of all proposed management measures, prior to initial implementation of "routine" measures, the Council will analyze the need for the measures, their impacts and the rationale for their use. Once a management measure has been classified as "routine" through a rulemaking procedure, it may be modified thereafter through the single meeting "notice" procedure (II.B.2. above) only if: (1) The modification is proposed for the same purpose as the original measure, and (2) the impacts of the modification are within the scope of the impacts analyzed when the measure was originally classified as "routine." The analysis of impacts need not be repeated when the measure is subsequently modified, if they do not differ substantially from those contained in the original analysis. The Council may also recommend removing a "routine" classification.

Amendment 4 initially classifies the measures listed below by species and gear type as "routine" measures due to the long history of their usage in the fishery and the extensive knowledge of their impacts:

Trip landing and frequency limits

Widow rockfish—all gear
Sebastes complex—all gear
Yellowtail rockfish—all gear
Pacific ocean perch—all gear
Sablefish (including size limits)
  trawl gear
  nontrawl gear

Recreational bag and size limits

Lingcod
Rockfish

Any measure designated as "routine" for one specific species, species group, or gear type may not be treated as "routine" for a different species, species group or gear type without first having

been classified as "routine" through the rulemaking process.

The Council will conduct a continuing review of landings of those species for which harvest guidelines, quotas or specific "routine" management measures have been implemented, and will make projections of the landings at various times throughout the year. If in the course of this review it becomes apparent that the rate of landings is substantially different than anticipated and that the current "routine" management measures will not achieve the annual management objectives, the Council may recommend inseason adjustments to those measures. Such adjustments may be implemented through the single meeting "notice" procedure.

(b) *Resource Conservation Issues—The "Points of Concern" Framework*

A Council-appointed management ream (the Groundfish Management Team or GMT) will monitor the fishery throughout the year, taking into account any new information on the status of each species or species group, to determine whether a resource conservation issue exists that requires a management response. In conducting its review, the GMT will utilize the most current catch, effort and other relevant data from the fishery.

In the course of the continuing review, a "point of concern" occurs when any one or more of the following is found or expected:

1. Catch for the calendar year is projected to exceed the best current estimate of ABC for those species for which a harvest guideline or quota is not specified;
2. Catch for the calendar year is projected to exceed the current harvest guideline or quota;
3. Any change in the biological characteristics of the species/species complex is discovered, such as changes in age composition, size composition, and age at maturity;
4. Exploitable biomass or spawning biomass is below a level expected to produce MSY for the species/species complex under consideration; or
5. Recruitment is substantially below replacement level.

Once a "point of concern" is identified, the GMT will evaluate current data to determine if a resource conservation issue exists and will provide its findings in writing at the next scheduled Council meeting. If the GMT determines a resource conservation issue exists, it will provide its recommendation, rationale, and analysis for the appropriate management measures that will address the issue.

10. Gear limitations, which include but are not limited to definitions of legal gear, mesh size specifications, codend specifications, and marking requirements, and other gear specifications as necessary.
11. Observer coverage
12. Reporting requirements
13. Permits
14. Other necessary measures

Direct allocation of the resource between different segments of the fishery is, in most cases, not the preferred response to a resource conservation issue. Council recommendations to allocate directly the resource will be developed according to the criteria and process described in Section III.B.(c), the socio-economic framework.

After receiving the GMT's report, the Council will take public testimony and, if appropriate, will recommend management measures to the NMFS Regional Director accompanied by supporting rationale and analysis of impacts. The Council's analysis will include a description of (a) how the action will address the resource conservation issue consistent with the objectives of Amendment 4; (b) likely impacts on other management measures and other fisheries; and (c) economic impacts, particularly the cost to the commercial and recreational segments of the fishing industry.

The NMFS Regional Director will review the Council's recommendation and supporting information and, if he concurs, will follow the appropriate implementation process described in Section III.B., depending on the amount of public notice and comment provided by the Council, the intended permanence of the management action, and other applicable law. If the Council contemplates the need for frequent adjustments to the recommended measures, it may classify them as "routine" through the appropriate process described in section III.B.(a).

If the NMFS Regional Director does not concur with the Council's recommendation, the Council will be notified in writing of the reasons for the rejection.

Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under section 305(e) of the Magnuson Act.

(c) *Non-Biological Issues—The Socio-Economic Framework*

From time to time non-biological issues may raise that require the Council to recommend management actions to address certain social or economic issues in the fishery. Resource allocation, seasons or landing limits based on market quality and timing, safety measures, and prevention of gear conflicts make up only a few examples of possible management issues with a social or economic basis. In general, there may be any number of situations where the Council determines that management measures are necessary to achieve the stated social and/or economic objectives of the FMP.

Either on its own initiative or by request, the Council may evaluate current information and issues to determine if social or economic factors warrant imposition of management measures to achieve the Council's established management objectives. Actions that are permitted under this framework include all of the cagetories of actions authorized under the "points of concern" framework with the addition of direct resource allocation.

If the Council concludes that a management action is necessary to address a social or economic issue, it will prepare a report containing the rationale in support of its conclusion. The report will include the proposed management measure, a description of other viable alternatives considered, and an analysis that addresses the following criteria: (a) How the action is expected to promote achievement of the goals and objectives of the FMP; (b) likely impacts on other management measures and other fisheries; (c) biological impacts; (d) economic impacts, particularly the cost to the fishing industry; and (e) how the action is expected to accomplish at least one of the following:

1. Enable a quota, harvest guideline, or allocation to be achieved;
2. Avoid exceeding a quota, harvest guideline, or allocation;
3. Extend domestic fishing and marketing opportunities as long as practicable during the fishing year, for those sectors for which the Council has established this policy;
4. Maintain stability in the fishery by continuing management measures for species that previously were managed under the points of concern mechanism;
5. Maintain or improve product volume and flow to the consumer;
6. Increase economic yield;
7. Improve product quality;
8. Reduce anticipated discards;
9. Reduce gear conflicts, or conflicts between competing user groups;
10. Develop fisheries for underutilized species with minimal impacts on existing domestic fisheries;
11. Increase sustainable landings;
12. Increase fishing efficiency;
13. Maintain data collection and means for verification;

14. Maintain or improve the recreational fishery; or

15. Any other measurable benefit to the fishery.

The Council, following review of the report, supporting data, public comment and other relevant information, may recommend management measures to the NMFS Regional Director accompanied by relevant background data, information and public comment. The recommendation will explain the urgency in implementation of the measure(s), if any, and reasons therefore.

The NMFS Regional Director will review the Council's recommendation, supporting rationale, public comments and other relevant information, and, if approved, will undertake the appropriate method of implementation. Rejection of the recommendation will be explained in writing.

If conditions warrant, the Council may designate a management measure developed and recommended to address social and economic issues as a "routine" management measure, provided that the criteria and procedures in Section III.B.(a) are followed.

Quotas, including allocations, implemented through this framework will be set annually and may be modified inseason only to reflect technical corrections of ABC. (In contrast, quotas may be imposed at any time of year for resource conservation reasons under the points of concern mechanism.)

(c)(i) *Allocation*

In addition to the requirements in Section III.B.(c), the Council will consider the following factors when intending to recommend direct allocation of the resource.

1. Present participation in and dependence on the fishery, including alternative fisheries;

2. Historical fishing practices in, and historical dependence on, the fishery;

3. The economics of the fishery;

4. Any consensus harvest sharing agreement or negotiated settlement between the affected participants in the fishery;

5. Potential biological yield of any species or species complex affected by the allocation;

6. Consistency with the national standards of the Magnuson Act;

7. Consistency with the goals and objectives of Amendment 4.

The modification of a direct allocation cannot be designated as "routine" unless the specific criteria for the modification have been established in the regulations.

IV. Restrictions on Other Fisheries

For each non-groundfish fishery considered, a reasonable limit on the incidental groundfish catch may be established that is based on the best available information (from experimental fishing permits, logbooks, observer data, or other scientifically acceptable sources). These limits will remain unchanged unless substantial changes are observed in the condition of the groundfish resource or in the effort or catch rate in the groundfish or non-groundfish fishery.

Incidental limits or species categories may be imposed or adjusted in accordance with the appropriate procedures described in Section III. The Secretary may accept or reject but not substantially modify the Council's recommendations. The trip limits for the pink shrimp and spot and ridgeback prawn fisheries in effect when Amendment 4 is implemented will be maintained until modified based on the above criteria through the management adjustment framework.

The objectives of this framework are to:

1. Minimize discards in the non-groundfish fishery by allowing retention and sale, thereby increasing fishing income;

2. Discourage targeting on groundfish by the non-groundfish fleet; and,

3. Reduce the administrative burden of reviewing and issuing EFPs for the sole purpose of enabling non-groundfish fisheries to retain groundfish.

V. Procedure for Reviewing State Regulations

Any state may propose that the Council review a particular state regulation for the purpose of determining its consistency with the FMP and the need for complementary Federal regulations. Although this procedure is directed at the review of new regulations, existing regulations affecting the harvest of groundfish managed by the FMP may also be reviewed under this process. The state making the proposal will include a summary of the regulations in question and concise arguments in support of consistency.

Upon receipt of a state's proposal, the Council may make an initial determination whether or not to proceed with the review. If the Council determines that the proposal has insufficient merit or little likelihood of being found consistent, it may terminate the process immediately and inform the petitioning state in writing of the reasons for its rejection.

If the Council determines sufficient merit exists to proceed with a determination, it will review the state's documentation or prepare an analysis considering, if relevant, the following factors:

1. How the proposal furthers or is not otherwise inconsistent with the objectives of the FMP, the Magnuson Act, and other applicable law;

2. The likely effect on or interaction with any other regulations in force for the fisheries in the area concerned;

3. The expected impacts on the species or species group taken in the fishery sector being affected by the regulation;

4. The economic impacts of the regulation, including changes in catch, effort, revenue, fishing costs, participation, and income to different sectors being regulated as well as to sectors which might be indirectly affected; and,

5. Any impacts in terms of achievement of quotas or harvest guidelines, maintaining year-round fisheries, maintaining stability in fisheries, prices to consumers, improved product quality, discards, joint venture operations, gear conflicts, enforcement, data collection, or other factors.

The Council will inform the public of the proposal and supporting analysis and invite public comments before and at the next scheduled Council meeting. At its next scheduled meeting, the Council will consider public testimony, public comment, advisory reports, and any further state comments or reports, and determine whether or not the proposal is consistent with the FMP and whether or not to recommend implementation of complementary Federal regulations or to endorse state regulations as consistent with the FMP without additional Federal regulations.

If the Council recommends the implementation of complementary Federal regulations, it will forward its recommendation to the NMFS Regional Director for review and approval.

The NMFS Regional Director will publish the proposed regulation in the **Federal Register** for public comment, after which, if approved, he will publish final regulations as soon as practicable. If the Regional Director disapproves the proposed regulations, he will inform the Council in writing of the reasons for his disapproval.

[FR Doc. 90-21831 Filed 9-11-90; 5:13 pm]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 55, No. 180
Monday, September 17, 1990

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

Forest Service

Electronic Communication Rental Fee Schedule for the Pacific Northwest Region

AGENCY: Forest Service, USDA.

ACTION: Notice of market survey to update the rental fee schedule for electronic communication sites.

SUMMARY: The Forest Service, USDA, hereby gives notice that it is preparing a market survey to adjust the existing schedule of rental fees for communication uses on National Forest System lands located in the Pacific Northwest Region. Comments from interested individuals and users are welcome.

DATES: Comments must be received in writing by October 15, 1990.

ADDRESSES: Send written comments to John F. Butruille, Regional Forester, Pacific Northwest Region, P.O. Box 3623, Portland, OR 97208-3623. The public may inspect comments received on this new study in the office of the Director Lands and Minerals, 8th Floor, Multnomah Building, 319 SW. Pine Street, Portland, OR 97208-3623, between the hours of 8 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Lisa Freedman, Lands Staff, Pacific Northwest Region, 319 SW. Pine Street, (P.O. Box 3623), Portland, OR 97208-36, phone (503) 326-2921.

SUPPLEMENTARY INFORMATION: On December 11, 1986, the Pacific Northwest Region of the Forest Service published in the Federal Register a fee schedule for electronic communication sites (51 FR 44646). That schedule set forth the annual rental fees for different types and intensities of communication uses for areas and zones with similar fees on National Forest System land in the States of Oregon and Washington. The fee schedule required that it be updated every 5 years based on an updated market analysis. That market analysis will be completed by the end of 1990. After the analysis is complete, the Forest Service will prepare a new fee schedule for communication uses on National Forest System land.

To prepare the market analysis, the Forest Service plans to collect transaction data from other agencies, private fee appraisers, communications specialists, private communication transactions, courthouse records, National Forest communication site holders and other sources. A letter will be sent to all communication site permit holders, informing them of the market analysis and asking for comments. The analysis will establish fair annual rent estimates for the following categories of use.

A. Broadcast
1. Television Broadcast
2. Radio Broadcast (FM & AM)
3. Broadcast Translator

B. Two-Way Microwave
1. Common Carrier Microwave Relay
2. Industrial Microwave

C. Two-Way Mobile Radio
1. Amateur Radio
2. Cellular
3. Mobile Radio
4. Passive Reflector
5. Receive only: Cable/Subscription & Personal Receive

D. Other
1. Radio Astronomy
2. Radar
3. VHF Omnirange
4. Distance Measuring Station

Dated: September 10, 1990.

John E. Lowe,
Deputy Regional Forester.

[FR Doc. 90-21914 Filed 9-14-90; 8:45 am]

BILLING CODE 3410-11-M

Restrictions on Exports of Unprocessed Timber from National Forest System Lands

AGENCY: Forest Service, USDA.

ACTION: Notice of statutory restrictions.

SUMMARY: the Forest Resources Conservation and Shortage Relief Act of 1990 was signed into law on August 20, 1990. Certain provisions of the Act became immediately effective. To ensure that interested and/or affected parties are aware of these restrictions, the Forest Service is issuing this notice setting forth the statutory prohibitions which apply as of August 20, 1990.

EFFECTIVE DATE OF THIS NOTICE: Except as otherwise noted, the provisions contained in this notice became effective August 20, 1990.

FOR FURTHER INFORMATION CONTACT: Ron Lewis, Timber Management Staff, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090-6090 Telephone: (202) 475-3755.

SUPPLEMENTARY INFORMATION: The Forest Resources Conservation and Shortage Relief Act of 1990 (101 Stat. 714-726; 16 U.S.C. 620 *et. seq.*) was enacted on August 20, 1990. The Act prohibits the export of unprocessed timber originating from Federal lands west of the 100th meridian in the contiguous 48 States and restricts substitution of unprocessed Federal timber for timber exported from private lands. A summary of the restrictions which became effective August 20 follows.

Exporting of unprocessed Federal timber

Section 489 of the Act (16 U.S.C. 620a) prohibits any person who acquires unprocessed timber originating from Federal lands west of the 100 meridian in the contiguous 48 States from exporting, selling, trading, exchanging, or otherwise conveying such timber to any other person for the purpose of exporting such timber from the United States. This prohibition does not apply to specific quantities and species of unprocessed timber from Federal lands that the Secretary of Agriculture determines to be surplus to domestic manufacturing needs. Current determinations of surplus species will remain in effect until hearings are held to determine new surplus species.

Section 493 of the Act (16 U.S.C. 620e) defines "person" as any individual, partnership, corporation, association, or other legal entity and includes any subsidiary, subcontractor, parent company or business affiliate where one affiliate controls or has the power to control the other or when both are controlled directly or indirectly by a third person.

Section 497 of the Act (16 U.S.C. 620h) provides that all timber sale contracts entered into between a purchaser and the Secretary of Agriculture prior to enactment (August 20, 1990) will

continue to be governed by the Secretary's log export restriction rules in existence at the time the contracts were awarded (36 CFR part 223, subpart D).

Substitution

The Act also prohibits the use of unprocessed Federal timber to offset or substitute for timber volumes exported from private lands. The Act addresses both direct and indirect substitution.

Direct Substitution

Section 490 of the Act (16 U.S.C. 620b) prohibits all persons from purchasing unprocessed timber directly from any Department or agency of the United States, if such timber is to be used in substitution for exported unprocessed timber originating from private lands, or if such person has, during the preceding 24-month period, exported unprocessed timber originating from private lands. The Act exempts any person from the 24-month test who has in the past legally substituted Federal timber for exported private timber under an historic export quota approved by the Secretary of Agriculture, provided that person certifies within 3 months that the person will cease exporting unprocessed timber originating from private lands within 6 months after the date of enactment of this Act. The deadline for certifications to be received is November 20, 1990; the deadline for ceasing exports from private lands is February 20, 1991.

Section 490 of the Act further provides for a direct substitution phase-out period for the operator of the Cooperative Sustained Yield Unit in the State of Washington.

Indirect Substitution

Section 490 of the Act (16 U.S.C. 620b) prohibits, as of September 10, 1990, indirect substitution of unprocessed timber originating from Federal lands west of the 100th meridian in the contiguous 48 States for exported unprocessed timber from private lands. No person may obtain unprocessed timber from any other person if such person would be prohibited from obtaining unprocessed timber directly from a Department or Agency of the United States. The Act provides for a limited exception for companies that indirectly acquire unprocessed timber from the National Forest System lands within the State of Washington, and specifically excludes from the indirect substitution prohibition persons who indirectly acquire and domestically process Western Red Cedar originating from Federal lands.

Applicability to Existing Contracts

Section 490 of the Act states that contracts entered into after adoption of its implementing regulations will be governed by those regulations. However, certain contracts entered into after enactment (August 20, 1990), but before the date of issuance of those regulations will be governed by the Secretary of Agriculture's substitution regulations currently in effect. Specifically, the Secretary's current regulations apply to direct substitution of Federal timber, and indirect substitution of National Forest timber from the State of Washington, purchased pursuant to timber sale contracts entered into after enactment (August 20, 1990), but before implementing regulations are issued.

Civil Penalties and Remedies

Section 492 of the Act (16 U.S.C. 620d) provides for civil penalties of $500,000 for each violation or three times the gross value of the unprocessed timber involved in the violation, whichever amount is greater. These penalties are not exclusive of any other penalty provided by law. Any person who violates the prohibition may be debarred for up to 5 years and may have contracts cancelled. The civil penalties and administrative remedies provided in the Act for violations of these prohibitions are effective immediately.

The agency is proceeding to develop rules necessary to implement the Act. These rules will be published in the **Federal Register.**

Dated: September 10, 1990.

George M. Leonard,

Associate Chief.

[FR Doc. 90-21916 Filed 9-14-90; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Oceanic and Atmospheric Administration.

Title: Report of Transmitting Antenna Construction, Alteration, or Removal.

Form number: NOAA Form 76-10; OMB-0648-0096.

Type of request: Request for extension of the expiration date of a currently approved collection without any change in the substance or method of the collection.

Burden: 780 respondents; 195 reporting hours; average hours per response—.125 hours.

Needs and uses: Any construction, alteration, or removal of radio transmitting antenna must be reported. The information is used to produce accurate aeronautical charts.

Affected public: State or local governments, businesses or other for profit, federal agencies or employees, non-profit institutions, small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB desk officer: Ronald Minsk, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230. Written comments and recommendations for the proposed information collection should be sent to Ronald Minsk, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: September 12, 1990.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 90-21866 Filed 9-14-90; 8:45 am]

BILLING CODE 3510-CW-M

Economic Development Administration

Membership; Senior Executive Service, Performance Review Board

Below is a listing of individuals who are eligible to serve on the Performance Review Board in accordance with the Economic Development Administration Senior Executive Service (SES) Performance Appraisal System:

Craig M. Smith, John E. Corrigan, Charles E. Oxley, George Muller, David Farber, Ruth L. Kleinfeld, Hugh M. Farmer.

Edward A. McCaw,

Executive Secretary, Economic Development Administration, Performance Review Board.

[FR Doc. 90-21814 Filed 9-14-90; 8:45 am]

BILLING CODE 3510-BS-M

National Oceanic and Atmospheric Administration

Caribbean Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Caribbean Fishery Management Council's Adminstrative Committee will hold a public meeting on September 19, 1990, at the Hotel Pierre, San Juan, Puerto Ricola Verde, San Juan, Puerto Rico.

The Administrative Committee will begin meeting at 10 a.m. to discuss the status of the Council's budget for 1991–93, and the projection for the remainder of 1990, and regular Council adminstrative matters.

For more information contact Miguel A. Rolon, Executive Director, Caribbean Fishery Management Council, Banco de Ponce Building, suite 1108, Hato Rey, Puerto Rico 00918–2577; telephone: (809) 766–5926.

Dated: September 11, 1990.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90–21816 Filed 9–14–90; 8:45 am]

BILLING CODE 3510-22-M

North Pacific Fishery Management Council Addition of Meeting Agenda Items

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The agenda, published in the Federal Register at 55 FR 36845, on September 7, 1990, for the North Pacific Fishery Management Council's public meeting in Anchorage, AK, on September 25–29, 1990, has been amended to include discussion of the following items:

Additional Agenda Items

1. When discussing the current inshore-offshore allocation analysis, Council members will determine whether to limit the analysis to pollock and eliminate Pacific cod.

2. The Council also will discuss community development quotas.

All other information as originally published remains unchanged. For more information contact Steve Davis, Deputy Director, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 271–2809.

Dated: September 11, 1990.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90–21817 Filed 9–14–90; 8:45 am]

BILLING CODE 3510-22-M

Taking and Importing of Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of finding of conformance.

SUMMARY: The Assistant Administrator for Fisheries, NMFS, announces that the Government of Ecuador has submitted documentary evidence which establishes under the yellowfin tuna importation regulations that the average rate of incidental taking by its vessels is comparable to the average rate of incidental taking of marine mammals by United States vessels in the course of harvesting yellowfin tuna by purse seine in the eastern tropical Pacific Ocean, and that the other requirements for an affirmative finding allowing importation have been met. As a result of this affirmative finding, yellowfin tuna and tuna products from Ecuador can be imported into the United States through December 31, 1990.

DATES: This finding is effective September 11, 1990, and remains in effect until December 31, 1990, or until superseded.

FOR FURTHER INFORMATION CONTACT: E. Charles Fullerton, Regional Director, or J. Gary Smith, Deputy Regional Director, Southwest Region, National Marine Fisheries Service, NOAA, 300 South Ferry Street, Terminal Island, CA 90731, Phone: (213) 514–6196.

SUPPLEMENTARY INFORMATION: On March 30, 1990, the NMFS promulgated a final rule (55 FR 11921) to implement portions of the Marine Mammal Protection Act Amendments of 1988. This rule governs the importation of yellowfin tuna caught by purse seining in the eastern tropical Pacific Ocean (ETP). Additionally, on May 10, 1989 (54 FR 20171), the NMFS published a final determination to accept an alternative international observer coverage program for 1989, establishing observer coverage requirements for the non-U.S. tuna fleet in the ETP.

On August 28, 1990, the United States District Court for the Northern District of California ordered an embargo of all yellowfin tuna and yellowfin tuna products harvested with purse seines in the ETP by foreign nations. The embargo remains in effect until the Secretary of Commerce makes affirmative findings based upon documentary evidence provided by the government of the exporting nation that the average rate of the incidental taking by vessels of such foreign nation is no more than 2.0 times that of United States vessels during the same period.

The Assistant Administrator, after consultation with the Department of State, finds that the Government of Ecuador has submitted documentary evidence which establishes under the tuna importation provisions of 50 CFR 216.24 (e), that the average rate of the incidental taking by its vessels is no more than 2.0 times that of the U.S. vessels during the same period. As a result of this affirmative finding, yellowfin tuna and tuna products from Ecuador can be imported into the United States through December 31, 1990.

Dated: September 11, 1990.

Michael F. Tillman,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 90–21904 Filed 9–14–90; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve a new information collection requirement concerning Right of First Refusal of Employment.

ADDRESSES: Send comments to Ms. Eyvette Flynn, FAR Desk Officer, OMB room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. John O'Neill, Office of Federal Acquisition and Regulatory Policy, (202) 501–3856.

SUPPLEMENTARY INFORMATION:

a. Purpose

Right of Refusal of Employment is a regulation which establishes policy regarding displaced Government employees resulting from the conversion from in-house performance to performance by contract. The policy will enable these employees to have an opportunity to work for the contractor who is awarded the contract. The information gathered will be used by the Government to gain knowledge of which employees, displaced as a result of the contract award, have gained employment with the contractor within 90 days of the contract start date.

b. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, 130; responses per respondent, 1; total annual responses, 130; perparation hours per response, 3; and total response burden hours, 390.

c. Annual Recordkeeping Burden

The annual recordkeeping burden is estimated as follows: Recordkeepers, 100; hours per recordkeeper, .5; and total recordkeeping burden hours, 50.

OBTAINING COPIES OF PROPOSALS: Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), room 4041, Washington, DC 20405, telephone (202) 501-4755. Please cite OMB Control No. 9000-0XXX, Right of First Refusal of Employment.

Dated: September 7, 1990.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 90-21820 Filed 9-14-90; 8:45 am]

BILLING CODE 6820-34-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Renewal of the Defense Intelligence Agency Advisory Board

SUMMARY: Under the provisions of Public Law 92-463, "Federal Advisory Committee Act," notice is hereby given that the Strategic Defense Initiative Advisory Committee has been renewed, effective September 7, 1990.

The Defense Intelligence Agency Advisory Board provides the Director, Defense Intelligence Agency and other Defense Department officials with scientific and technical expertise and advise on current and long-term operational and intelligence matters covering the total range of the mission of the Defense Intelligence Agency. The Board provides a link between the scientific/technical and military operations communities of the United States and the Defense Intelligence Agency. Issues addressed by the Board include intelligence support to combat units, joint intelligence doctrine, net assessments, arms control, and integration of intelligence and operational planning.

The Defense Intelligence Agency Advisory Board will continue to be composed of approximately 25 to 30 members who are acknowledged leaders and experts in scientific and technical areas relating to Defense Intelligence Agency programs. The members will be a well-balanced composite of renowned individuals drawn from academic institutions, national laboratories, industry, and the private sector to ensure that affected interest groups will be well represented and that assigned advisory functions will be performed.

Dated: September 12, 1990.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90-21883 Filed 9-14-90; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

Privacy Act of 1974; Addition of Record Systems

AGENCY: Department of the Air Force, DoD.

ACTION: New record systems.

SUMMARY: The Department of the Air Force proposes to add three new record systems to its inventory of record systems subject to the Privacy Act of 1974, as amended, (5 U.S.C. 552a).

DATES: The record systems will be effective October 17, 1990, unless comments are received which result in a contrary determination.

ADDRESSES: Send any comments to Mrs. Anne Turner, SAF/AAIA, The Pentagon, Washington, DC 20330-1000. Telephone (202) 697-3491 or Autovon 227-3491.

SUPPLEMENTARY INFORMATION: The Department of the Air Force record systems notices subject to the Privacy Act of 1974, as amended, (5 U.S.C. 552a), have been published in the Federal Register as follows:

50 FR 22332 May 29, 1985 (DoD compilation, changes follow)
50 FR 24672 Jun. 12, 1985
50 FR 25737 Jun. 21, 1985
50 FR 46477 Nov. 8, 1985
50 FR 50337 Dec. 10, 1985
51 FR 4531 Feb. 5, 1986
51 FR 7317 Mar. 3, 1986
51 FR 16735 May 6, 1986
51 FR 18927 May 23, 1986
51 FR 41382 Nov. 14, 1986
51 FR 44332 Dec. 9, 1986
52 FR 11845 Apr. 13, 1987
53 FR 24354 Jun. 28, 1988
53 FR 45800 Nov. 14, 1988
53 FR 50072 Dec. 13, 1988
53 FR 51301 Dec. 21, 1988
54 FR 10034 Mar. 9, 1989
54 FR 43450 Oct. 25, 1989
54 FR 47550 Nov. 15, 1989
55 FR 21770 May 29, 1990
55 FR 21900 May 30, 1990 (AF Address Directory)
55 FR 27868 Jul. 6, 1990
55 FR 28427 Jul. 11, 1990
55 FR 34310 Aug. 22, 1990

The new record systems, as required by 5 U.S.C. 552a(r) of the Privacy Act, were submitted on September 5, 1990, to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget (OMB) pursuant to paragraph 4b of Appendix I to OMB Circular No. A-130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated December 12, 1985 (50 FR 52730, December 24, 1985).

Dated: September 12,1990.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F110 USAFE A

SYSTEM NAME:

F110 USAFE A—Civil Process Case Files.

SYSTEM LOCATION:

Office of the Staff Judge Advocate General/JAS, Headquarters, United States Air Forces in Europe, APO New York 09094-5001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military members and civilian employees and their dependents upon whom service is made of documents issued by German courts, customs and taxing agencies, and other administrative agencies.

CATEGORIES OF RECORDS IN THE SYSTEM:

Documents from German authorities regarding payment orders, execution orders, demands for payment of indebtedness, notifications to establish civil liability, customs and tax demands, assessing fines and penalties, demands for court costs or for costs for administrative proceedings summons and subpoenas, paternity notices, complaints, judgments, briefs, final and interlocutory orders, orders of confiscation, notices, and other judicial or administrative writs; correspondence between United States (US) Government

authorities and the Federal Republic of Germany; identifying data on individuals concerned; and similar relevant documents and reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force; powers and duties, delegation by; Agreement to Supplement the Agreement between the Parties to the North Atlantic Treaty regarding the Status of their Forces with respect to Foreign Forces stationed in the Federal Republic of Germany (NATO SOFA Supplementary Agreement); 1 United States Treaty 531; Treaties and Other International Acts Series 5351, and 48 United Nations Treaties Series 262, Article 32; and Executive Order 9397.

PURPOSE(S):

To ensure that military members and civilian employees' obligations under the NATO SOFA Supplementary Agreement are honored and the rights of these personnel are protected by making legal assistance available.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The Department of the Air Force "Blanket Routine Uses" published at the beginning of the agency's compilation apply to this system.

Information may be disclosed to authorities of the Federal Republic of Germany, which may be further disclosed to claimants, creditors or their attorneys.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and cards in steel filing cabinets.

RETRIEVABILITY:

By individual's surname.

SAFEGUARDS:

All information is maintained in areas accessible only to designated individuals having official need therefor in the performance of their duties. Records are housed in buildings protected by military police or security guards.

RETENTION AND DISPOSAL:

Paper records are destroyed 2 years after completion of case; card files are retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Office of the Staff Judge Advocate General/JAS, Headquarters, United States Air Forces in Europe, APO New York 09094-5001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this record system contains information on themselves may write to or visit the Office of the Staff Judge Advocate General/JAS, Headquarters, United States Air Forces in Europe, APO New York 09094-5001.

Individuals should furnish their full name, rank/grade, Social Security Number, sufficient details to permit locating the records, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system may write to or visit the Office of the Staff Judge Advocate General/JAS, Headquarters, United States Air Forces in Europe, APO New York 09094-5001.

Individuals should furnish their full name, rank/grade, Social Security Number, sufficient details to permit locating the records, and signature.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12-35; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The individual to whom the record pertains, German authorities and Air Force records and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F168 TAC A

SYSTEM NAME:

F168 TAC A—Physician Retention Program.

SYSTEM LOCATION:

Headquarters, Tactical Air Command (HQ TAC), Langley Air Force Base, VA 23665-5578, and at all TAC medical facilities. Official mailing addresses are published as an appendix to the Air Force's compilation of record system notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Practitioners who are members of the United States Air Force Medical Service or civil service employees and who are assigned to, employed by, or practice in any TAC medical facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Social Security Number, duty title, specialty and Air Force Specialty Code, information on service commitment, educational background, personal goals, career goals, and future plans; spouse's name, spouse's occupation, children's names and ages. Date entered Air Force, past duty assignments, reasons for entering and remaining, and future assignment desires. Deterrents to making the Air Force a career.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force; powers and duties, delegation by; as implemented by Air Force Regulation 168-4, Tactical Air Command Supplement 1, Administration of Medical Activities, and Executive Order 9397.

PURPOSE(S):

To assist in retaining qualified physicians beyond their initial service commitments.

To identify and reduce or eliminate irritants to each physician.

Information is solicited to make future career assignments and reassess irritants and reasons for dissatisfaction.

Information is summarized and presented to a retention committee.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The Department of the Air Force "Blanket Routine Uses" published at the beginning of the agency's compilation of record system notices apply to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders and visible file binders/cabinets and computer and computer products.

RETRIEVABILITY:

Filed by name, Social Security Number, and location.

SAFEGUARDS:

Records are accessed by custodian of the record system; by person(s) responsible for servicing the record system in performance of their official duties; by commanders of TAC medical facilities, and HQ TAC surgeon general personnel with an official need to know. Computers and disks will be stored in locked cabinets or locked rooms.

RETENTION AND DISPOSAL:

Records are transferred to the gaining TAC medical facility if reassigned within TAC. If separated or reassigned outside of TAC, records will be retained for one year then destroyed by tearing into pieces, shredding, pulping,

macerating, or burning. Electronic data will be erased upon separation or reassignment to a non-TAC medical facility.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters, Tactical Air Command, Director of Professional Services, Langley Air Force Base, VA 23665-5578, ATTN: Physician Retention Officer.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this record system contains information on themselves should address inquiries to the medical facility Physician Retention Officer where assigned. Official mailing addresses are published as an appendix to the Air Forces' compilation of record system notices.

For records maintained at HQ TAC, contact Headquarters, Tactical Air Command, Director of Professional Services Langley Air Force Base, VA 23665-5578, ATTN: Physician Retention Officer.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address requests to the medical facility Physician Retention Officer where assigned. Official mailing addresses are published as an appendix to the Air Forces' compilation of record system notices.

For records maintained at HQ TAC, contact Headquarters, Tactical Air Command, Director of Professional Services, Langley Air Force Base, VA 23665-5578, ATTN: Physician Retention Officer.

CONTESTING RECORD PROCEDURES:

The Air Force rule for accessing records and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12-35; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is obtained from subject of the record.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F215 AF DP A

SYSTEM NAME:

F215 AF DP A—Child Development/ Youth Activities Records.

SYSTEM LOCATION:

Headquarters Air Force Military Personnel Center, Directorate of Morale and Welfare Operations (HQ AFMPC/ DPMS), Randolph Air Force Base, TX 78150-6001, major command headquarters, and each Air Force installation with Child Development/ Youth Activities programs. Official mailing addresses are published as an appendix to the Air Force's compilation of record system notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Eligible children and youths enrolled in Air Force Child Development or Youth Activities programs and their parents/guardians.

CATEGORIES OF RECORDS IN THE SYSTEM:

Enrollment/registration records; record of injuries; medication permission records; permanent register; staff and child record; weekly activity plans; incident reports; annual and semiannual program reports; parents/ guardians and program surveys; parents'/guardians authorization for testing/field trips; student progress reports; test results; forwarding of school records; daily reservation logs; daily attendance records, and volunteers applications. The system will also contain family day care (FDC) license applications; FDC license, and FDC home approval records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force; Powers and Duties; delegation by; implemented by Air Force Regulations 215-27, Child Development Program, and 215-23, Youth Activities.

PURPOSES(S):

Used by child development and youth activities personnel to enroll children/ youths in the child development/youth activities programs; locate parents/ guardians in cases of emergency; monitor and properly report injuries and accidents; receive documentation and permission to dispense medications; record and monitor staff-to-child ratio; report program participation and activities; report financial data; assess program needs; enroll and license family day care providers; record, reserve, and monitor daily attendance; and maintain information for waiting lists.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The Department of the Air Force "Blanket Routine Uses" published at the beginning of the agency's compilation of record system notices apply to this record system.

Records from this system may be disclosed to civilian physicians or hospitals in the course of obtaining emergency medical attention for children.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and card stock records maintained in file folders. Data will also be maintained in computer files.

RETRIEVABILITY:

Filed by family name.

SAFEGUARDS:

Records are maintained in locked file cabinets, locked desk drawers or locked offices. Computers and disks wil be stored in locked cabinets or locked rooms. Records are accessed by the program directors, assistant directors, family day care coordinators/out-reach workers and clerks/administrative personnel responsible for servicing the records in performance of their official duties who are properly screened and cleared for need-to-know.

RETENTION AND DISPOSAL:

Retained in office files for one year after child/youth leaves program or until parent/FDC provider requests transfer of records to another base, whichever, comes first. In the event the records are not transferred, they will be destroyed by tearing into pieces, shredding, pulping, macerating, or burning. Computerized records will be erased, deleted, or typed over.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters Air Force Military Personnel Center, Directorate of Morale and Welfare Operations, Randolph Air Force Base, TX 78150-6001 and Child Development/Youth Activities Directors at Air Force installations with Child Development/Youth Activities programs. Official mailing addresses are published as an appendix to the Air Force's compilation of record system notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this record system contains information on themselves should address inquiries to, or visit the Headquarters Air Force Military Personnel Center, Directorate of Morale and Welfare Operations, Randolph Air Force Base, TX 78150-6001 and Child Development/Youth Activities Directors at Air Force installations with Child Development/Youth Activities programs. Official mailing addresses are published as an appendix to the Air Force's compilation of record system notices.

The full name of the person/provider will be required to determine if the system contains a record about him or her. A military identification card or drivers license will be required as proof of identity.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address requests to the Headquarters Air Force Military Personnel Center, Directorate of Morale and Welfare Operations, Randolph Air Force Base, TX 78150-6001 and Child Development/Youth Activities Directors at Air Force installations with Child Development/Youth Activities programs. Offical mailing addresses are published as an appendix to the Air Force's compilation of record system notices.

A military identification card or drivers license will be required as proof of identity.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12-35; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from parents, volunteers, FDC applicants, and documentation by authorized child development and/or youth activities personnel.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 90-21884 Filed 9-14-90; 8:45 am]

BILLING CODE 3810-01-M

Department of the Navy

Notice of Postponement of Public Hearing and Extension of Comment Period for the Draft Environmental Impact Statement for Possible Base Closure of Naval Ordnance Station, Louisville, KY

The public hearing scheduled for September 20, 1990 for the Draft Environmental Impact Statement for Possible Base Closure of Naval Ordnance Station (NOS) Louisville, as announced in the **Federal Register** on Tuesday, September 4, 1990, is hereby postponed. Subsequent information regarding the public hearing will be provided at a later date. In addition, the public review period for the DEIS is extended from October 15, 1990 to November 15, 1990.

Dated: September 12, 1990.

Jane M. Virga,

Lt, JAGC, USNR, Alternate Federal Register Liaison Officer.

[FR Doc. 90-21917 Filed 9-14-90; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.132]

Centers for Independent Living, Inviting Applications for New Awards for Fiscal Year (FY) 1991

Purpose of Program: To provide grants for the establishment and operation of Centers for Independent Living that provide a combination of the independent living services described in section 711(c) (2) of the Rehabilitation Act of 1973, as amended (the Act).

Deadline for Transmittal of Applications

Designated State Units: March 14, 1991.

Local Public Agencies or Private Nonprofit Organizations: April 26, 1991.

Designated State units may also submit applications until April 26, but those applications will not receive preference over other applications received. Applications from local public agencies or private nonprofit organizations cannot be accepted until after March 14, 1991.

Deadline for Intergovernmental Review: June 26, 1991.

Applications Available: December 14, 1990.

Available Funds: $26,000,000.

Estimated Range of Awards: $175,000-$500,000.

Estimated Average Size of Awards: $260,000.

Estimated Number of Awards: 100.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 366.

Eligible Applicants: Under section 711(a) of the Act the Secretary is authorized to award grants for the establishment and operation of Centers for Independent Living to any designated State unit (DSU) that administers the State plan under section 705 of the Act. In addition, section 711(d) of the Act permits local public agencies or private nonprofit organizations within the State to apply and compete for grants under this program on the same basis as the DSU if, in any fiscal year, a DSU has not applied for a grant within three months after the date the Secretary begins accepting applications. For fiscal year 1991 the Secretary will begin accepting applications on December 14, 1990.

If a DSU decides that it does not plan to submit an application for a grant under this program before the expiration of the three-month period during which DSUs have absolute priority under this program, the Secretary urges the DSU to make this decision known to any local public agency or private nonprofit organization within the State that might be interested in applying for a grant under this program.

Invitational Priorities: The Secretary is particularly interested in applications that meet one of the following invitational priorities:

Priority 1: State Agency Collaboration with Private Nonprofit Organizations or Local Public Agencies

Projects that would establish Centers for Independent Living through State agency (designated State unit) collaboration with private nonprofit organizations or local public agencies that have a history of successfully operating a Center for Independent Living. Collaborative projects that also demonstrate innovative methods for serving minorities with severe disabilities, individuals with Acquired Immune Deficiency Syndrome (AIDS), youth with severe disabilities, or elderly individuals with severe disabilities are encouraged. Projects are also encouraged to provide no fewer than eight of the services described in section 711(c) (2) of the Act.

Priority 2: Indian Reservations

Projects that would establish Centers for Independent Living on Indian reservations.

However, under 34 CFR 75.105(c) (1) an application that meets one of these invitational priorities does not receive competitive or absolute preference over other applications.

For Applications or Information Contact: Sherrita Gary, U.S. Department of Education, 400 Maryland Avenue, SW., room 3332, Switzer Building, Washington, DC 20202-2649. Telephone: (202) 732-1351; deaf and hearing impaired persons may call the Federal Dual Party Relay Service on 1-800-877-8339.

Program Authority: 29 U.S.C. 796(e).

Dated: September 11, 1990.

Robert R. Davila,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 90-21784 Filed 9-14-90; 8:45 am]

BILLING CODE 4000-01-M

Office of Postsecondary Education

CFDA Nos. 84.055A, 84.055B, 84.055C and 84.055D]

Title VIII of the Higher Education Act of 1965, as amended, (20 U.S.C. 1133-1133b): Cooperative Education Program

AGENCY: Department of Education.

ACTION: Notice of Technical Assistance Workshop: Cooperative Education Program.

SUMMARY: This is a supplement to the notice inviting applications for new awards for fiscal year 1991 under the Cooperative Education Program pubished in the Combined Application Notice (CAN) in this issue of the Federal Register. The Secretary of education will sponsor a two-day Technical Assistance Workshop for institution of higher education and public and private nonprofit agencies and organizations interested in applying for new and noncompeting continuation Cooperative Education Program grant awards for Administration, Demonstration, Research, and Training and Resource Center projects. Representatives of the Division of Higher Education Incentive Programs will conduct this workshop, and will review and discuss the authorizing statute and the regulations governing applications for new and noncompeting continuation projects application selection criteria, project budgets, and grant management and accountability issues.

The workshop is designed to assist those entities interested in applying for Cooperative Education Program funding, and in understanding better how to conduct federally funded Copoperative Education projects in accordance with current Department of Education policies, procedures and practices.

DATE: October 29-30, 1990.

TIME: 8 a.m. to 4:30 p.m., both days.

PLACE: Washington Plaza Hotel, Vermont and Massachusetts avenues, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Dr. John E. Bonas or Mrs. Darlene B. Collins, U.S. Department of Education, Division of Higher Education Incentive Programs, 400 Maryland Avenue, SW., Washington, DC 20202-5251. Their respective telephone numbers are (202) 708-9407 and (202) 708-9404. The workship is free, but because of limited space, prospective participants must register in advance. Registration forms can be obtained by contracting Ms. Edith Braxton, telephone (202) 708-9434.

(Catalog of Federal Domestic Assistance Nos. 84.055A, 84.055B, 84.055C, and 84.055D, Cooperative Education Program: Administration, Demonstration, Research, and Training and Resource Center Projects, respectively.)

Dated: September 6, 1990.

Leonard L. Haynes III,

Assistant Secretary for Postsecondary Education.

[FR Doc. 90-21786 Filed 9-14-90; 8:45 am]

BILLING CODE 4000-01-M

Direct Grant Programs and Fellowship Programs; Availability of Service for the Deaf and Hearing Impaired

AGENCY: Department of Education.

In a separate notice in this issue of the Federal Register, the Secretary of Education has published a notice inviting applications for new awards for fiscal year 1991 under many of the Department's direct grant and fellowship programs and announcing deadline dates for the transmittal of applications under those programs.

The respective announcements for the individual programs announced or referenced in that combined application notice contain addresses and telephone numbers for obtaining applications for, or further information about, those programs.

Some of the programs may also list a separate TDD (Telecommunications Device for the Deaf) number for the deaf and hearing impaired. Many programs do not have a separate TDD listing. However, for TDD service, any program in the combined application notice that does not have its own specified TDD number can be contacted via the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern time.

Dated: September 11, 1990.

Robert R. Davila,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 90-21793 Filed 9-14-90; 8:45 am]

BILLING CODE 4000-01-M

[CFDA No.: 84.129T]

Experimental and Innovative Training; Inviting Applications for New Awards for Fiscal Year (FY) 1991

Purpose of Program: To provide grants to develop new types of training programs, demonstrate the effectiveness of these new programs, and develop new, improved methods of training rehabilitation personnel.

Deadline for Transmittal of Applications: March 15, 1991.

Deadline for Intergovernmental Review: May 15, 1991.

Applications Available: January 15, 1991.

Available Funds: $150,000.

Estimated Range of Awards: $60,000-100,000.

Estimated Average Size of Awards: $80,000.

Estimated Number of Awards: 2.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR parts 385 and 387.

Priorities: The Secretary is particularly interested in funding applications that meet the following invitational priority:

Projects that propose to develop innovative training methodologies to maintain and improve the skills and quality of State vocational rehabilitation personnel with regard to the rehabilitation of persons with learning disabilities or persons with severe head injuries.

However, under 34 CFR 75.105(c)(1) an application that meets this invitational priority does not receive competitive or absolute preference over other applications.

For Applications or Information Contact: Sherrita Gary, U.S. Department of Education, 400 Maryland Avenue, SW., room 3332, Switzer Building, Washington, DC 20202-2649. Telephone: (202) 732-1351; deaf and hearing impaired persons may call the Federal Dual Party Relay Service on 1-800-877-8339.

Program Authority: 29 U.S.C. 774.

Dated: September 11, 1990.

Robert R. Davila,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 90-21787 Filed 9-14-90; 8:45 am]

BILLING CODE 4000-01-M

Office of Special Education and Rehabilitative Services

[CFDA Nos.: 84.133C, 84.133F, 84.133G, and 84.133P]

National Institute on Disability and Rehabilitation Research; Inviting Applications for New Awards Under Certain Programs for Fiscal Year 1991

AGENCY: Department of Education, Office of Special Education and Rehabilitation Services.

ACTION: Correction notice.

SUMMARY: On August 1, 1990 a notice inviting applications for new awards under certain programs for fiscal year 1991 was published at 55 FR 31318. This notice corrects the expiration date as published in that notice.

On page 31321, third column, last paragraph, the last line is corrected to read as follows: Expiration Date: September 30, 1992.

FOR FURTHER INFORMATION CONTACT: The National Institute on Disability and Rehabilitation Research, 400 Maryland Avenue SW., Washington, DC 20202. Telephone: (202) 732-1207; deaf and hearing impaired persons may call (202) 732-5316 for TDD services.

Authority: 29 U.S.C. 760-762.

Dated: September 11, 1990.

Robert R. Davila,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 90-21785 Filed 9-14-90; 8:45 am]

BILLING CODE 4000-01-M

[CFDA No.: 84.129]

Rehabilitation Long-Term Training, Inviting Applications for New Awards for Fiscal Year (FY) 1991

Purpose of Program: To provide grants to increase the supply of qualified rehabilitation personnel and to maintain and upgrade the skills and knowledge of personnel who provide vocational and independent living rehabilitation services.

Deadline for Transmittal of Applications: November 30, 1990.

Deadline for Intergovernmental Review: January 30, 1991.

Applications Available: September 28, 1990.

Available Funds: $6,325,000.

Awards are to be made in various priority areas. Specific information regarding the estimated range of available funds, range of awards, average size of awards, and number of awards appears in the chart in this notice.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR parts 385 and 386.

Priorities:

Absolute Priorities

Under 34 CFR 75.105(c)(3) and 34 CFR 386.1 the Secretary gives an absolute preference to applications that meet one of the following priorities:

Applications that propose to provide training in one of the following areas of personnel shortages:

Areas	Estimated range of available funds (dollars in thousands)	Estimated range of awards (dollars in thousands)	Estimated average size of awards	Estimated number of awards
Rehabilitation Medicine	$400-600	$80-120	$100,000	4-6
Prosthetics and Orthotics	140-210	140-210	175,000	1
Rehabilitation Facility Administration	280-420	110-170	135,000	3-4
Rehabilitation Administration	580-870	190-290	* 240,000	3
Physical Therapy	240-360	80-120	100,000	3
Occupational Therapy	100-150	50-80	65,000	1-2
Rehabilitation Engineering	240-360	80-120	100,000	2-3
Vocational Evaluation and Work Adjustment	320-480	80-120	100,000	3-4
Rehabilitation Workshop and Facility Personnel	560-840	95-145	120,000	6-7
Rehabilitation of the Mentally Ill	320-480	80-120	100,000	4-5
Rehabilitation Psychology	200-300	55-85	70,000	3-4
Specialized Personnel for Supported Employment	160-240	80-120	100,000	2-3
Undergraduate Education in the Rehabilitation Services	200-300	80-120	100,000	2-3
Independent Living	80-120	80-120	100,000	1
Rehabilitation of the Blind	400-600	80-120	100,000	4-6
Rehabilitation of the Deaf	400-600	80-120	100,000	4-6
Rehabilitation Job Development and Job Placement	160-240	65-95	80,000	2-3
Client Assistance	80-120	80-120	100,000	1
Other Fields Contribution to the Rehabilitation of Individuals with Handicaps, Especially Individuals with Severe Handicaps, Including Homebound or Institutionalized Individuals	200-300	200-300	250,000	1

* The Secretary may allow a larger award for projects that are national in scope.

Under 34 CFR 75.105(c)(3) the Secretary funds under this competition only applications that meet one or more of these absolute priorities.

Invitational Priorities

Priority 1: Under the absolute priority of Rehabilitation Administration, the Secretary is particularly interested in funding applications that meet one of the following invitational priorities:

(a) A project of national scope designed to improve the knowledge and skills of rehabilitation personnel in executive and middle management positions; or

(b) A project of regional or State scope designed to improve the knowledge and skills of rehabilitation personnel in positions of administration, management, and first line supervision.

Priority 2: Under the absolute priority of Rehabilitation of the Deaf, the Secretary is particularly interested in funding applications that meet the following invitational priority:

Projects for specialized preparation of personnel for employment in agencies and facilities providing rehabilitation services to individuals who are hard of hearing. *The National Health Interview Survey* (1988) estimates that between 22 to 28 million Americans experience hearing loss. Approximately two million of these individuals are described as deaf; the remainder are considered hard of hearing. The Gallaudet University Center for Assessment and Demographic Studies further estimates

that nearly 60% of individuals who are hard of hearing are between the ages of 18 and 64, and thus may experience some level of work disability.

Priority 3: Under the absolute priority of Rehabilitation Psychology, the Secertary is particularly interested in funding applications that meet the following invitational priority:

Projects that train personnel to provide psychological services in rehabilitation settings with particular emphasis upon individuals with traumatic brain injuries, specific learning disabilities, or long-term mental illness. The Secretary further welcomes applications under this invitational priority with a training program curriculum content that includes: (1) Skills training in developing psychological reports reflecting functional capacities and limitations of individuals with disabilities, especially those with traumatic brain injuries, specific learning disabilities, or long-term mental illness; and (2) skills training of vocational rehabilitation personnel in interpreting diagnostic reports from psychologists.

However, under 34 CFR 75.105(c)(1) an application that meets one of these invitational priorities does not receives competitive or absolute preference over other applications.

FOR APPLICATIONS OR INFORMATION CONTACT: Sherrita Gary, U.S. Department of Education, 400 Maryland Avenue, SW., room 3332, Switzer Building, Washington, DC 20202-2649. Telephone: (202) 732-1351; deaf and hearing imparied persons may call the Federal Dual Party Relay Service on 1-800-877-8339.

Program Authority: 29 U.S.C. 774.

Dated: September 11, 1990.

Robert R. Davila,

Assistant Secretary, Office of Special Education and Rehabilitiative Services.

[FR Doc. 90-21789 Filed 9-14-90; 8:45 am]

BILLING CODE 4000-01-M

[CFDA No.: 84.129B]

Rehabilitation Long-Term Training—Rehabilitation Counseling; Inviting Applications for New Awards for Fiscal Year (FY) 1991

Purpose of Program: To provide grants to increase the supply of qualified rehabilitation personnel and to maintain and upgrade the skills and knowledge of personnel who provide vocational and independent living rehabilitation services.

Deadline for Transmittal of Applications: February 12, 1991.

Deadline for Intergovernmental Review: April 12, 1991.

Applications Available: November 27, 1990.

Available Funds: $1,400,000

Estimated Range of Awards: $50,000-150,000.

Estimated Average Size of Awards: $100,000.

Estimated Number of Awards: 17.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR parts 385 and 386.

Priorities: Under 34 CFR 75.105(c)(3) and 34 CFR 386.1 the Secretary gives an absolute preference to applications that propose to privide training in rehabilitation counseling, which the Secretary has identified as an area of personnel shortage. Under this area, the Secretary is particularly interested in funding applications that meet one of the following invitational priorities:

Priority 1: Master's Program

Projects offering training at the master's level through established graduate rehabilitation counseling programs that are accredited by the Council on Rehabilitation Education. Project funds may be used to support tuition, fees, stipends and other training allowances for students. Preference in the award of scholarships may be given to individuals who work in the public vocational rehabilitation service delivery system.

Priority 2: Doctoral Program

Projects offering training at the doctoral level through established graduate rehabilitation counseling programs that are accredited by the Council on Rehabilitation Education. Project funds may be used to support tuition, fees, stipends and other training allowances for students. Preference in the award of scholarships may be given to individuals who have academic degrees in rehabilitation counseling and work experience in the public public vocational rehabilitation service delivery system.

However, under 34 CFR 75.105(c)(1) an application that meets one of these invitational priorities does not receive competitive or absolute preference over other applications.

FOR APPLICATIONS OR INFORMATION CONTACT: Sherrita Gray, U.S. Department of Education, 400 Maryland Avenue, SW., room 3332, Switzer Building, Washington, DC 20202-2649. Telephone: (202) 732-1351; deaf and hearing impaired persons may call the Federal Dual Party Relay Service on 1-800-877-8339.

Program Authority: 29 U.S.C. 774.

Dated: September 11, 1990.

Robert R. Davila,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 90-21790 Filed 9-14-90; 8:45 am]

BILLING CODE 4000-01-M

[CFDA No. 84.129V]

State Vocational Rehabilitation Unit In-Service Training, Inviting Applications for New Awards for Fiscal Year (FY) 1991

Purpose of Program: To provide grants for in-service training to State vocational rehabilitation unit personnel in areas essential to effective management or in skill areas to improve the provision of vocational rehabilitation services.

Deadline for Transmittal of Applications: June 5, 1991.

Deadline for Intergovernmental Review: August 5, 1991.

Applications Available: April 3, 1991.

Available Funds: $1,500,000.

Funds are available under this program for the support of new projects in Regions I, II, V, VI, VII, and IX.

Estimated Range of Awards: $2,000-127,000.

Estimated Average Size of Awards: $40,000.

Estimated Number of Awards: 37.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR parts 385 and 388.

For Applications or Information Contact: Sherrita Gary, U.S. Department of Education, 400 Maryland Avenue, SW., room 3332, Switzer Building, Washington, DC 20202-2649. Telephone: (202) 732-1351; deaf and hearing impaired persons may call the Federal Dual Party Relay Service on 1-800-877-8339.

Program Authority: 29 U.S.C. 774.

Dated: September 11, 1990.

Robert R. Davila,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 90-21788 Filed 9-14-90; 8:45 am]

BILLING CODE 4000-01-M

Indian Education National Advisory Council; Meeting

AGENCY: National Advisory Council on Indian Education, ED.

ACTION: Notice of partially closed meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming partially closed meeting of the National Advisory Council on Indian Education. This notice also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend the open portions of the meeting.

DATES: September 17–18, 1990, 9:30 a.m. until conclusion of business each day.

ADDRESSES: 330 C Street SW., room 4409–C, Switzer Building, Washington, DC 202–732–1353.

FOR FURTHER INFORMATION CONTACT: Jo Jo Hunt, Executive Director, National Advisory Council on Indian Education, 330 C Street SW., room 4072, Switzer Building, Washington, DC 20202–7556, (202–732–1353).

SUPPLEMENTARY INFORMATION: The National Advisory Council on Indian Education is established under section 5342 of the Indian Education Act of 1988 (25 U.S.C. 2642). The Council is established to, among other things, assist the Secretary of Education in carrying out responsibilities under the Indian Education Act of 1988 (Part C, title V, Public Law 100–297) and to advise Congress and the Secretary of Education with regard to federal education programs in which Indian children or adults participate or from which they can benefit.

On September 17, 1990, the National Advisory Council on Indian Education will meet in open session starting at approximately 9:30 a.m. and will end at the conclusion of business at approximately 5 p.m. The agenda includes reports by the Chairman and Executive Director; reports on planning activities for the White House Conference on Indian Education and activities of the Indian Nations At Risk Task Force; report on Indian education issues; and report on the fiscal year 1990 Council budget.

On September 18, 1990, the Council will meet in open session starting at approximately 9:30 a.m. and will end at the lunch break at approximately 12 noon. The agenda includes report on legislation affecting Indian education; planning of Council activities for fiscal year 1991; and planning of the agenda of the full Council meeting to be held in October 1990 in conjunction with the meeting of the National Indian Education Association in San Diego, California, and any site visits in California.

On September 18, 1990, the Council will meet in closed session starting at approximately 1 p.m. and ending at the conclusion of business at approximately 5 p.m. The agenda will consist of a review of allegations of improprieties during selection of the Council's Executive Director, briefing on the ongoing investigation of this matter, and review of allegations of improprieties by a Council official.

The closed portion of the meeting of the National Advisory Council on Indian Education will touch upon matters that relate solely to the internal personnel rules and practices of an agency and will disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session. Such matters are protected by exemptions (2) and (6) of section 552b(c) of the Government in the Sunshine Act (Public Law 94–409; 5 U.S.C. 552b(c)).

The public is being given less than 15 days notice due to the special nature of this meeting of the Council and the need to hold the meeting as soon as possible.

A summary of the activities of the closed portion of the meeting and related matters which are informative to the public consistent with the policy of title 5 U.S.C. 552b will be available to the public within 14 days of the meeting.

Records shall be kept of all Council proceedings and shall be available for public inspection at the Office of the National Advisory Council on Indian Education located at 330 C Street SW., room 4072, Washington, DC 20202–7556.

Dated: September 12, 1990.

Signed at Washington, DC.

Jo Jo Hunt,

Executive Director, National Advisory Council on Indian Education.

[FR Doc. 90–21468 Filed 9–13–90; 10:12 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Determination of Noncompetitive Financial Assistance; Alabama A&M University

AGENCY: Department of Energy (DOE).

ACTION: Notice.

SUMMARY: DOE announces that pursuant to 10 CFR 600.7(b)(2), it intends to renew on a noncompetitive basis a grant to Alabama A&M University to support the University's institutional capacity to carry out energy-related research. The grant is being renewed for a one-year period, effective September 30, 1990. The total estimated cost is $519,310, which consists of DOE funding in the amount of $164,978 and recipient cost sharing of $354,332.

Procurement request No.: 05–900R21701.001.

Project scope: This grant renewal will allow the recipient to pursue its goal to promote energy-based science and technology research and development efforts at the Alabama A&M University and thereby increase the pool of minorities pursuing research careers in these areas. During this phase of the project, the recipient will focus on implementing a semi-autonomous Research and Public Service foundation; developing a centralized document processing center to aid in proposal and progress report development; and enhancing the University's research capability in specific energy-related areas. Accomplishments during the initial phase of the project indicate that Alabama A&M University will successfully achieve these objectives with continued DOE funding and that competition for support would result in considerable delay in achieving some of the results anticipated during the upcoming phase of the project as well as inhibit the objectives of the DOE Minority Educational Institution Assistance Program. Award is therefore restricted to Alabama A&M University.

FOR FURTHER INFORMATION CONTACT: Rufus H. Smith, DOE Project Officer, Office of the Manager, Oak Ridge Operations, U.S. Department of Energy, P.O. Box 2001, Oak Ridge, TN 37831–8503, (615) 576–4988.

Issued in Oak Ridge, Tennessee, on September 10, 1990.

Peter D. Dayton,

Director, Procurement and Contracts Division, Oak Ridge Operations.

[FR Doc. 90–21925 Filed 9–14–90; 8:45 am]

BILLING CODE 6450–01–M

Determinations of Noncompetitive Financial Assistance; Clark Atlanta University

AGENCY: Department of Energy (DOE).

ACTION: Notice.

SUMMARY: DOE announces that pursuant to 10 CFR 600.7(b)(2), it intends to renew on a noncompetitive basis a grant to Clark Atlanta University to support the institution's efforts in improvement of the administrative

infrastructure of the University's Center for Computational Sciences.

The grant is being renewed for a one-year period, effective September 30, 1990. The total estimated cost is $362,424, which consists of DOE funding in the amount of $290.694 and recipient cost sharing of $71,730.

PROCUREMENT REQUEST NO.: 05-900R21700.001 .

PROJECT SCOPE: This grant renewal will allow the recipient to continue efforts in improving the administrative infrastructure of the University's Center for Computational Sciences and, additionally, enhance the pool of minorities pursuing careers in energy-related science and technology. Objectives of the project are development of a minority education institution consortium for environmental sciences nd engineering with DOE laboratories, EPA laboratories, the National Institutions of Health, minority universities, and minority businesses; development of software engineering, data base, neural networks, and artificial intelligence research and education programs; presentations and solicitiations at major corporations and foundations for program support; strengthening the HBCU Fossil Energy Consortium; planning a high technology incubator program; developing linkages with minority business; and development of aerospace and other engineering sciences research and education, with Georgia Institute of Technology and Massachusetts Institute of Technology. Accomplishments during the initial phase of the project indicate that Clark Atlanta University will successfully achieve these objectives with continued DOE funding and that competition for support would result in considerable delay in achieving some of the results anticipated during the upcoming phase as well as inhibit the objectives of the DOE Minority Educational Institution Assistance Program. Award is therefore restricted to Clark Atlanta University.

FOR FURTHER INFORMATION CONTACT: Rufus H. Smith, DOE Project Office of the Manager, Oak Ridge Operations, U.S. Department of Energy, P.O. Box 2001, Oak Ridge, TN 37831-8503, (615) 576-4988.

Issued in Oak Ridge, Tennessee, on September 10, 1990.

Peter D. Dayton,

Director, Procurement and Contracts Division, Oak Ridge Operations.

[FR Doc. 90-21926 Filed 9-14-90; 8:45 am]

BILLING C)DE €450-01-M

[No. DE-PS07-90ID13022]

Solicitation for Financial Assistance; Participation in the Department of Energy Electric and Hybrid Vehicle Site Operator Program

The U.S. Department of Energy (DOE), Idaho Operations Office requests applications on the basis of open competition, for cost sharing the test and evaluation of electric and hybrid vehicles in support of its Electric and Hybrid Vehicle (EHV) Program. The statutory authority for this action is the Electric Vehicle and Hybrid Vehicle Research, Development and Demonstration Act of 1976 (Pub. L. 94-413). This announcement is the complete solicitation document and no other document for this work is available. The objective of this program is to execute one or more instruments to support the test and evaluation of electric vehicles and components being used in an operating environment. Award of Cooperative Agreements is anticipated. DOE and/or DOE Contractors (hereafter referred to as DOE) will be substantially involved in the projects. This involvement will include shared responsibility by DOE and the participant for the direction of the project. DOE and the participant will jointly determine what special tests, if any, will be conducted; the content and format for reports; the type of data that will be taken; and what equipment (exclusive of vehicles) will be procured. DOE will also have the right to intervene in the conduct or performance of the project activities for programmatic reasons. Intervention will include the interruption or modification of the conduct or performance of the project activities. DOE will coordinate activities between the other DOE Electric Vehicle Program activities and the site operator program. Modifications will be made to assure that the site operator program continues to meet DOE needs and goals. A statement of substantial involvement further specifying the anticipated involvement of DOE during performance will be incorporated within the award instrument.

All projects will be cost shared by DOE and the participant. Applicants should be aware that any awardee will be required to have a cost share of not less than 50 percent of the cost of any vehicles purchased and not less than 20 percent of the total cost of the program. No fee or profit will be paid to the recipients of the awards. DOE anticipates that approximately $1M will be available for support of activities during FY-91. It is anticipated that there will be four or more awards with a maximum DOE participation of $250K/year. Available funds for out years is anticipated to be at basically the same level. Negotiation, award, and administration will be in accordance with DOE Financial Assistance Regulations (10 CFR part 600). The Catalog of Federal Assistance number for this program is 81.086.

It is anticipated that project duration will be approximately five years. Initial awards will be for one year, with extensions, contingent on available funding, for following years. Applications submitted in response to this solicitation should provide detailed cost, schedule, and budget information for the first year and less detailed information for subsequent years, as further specified in this solicitation.

Public Law 94-413, enacted on September 17, 1976, then modified by Public Law 95-238, authorized the U.S. Department of Energy (DOE) to conduct a program of research, development and demonstration designed to promote electric and hybrid vehicle technologies to commercial feasibility. Test and evaluation of electric and hybrid vehicles, components and batteries were among the activities specified by this legislation. In the period since the enactment of the enabling legislation the DOE has supported an ongoing program directed toward supporting the development of commercially viable electric and hybrid vehicles. Current program direction is centered in three areas. These are vehicle and component performance and acceptability, vehicle and component maintenance requirements, and battery performance and life. Performance measurements include such items as energy consumption, range, and acceleration. Acceptability involves the ability of the vehicle to perform its assigned mission and the operators subjective evaluation of the vehicle. Components are evaluated for their ability to support and enhance vehicle performance, for example, will an air conditioner cool the vehicle and at what cost in range and performance. Component evaluation includes both on board and off board items. Two of the areas where servicing requirements for electric vehicles have been greater than desired are watering and charging. The Site Operator program has supported work to develop better methods to water both lead acid and nickel iron batteries, the two types which power all but a very few of the EVs in use today. These have included such approches as devices which will automatically stop the water flow to a battery when the water level has

reached the appropriate level and single point systems which allow all modules in a pack to be watered from one location on the vehicle.

Maintenance measurements include type, frequency, and cost of any maintenance performed on the vehicle. Areas of interest include routine maintenance, such as watering the battery pack, and breakdowns, both items tyyical for all vehicles and those unique to electric and hybrid vehicles. Battery performance is measured as a function of vehicle range and pack life. Pack life is measured both as a function of time and number of charge-discharge cycles the pack undergoes. Battery packs are normally subjected to capacity tests on a regular basis to monitor performance.

This test and evaluation program is designed to provide data which can be used by manufacturers and potential manufacturers to improve the design of electric vehicles. These improvements are aimed at making the electric vehicle commercially feasible for the manufacturer and acceptable to the driving public. Specific areas of interest include battery management, electronics and drive train efficiency and reliability, and operator/passenger ergonomics. The Site Operator Program is a field test of EV technology, as opposed to a demonstration of any specific product or products. The project plans must include data collection and analysis and provide the flexibility to test new technology on component and vehicle levels. The testing is expected to occur on a daily basis and should be integrated into existing fleet operations to minimize special treatment. Vehicle routes and missions should be predefined to minimize mismatched vehicle assignments. For the proposal phase a general description of types and numbers of vehicles and vehicle usage, and other equipment will be required. Please note that all vehicles, equipment, etc. will be procured by the awardee.

The applicant is to include a concise but definitive statement of objectives for inclusion into any resulting agreement. The individual key tasks are to be defined and listed in logical sequence. It is the responsibility of the applicant to include all items in the statement of objectives that are required to accomplish the stated purpose of the project. Each task is to be priced separately.

The application will be broken down into categories. The following is a list of the categories with a brief description of each. The application must address each category.

(a) *Program plan:* The applicant needs to submit a program plan detailing what exactly he proposes to do (short term goals and objectives) for the first year and how he plans to accomplish these goals and objectives with a detailed budget. This description should include what type of vehicles, equipment, etc. will be procured and the proposed sources. He also needs to submit the general long term goals and objectives with rough estimates for next four years.

(b) *Management plan:* In addition to documenting internal support the applicant should submit a management plan. The management plan should detail the organization of the proposed team; communications plans; points of contact internally and externally; team organization fit/connection within the applying organization.

(c) *Personnel:* The applicant should submit a list of all personnel that will comprise the site operator team. The list should include college degrees and prior personnel experience with fleet operations and maintenance; electric vehicles; program/project management; testing and evalaution; batteries; etc. in a chart matrix form with resumes documenting claimed experience. The program manager should have a college degree and at least five years program management experience. Project Engineers should have a BS degree and four years engineering experience in fleet operation and maintenance. Senior Technicians should have at least four years experience with batteries and/or vehicle maintenance and repair.

(d) *Facilities:* In addition to the garage facilities and equipment in the draft solicitation, the applicant should list all other office facilities and equipment that will also be used in the site operator program such as computers, printers, software, etc.

(e) *Location:* Climate has a significant impact on the performance of electric vehicles. In order to provide a comprehensive appraisal of EV performance, representatives are desired in all major climatic areas of the country. The application should clearly indicate where the vehicles will be operated, and typical climatic conditions for that (those) areas.

(f) *Environmental impact:* Since the environment is one of the major factors influencing electric vehicle development, participation by organizations within air quality "nonattainment areas" is desired. The application should contain environmental statistics for the area. These should include measured quantities for ozone, CO and NO_x and the corresponding allowed values. The application should also include the ratio of fossil to nonfossil fueled power generation for the utility serving the area, and any other significant environmental considerations.

(g) *External support:* Site operators are encouraged to involve local government and industry. Local support may be used to supplement internal funding and/or operations, but cannot replace itnernal management commitment. Any involvement by outside organizations should be defined in the application.

(h) *Special interest:* Collocated programs such as technical training, EV component manufacturing, etc. that may benefit, or be benefited by, the Site Operator Program will be considered. A description of any such program and the expected relationships should be included in the application.

(i) *Other:* In addition to the above the applicant should describe any additional capabilities and/or resources which the applicant believes would be advantageous to the program. These could, for example, include special computer capabilities, video services, etc.

(j) *Data collection and reports:* There should be a section in the applications that details the offeror's data collection plan and report submission to insure accurate data and timely submission of reports. This includes the applicant's quality assurance plan.

(k) *Experience:* The applicant should document the organizational experience with fleet operations, electric vehicles and government grants. The government grants documentation should include contrct number, agency name, performance period, agency program manager's name, phone number, etc.

Evaluation Criteria

All timely applications recieved will be evalauted and point scored in accordance with the technical evaluation criteria listed (in descending order of importance) below.

Technical Proposal Evaluation Criteria

The Technical Evaluation Criteria are weighted in the following manner: Criterion A is weighted approximately twice as much as Criterion B. Subcriterion A.1 is weighted about one and one-third as much as Subcriterion A.2 and A.3, which are weighted equally. Subcriterion B.1 is weighted equal to subcriterion B.2. Criterion C is weighted approximately one-third Criterion A. Subcriterion C.1 is weighted equal to subcriterion C.2. Criterion D is weighted approximately two-thirds Criterion C. subcriterion D.1 and subcriterion D.2 are weighted equally.

Criterion A: Experience, Facilities and Personnel

1. Experience will be evaluated to determine the applicants familiarity and background in the procurement, operation and maintenance of electric vehicles.

2. The description of the applicants facilities will be evaluated to determine the suitability for housing and maintaining the EV vehicle(s), and program staff.

3. Key personnel will be evaluated as to their capabilities in the EV area, as demonstrated by education and past work experience.

Criterion B: Program Plan and Management Plan

1. The Program Plan will be evaluated to determine the short and long-term objectives of the applicant, and the proposed methods of achieving these objectives. These will be compared with the goals of the Site Operator program.

2. The Management Plan will be evaluated to assess the quality of the provisions for technical, quality and administrative controls and to assure appropriate project maintenance and overall management.

Criterion C: External Support and Environmental Impact

1. The application will be evaluated to determine the extent of involvement in, and support of, the program by local industry and government.

2. The application will be evaluated to determine the potential for beneficial environmental impact through the use of EVs to replace internal combustion engine-powered vehicles.

Criterion D: Data Collection & Reporting, Special Interest, and Other

1. The Data Collection and Reports section of the application will be evaluated to determine the method(s) for insuring the accuracy and timeliness of reports and data.

2. The application will be evaluated to determine the potential benefit of any activities and/or capabilities of the applicant which are not directly related EV fleet operation, but which may enhance the program.

Applications shall be responsive to all the above criteria. Cost considerations will not be point scored or adjectively rated. In making the selection decision, the apparent advantages of individual technical applications will be weighed against the evaluated probable cost to the Government (including cost sharing) to determine whether better applications, excluding cost considerations are worth the evaluated probable cost differentials over other applications. If applications are very closely ranked and the Source Selection Official determines that the superiority in the technical aspects of the higher rated application(s) is not meaningful when viewed in relationship to lower rated applications, evaluated probable costs to the Government may form the basis for selection.

The Source Selection Official (SSO) will make selection for negotiations and award in accordance with the above evaluation criteria and in a manner which will further the DOE's programmatic goals.

In conducting the application evaluations, the government may use assistance and advice from non-government personnel. Applicants are therefore requested to state on the application cover sheet if they do not consent to use of non-government personnel. Applicants are further advised that DOE may be unable to give full consideration to an application submitted without such consent. Information contained in the applications shall be treated in accordance with the policies and procedures set forth in 10 CFR 600.18.

DOE reserves the right to fund, in whole or in part, any, all, or none of the applications submitted in response to the solicitation. DOE may require applications to be clarified or supplemented to the extent considered necessary, either through additional written submissions or oral presentations; however, the award may be made solely on the information contained in the application. DOE is under no obligation to pay for any costs associated with preparation or submission of applications if an award is not made. If an award is made, such costs may be allowable as provided in applicable cost principles.

Instructions and Other Information

Profit-making entities, individuals, educational or nonprofit institutions, and other entities, are eligible to submit applications in response to this solicitation. A-95 clearance is not required. Proposals from federal agencies and/or laboratories owned and operated, or under the direction of the Federal Government will also be accepted; however, any awards made such entities may not be subject to 10 CFR part 600. Application anticipating participation of a federal laboratory through subcontract, use agreement, or other arrangement must include satisfactory evidence of specific authorization from the cognizant federal agency.

Notice of Possible Availability of Loans for Bid Proposal Preparation by Minority Business Enterprises Seeking DOE Contracts and Assistance

Section 211(e)(1) of the DOE Act (Pub. L. 95-91 as amended by Pub. L. 95-619) authorizes the Department of Energy (DOE) to provide financial assistance to minority business enterprises to assist them in their efforts to participate in DOE acquisition and assistance programs. Financial assistance is in the form of direct loans to enable the preparation of bids or proposals for DOE contracts and assistance awards, subcontracts with DOE operating contractors, and contracts with subcontracts of DOE operating contractors. The loans are limited to 75 percent of the costs involved. Availability of these loans is subject to annual appropriation of funds and the remaining availability of funds from such appropriations under CFDA number 81.063. DOE not warrant that such assistance can be made available in sufficient time to prepare an application for this solicitation. DOE does point out that the program includes provisions for a preliminary review in advance of a specific loan request. Information regarding loan availability, eligibility criteria, and how to apply may be obtained from:

San Francisco Operations Office, USDOE, 1333 Broadway, Oakland, CA 94612, Attn: Minority Loan Program Office, (415) 273-6403

Each application in response to this solicitation should be prepared in one volume. One original and three copies of each application are required. Applications shall exclude material not essential to evaluation of the proposal. The application is to be prepared for the complete project including a detailed statement of objectives and cost estimate for the first year; more general task description and cost estimates are required, on an annual basis, for subsequent activities. Applications shall be as short as possible consistent with completeness, clearly and concisely written and neat and logically assembled. The importance of supplying full and competely responsive information for each of the evaluation criteria cannot be overemphasized. If the offer is submitted under a joint venture arrangement, this fact must be clearly set forth. The cost principles that shall apply will depend on the type of awardee(s): FAR 31.2 and DEAR 931.2 shall apply to commercial organizations, OMB Circular A-21 shall apply to institutions of higher education, OMB Circular A-87 shall apply to state and

local governments, and OMB Circular A-122 shall apply to nonprofit organizations. Reporting under any agreement awarded will be in accordance with DOE Order 1332.2 "Uniform Reporting System for Federal Assistance." The awardee(s) must have an accounting system capable of accumulating costs by project. All applicants are required to provide in their proposal the nine-digit Taxpayer Identification Number (TIN) assigned by the U.S. Internal Revenue Service. Applications must include completed Standard Forms 424 "Application for Federal Assistance," 424A "Budget Information," and 424B "Assurances," and include certifications for Drug-Free Workplace, Lobbying and Regarding Debarment, Suspension and Other Responsibility Matters—Primary Covered Transactions. These may be obtained from the DOE Contact Person named below. The specific reporting requirements, prepared in accordance with DOE Order 1332.2 "Uniform Reporting System for Federal Assistance," are also obtainable from the DOE Contact Person. Applications should be sumbitted to the DOE contact given below.

DATES: The application due date is 4 p.m., Mountain Daylight Time, October 15, 1990. Late applications will be handled in accordance with 10 CFR 600.13.

Prospective applicants intending to submit an application in response to this solicitation should notify the Contact Person below of their intent in writing. Questions regarding this solicitation should also be submitted to the Contact Person in writing by September 19, 1990. Questions and answers will be issued in writing by amendment to this solicitation. Copies of all amendments to this solicitation will be sent only to those notifying the Contact Person of their intent to submit an application. Selection is expected to be made October 26, 1990 and the earliest award(s) is expected to be to be made December 7, 1990. Unsuccessful applications will not be returned to the applicants and may be retained by DOE.

CONTACT: Three copies of each application and a signed original should be submitted to the DOE Contact Person:

Dallas L. Hoffer, Contracts Management Division, U.S. Department of Energy, Idaho Operations Office, 785 DOE Place, Idaho Falls, Idaho 83402-1129.

R.J. Hoyles,

Acting Director, Contracts Management Division.

[FR Doc. 90-21922 Filed 9-14-90; 8:45 am]

BILLING CODE 6450-01-M

Grant and Cooperative Agreement Awards; Idaho Operations Office: George Mason Law School

AGENCY: Department of Energy.

ACTION: Intent to negotiate a grant with George Mason Law School, Fairfax, Virginia.

SUMMARY: "Examination of the Regulatory Process Appropriate for the Licensing of Advanced Nuclear Reactors", The U.S. Department of Energy (DOE), Idaho Operations Office, intends to negotiate a grant, on a noncompetitive basis, with George Mason School of Law, Fairfax, Virginia. This grant is for approximately $182,602 and will carry the activity through September 30, 1992. This action is authorized by the Department of Energy Organization act, under Public Law 95-91. In a previous study, George Mason identified four principal areas of public concern regarding the safety of nuclear power. This grant will provide George Mason Law School with additional funding to examine the regulatory constraints and/or flexibility generated by the public's potential perception of the superior safety and environmental characteristics of advanced reactors. The objectives of the work are to determine how these perceptions affect the regulatory process and to quantify, if possible, what these perceptions are and then to identify how they may be met by advanced reactors and hence, indirectly, expedite the licensing process of advanced reactors. This information will then be provided to the utility companies to be used, as appropriate, in the licensing of the next generation of nuclear power. The authority and justification for determination of noncompetitive financial assistance is DOE Financial Assistance Rules 10 CFR part 600.7(b)(2)(i), (A). The activity to be funded is necessary to the satisfactory completion of, or is a continuation or renewal of, an activity presently being funded by DOE or another Federal agency, and for which competition for support would have a significant adverse effect on continuity or completion of the activity. The work definitely meets the intent of the Department of Energy's programatic mission and addresses a public need. Public response may be addressed to the contract specialist below.

CONTACT: U.S. Department of Energy, Idaho Operations Office, 785 DOE Place, Idaho Falls, Idaho 83402, James McGowan, Contract Specialist (208) 526-8779.

Dated: August 30, 1990

R. Jeffrey Hoyles,

Acting Director, Contracts Management Division.

[FR Doc. 90-21796 Filed 9-14-90; 8:45 am]

BILLING CODE 6450-01-M

Financial Assistance; State of Idaho, Boise, ID

ACTION: Notice of noncompetitive grant award to the State of Idaho.

Health Agreement

SUMMARY: The U.S. Department of Energy (DOE), Idaho Operations Office, intends to negotiate, on a noncompetitive basis, a grant for approximately $530,000 with the State of Idaho, Boise, ID. This grant will carry the activity through June 30, 1994. This action is authorized by 42 U.S.C. 2011 *et seq.*, Atomic Energy Act of 1954 as amended. The Secretary of Energy announced a Ten Point Plan designed to chart a new course for the DOE toward full accountability in the areas of environmental protection and public health and safety. Idaho was invited to participate in negotiations which lead to the execution of a formal Agreement between Idaho and DOE. The objective of the Agreement is to provide the State with the means to assume a more substantive role in evaluation of potential health risks, if any, arising out of or relating to activities at the INEL and evaluation of the health status of potentially exposed off-site populations within Idaho. These activities are expected to help assure the citizens of Idaho that DOE operations do not constitute a health hazard and to be beneficial in building public confidence in DOE programs. This grant award will implement this Agreement. The authority and justification for determination of noncompetitive financial assistance is DOE Financial Assistance Rules 10 CFR 600.7(b)(2)(i), (C). The applicant is a unit of government and the activity to be supported is related to performance of a governmental function within the subject jurisdiction, thereby precluding DOE provision of support to another entity. The work definitely meets the intent of the Secretary's Ten Point Plan and addresses a public need (assuring that DOE operations doe not constitute a health hazard). Public response may be addressed to the contract specialist below.

CONTACT: U.S. Department of Energy, Idaho Operations Office, 785 DOE Place, Idaho Falls, Idaho 83402, Marshall Garr, Contract Specialist (208) 526-1536.

Dated: September 4, 1990.

R. Jeffrey Hoyles,

Director, Contracts Management Division.

[FR Doc. 90-21924 Filed 9-14-90; 8:45 am]

BILLING CODE 6450-01-M

National Conference of State Legislators, Denver, CO; Intent To Negotiate a Non-Competitive Financial Assistance Award

AGENCY: Department of Energy.

ACTION: Notice of intent to negotiate a non-competitive financial assistance award with the National Conference of State Legislators, Denver, Colorado.

SUMMARY: "Energy Efficiency Options for State Legislators." The U.S. Department of Energy (DOE) Office of Conservation and Renewable Energy, through the DOE, Idaho Operations Office, Denver Support Office, intends to negotiate on a non-competitive basis, a cooperative agreement with the National Conference of State Legislators (NCSL), Denver, Colorado. This action is authorized by Public Law 95-91 (42 U.S.C. 7111) and Public Law 94-163 (42 U.S.C. 6321). The National Energy Strategy currently under development will contain options for energy efficiency, and many of the strategies will be implemented by State Governments. The NCSL has been invited to negotiate with the Denver Support Office leading to the execution of a cooperative agreement between it and DOE. The objective of the agreement is to assist the NCSL with the process of disseminating the contents of the National Energy Strategy to its state legislatures. This agreement will provide legislators with the means to assume a more substantive role in implementing the National Energy Strategy conservation goals. The authority and justification for determination of non-competitive financial assistance is DOE Financial Assistance Rules 10 CFR 600.7 (b)(2)(I)(i). The applicant has exclusive domestic capability to perform this activity based on the unique nature of the organization. No other national legislative organization exists which is governed by the State legislatures and directly funded by contributions from general tax revenue of the 50 States. The estimated cost for one year is expected to be approximately $150,000.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Idaho Operations Office, Denver Support Office, 1075 South Yukon Street, Lakewood, Colorado 80226, Margaret Learmouth, Contract Specialist, (303) 969-7000.

Dated: September 10, 1990.

R. J. Hoyles,

Acting Director, Contracts Management Division.

[FR Doc. 90-21861 Filed 9-14-90; 8:45 am]

BILLING CODE 6450-01-M

Financial Assistance, Reynolds Metals Co.

AGENCY: Department of Energy.

ACTION: Intent to negotiate a cost-sharing cooperative agreement with the manufacturing technology laboratory of the Reynolds Metals Company, Sheffield, AL.

SUMMARY: "Evaluation of TiB_2-G Cathode Components", the U.S. Department of Energy (DOE), Idaho Operations Office, intends to negotiate, on a noncompetitive basis, a cost-shared cooperative agreement having a duration of 3 years with the Reynolds Metals Company, Sheffield, AL. It is estimated that the total cost of the project will be approximately $3.1 million, DOE's share of the cost will total approximately $2.2 million. This unsolicited proposal was submitted by Reynolds under its own initiative in February 1990, and is accepted for support pursuant to the provisions of 10 CFR 600.14. The cooperative agreement will support research and development on application of wettable titanium diboride-graphite cathode components in retrofitted commercial Hall-Heroult alumina reduction cells for energy conservation through development and confirmation of the engineering design packages required as precursors to demonstration and industrial application. Reynold's unsolicited proposal has been accepted for DOE financial assistance based on its meeting the criteria outlined in the following paragraphs listed under 10 CFR 600.14: (a) The activity to be funded is an innovative approach relevant to a public purpose, and (d) the applicant possesses the facilities and techniques necessary to achieve the proposed project objectives. There are no recent, current, or planned solicitations under which this unsolicited proposal would be eligible for consideration. The work definitely meets the intent of the Department of Energy's Industrial Conservation Program, is authorized by the Steel and Aluminum Energy Conservation and Technology Competitiveness Act of 1988 (Pub. L. No. 100-680) and addresses a public need. Public response may be addressed to the contract specialist below.

CONTACT: U.S. Department of Energy, Idaho Operations Office, 785 DOE Place, Idaho Falls, Idaho 83402, James McGowan, Contract Specialist (208) 526-8779.

Dated: September 6, 1990.

R. J. Hoyles,

Acting Director, Contracts Management Division.

[FR Doc. 90-21923 Filed 9-14-90; 8:45 am]

BILLING CODE 6450-01-M

Determination of Noncompetitive Financial Assistance; Texas A&I University

AGENCY: Department of Energy (DOE).

ACTION: Notice.

SUMMARY: Doe announces that pursuant to 10 CFR 600.7 (b)(2), it intends to renew on a noncompetitive basis a grant to Texas A&I University to support the institution's efforts in strengthening the infrastructure and research activities of the South Texas Energy Research Development (STERAD) Center. The grant is being renewed for a one-year period, effective September 30, 1990. The total estimated cost is $257,513, which consists of the DOE funding in the amount of $66,231 and recipient cost sharing of $191,282.

Procurement request No.: 05-900R21703.001.

Project scope: This grant renewal will allow the recipient to pursue its goal to promote energy-based science and technology research and development efforts at the University and the South Texas region and thereby increase the pool of minorities pursuing research careers in these areas. During this phase of the project, the recipient will focus on continuing to develop the University's research infrastructure.

Accomplishments during the initial phase of the project indicate that the Texas A&I University will successfully achieve these objectives with continued DOE funding and that competition for support would result in considerable delay in achieving some of the results anticipated during the upcoming phase of the project as well as inhibit the objectives of the DOE Minority Educational Institution Assistance Program. Award is therefore restricted to Texas A&I University.

FOR FURTHER INFORMATION CONTACT: Rufus H. Smith, DOE Project Officer, Office of the Manager, Oak Ridge Operations, U.S. Department of Energy, P.O. Box 2001, Oak Ridge, TN 37831-8503, (615) 576-4988.

Issued in Oak Ridge, Tennessee, on September 10, 1990.

Peter D. Dayton,

Director, Procurement and Contracts Division, Oak Ridge Operations.

[FR Doc. 90-21927 Filed 9-14-90; 8:45 am]

BILLING CODE 6450-01-M

Morgantown Energy Technology Center, Cooperative Agreement; Financial Assistance Award to ThermoChem, Incorporated

AGENCY: Morgantown Energy Technology Center, Department of Energy (DOE).

ACTION: Notice of acceptance of an unsolicited financial assistance application for a cooperative agreement award.

SUMMARY: Based upon a determination made pursuant to 10 CFR 600.14(e)(1) the DOE, Morgantown Energy Technology Center gives notice of its plans to award a 48-month cooperative agreement to ThermoChem, Inc., of Columbia, Maryland, with an associated budget of approximately $6.M.

FOR FURTHER INFORMATION CONTACT: D. Denise Riggi, I-07, U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, West Virginia 25607-0880, Telephone: (304) 291-4241, Procurement Request No. 21-90MC27229.000.

SUPPLEMENTARY INFORMATION: The pending award is based on an unsolicited application for a research project for purposes of testing a Pulsed Atmospheric Fluidized Bed Combustion technology under adiabatic and non-adiabatic conditions. The test objectives shall include monitoring the continuous operation and performance of the facility as it responds to commercial demand cycle for coal drying and for district heating. Based on the unique and innovative approach, expertise of the personnel, and facilities provided at ThermoChem, and the enhanced benefits to be received by the public because of DOE's financial support, it has been determined that it is appropriate to award this cooperative agreement to ThermoChem, Inc., on a noncompetitive basis.

Dated: September 11, 1990.

Louie L. Calaway,

Director, Acquisition and Assistance Division, Morgantown Energy Technology Center.

[FR Doc. 90-21929 Filed 9-14-90; 8:45 am]

BILLING CODE 6450-01-M

Determination of Noncompetitive Financial Assistance the University of Texas at El Paso

AGENCY: Department of Energy (DOE).

ACTION: Notice.

SUMMARY: DOE announces that pursuant to 10 CFR 600.7(b)(2), it intends to renew on a noncompetitive basis a grant to The University of Texas at El Paso (UTEP) to support the efforts to improve the University's administrative infrastructure.

The grant is being renewed for a one-year period, effective September 30, 1990. The total estimated cost is $175,763, which consists of DOE funding in the amount of $111.157 and recipient cost sharing of $64,606.

PROCUREMENT REQUEST NO.: 05-900R21761.001.

PROJECT SCOPE: This grant renewal will allow the recipient to pursue its goal to promote energy-based science and technology research and development efforts at the University and thereby increase the pool of minorities pursuing research careers in these areas. During this phase of the project, the recipient will focus on establishing an energy research center as a separate operational unit to provide ongoing infrastructure support for energy-related programs; implementing a science/engineering outreach initiative with El Paso area secondary and two-year schools to strengthen science education at the precollege level; continuing the summer Science/Engineering Institutes and the "SUCCESS" Minority Retention Program; continuing the Distinguished Energy Research Speakers Program; implementing an inservice training program for El Paso area public school teachers; and completing the linkage of the Energy Center with the main engineering computer. Accomplishments during the initial phase of the project indicate that the University of Texas at El Paso (UTEP) will successfully achieve these objectives with continued DOE funding and that competition for support would result in considerable delay in achieving some of the results anticipated during the upcoming phase of the project as well as inhibit the objective of the DOE Minority Educational Institution Assistance Program. Award is therefore restricted to the University of Texas El Paso (UTEP).

FOR FURTHER INFORMATION CONTACT: Rufus H. Smith, DOE Project Officer, Office of the Manager, Oak Ridge Operations, U.S. Department of Energy, P.O. Box 2001, Oak Ridge, TN 37831-8503, (615) 576-4988.

Issued in Oak Ridge, Tennessee, on September 10, 1990.

Peter D. Dayton,

Director, Procurement and Contracts Division, Oak Ridge Operations.

[FR Doc. 90-21928 Filed 9-14-90; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. TM91-1-20-000 and RP90-180-000]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

September 11, 1990.

Take notice that Algonquin Gas Transmission Company (Algonquin) on August 31, 1990, tendered for filing proposed changes in its FERC Gas Tariff, Second Revised Volume No. 1, as set forth in the revised tariff sheets:

Proposed To Be Effective October 1, 1990

Second Revised Volume No. 1
- 45 Rev Sheet No. 201
- 7 Rev Sheet No. 201A
- 46 Rev Sheet No. 203
- 42 Rev Sheet No. 204
- 39 Rev Sheet No. 205
- 3 Rev Sheet No. 208
- 11 Rev Sheet No. 221
- 8 Rev Sheet No. 223
- 8 Rev Sheet No. 224
- 2 Sub 13 Rev Sheet No. 324
- Second Revised Sheet No. 659
- Second Revised Sheet No. 660

Original Volume No. 2
- 5 Rev Sheet No. 266

Algonquin states that it is making the instant filing pursuant to Section 32 of the General Terms and Conditions of Algonquin's FERC Gas Tariff. Algonquin states that it is filing the tariff sheets to track the increase in the Commission's Annual Charge Adjustment Surcharge from 0.16 to 0.21 cents per MMBtu, all as more fully set forth in Algonquin's instant filing.

Algonquin further states that the instant filing has two purposes: (1) To permit the tracking of the ACA unit surcharge authorized by the Commission for fiscal year 1990; and (ii) to revise section 32 of the general terms and conditions of Algonquin's tariff to permit the crediting of Commission refunds of ACA charges from the prior fiscal year charge exceeds actual programs costs for the same fiscal year and to permit the recovery of amounts which Algonquin is charged by the Commission in instances in which the Commission's fiscal year estimates fall short of actual program costs. The ACA Unit Surcharge authorized by the Commission for fiscal year 1990 is

$0.0019 per Mcf, $0.0018 per MMBtu converted to Algonquin's measurement basis. The ACA Unit Surcharge as adjusted to give effect to the 1989 adjustment is $0.0021 per MMBtu converted to Algonquin's measurement basis.

Algonquin notes that copies of this filing were served upon each affected party and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 19, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretarty.

[FR Doc. 90-21823 Filed 9-14-90; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 10395-003]

City of Augusta, KY; Extending Deadline

September 11, 1990.

By application filed July 22, 1988, the City of Augusta, Kentucky, and its Electric Plant Board (collectively Augusta), filed a license application in Project No. 10395-001. The Commission published notice of the application on May 21, 1990, with comments due by July 25, 1990. On July 25, 1990, the City of Vanceburg, Kentucky (Vanceburg), filed a Protest, Motion to Intervene, Request for Investigation or Hearing and Comments. On August 23, 1990, pursuant to Rules 212 and 2008(a) of the Commission's Rules of Practice and Procedure,[1] the City of Augusta, Kentucky filed a motion for a 30-day extension of time, to September 24, 1990, to file an answer to Vanceburg's request for investigation or hearing and comments. Augusta has shown good cause for granting the requested extension of time, and notice is hereby given that Augusta is given until September 24, 1990, to file an answer to Vanceburg's request for investigation or hearing and comments, filed July 25, 1990.

Lois D. Cashell,

Secretary.

[FR Doc. 90-21824 Filed 9-14-90; 8:45 am]

BILLING CODE 6717-01-M

[1] 18 CFR 385.212 and 385.2008(a) (1990).

[Docket No. RP90-111-000]

East Tennessee Natural Gas Co.; Informal Settlement Conference

September 11, 1990.

Take notice that an informal settlement conference will be convened in this proceeding on September 28, 1990, at 10 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC.

Any party, as defined by 18 CFR 385.102(c) (1990), or any participant, as defined by 18 CFR 385.102(b) (1990), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214 (1990)).

For additional information, contact Donald A. Heydt (202) 208-0248 or Irene E. Szopo (202) 208-1589.

Lois D. Cashell,

Secretary.

[FR Doc. 90-21825 Filed 9-14-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-1-15-000]

Mid Louisiana Gas Co.; Proposed Change of Rates

September 11, 1990

Take notice that Mid Louisiana Gas Company (Mid Louisiana) on September 10, 1990, tendered for filing as part of First Revised Volume No. 1 of its FERC Gas Tariff the following Tariff Sheets to become effective October 1, 1990:

	Superseding
Seventy-Sixth Revised Sheet No. 3a	Seventy-Fifth Revised Sheet No. 3a.1
Eight Revised Sheet No. 3a.1	Seventh Revised Sheet No. 3a.1

Mid Louisiana states that the purpose of the filing of Seventy-Sixth Revised Sheet No. 3a is to reflect the collection of the Annual Charges imposed by Section 382 of the Commission's Regulations.

Mid Louisiana states that this filing is being made in accordance with Section 22 of Mid Louisiana's FERC Gas Tariff. Mid Louisiana further states that copies of this filing have been mailed to Mid Louisiana's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a Petition to Intervene or Protest with the Federal Energy Regulatoray Commission, 825 North Capitol Street NE., Washington, DC 20426 in accordance with § 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.10). All such petitions or protests should be filed on or before September 19, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a Petition to Intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-21826 Filed 9-14-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-1-47-000]

MIGC, Inc.; Compliance Filing

September 11, 1990.

Take notice that on September 7, 1990, MIGC, Inc. ("MIGC") tendered for filing Fifty-Ninth Revised Sheet No. 32 to MIGC's FERC Gas Tariff, Original Volume No. 1. This tariff sheet is proposed to become effective October 1, 1990.

MIGC states that the instant filing is being submitted to reflect Annual Charge Adjustment unit charges applicable to sales and transportation services during the fiscal year commencing October 1, 1990.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such petitions or protests should be filed on or before September 19, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-21827 Filed 9-14-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-1-80-000]

Tarpon Transmission Co.; Tariff Filing

September 11, 1990.

Take notice that on September 7, 1990, Tarpon Transmission Company ("Tarpon") tendered for filing with the Commission as part of its FERC Gas Tariff, Original Volume No. 1, Fourth Revised Sheet No. 2A, proposed to be effective on October 1, 1990. Tarpon states that this tariff sheet has been submitted pursuant to §154.38(c)(6) of the Commission's Regulations and the Annual Charge Adjustment ("ACA") provision of Tarpon's FERC Gas Tariff in order to allow Tarpon to collect the new ACA unit charge of $0.0019 per Mcf established by the Commission to be applied to interstate pipeline rates in fiscal year 1991 for the recovery of 1990 Annual Charges.

Tarpon has requested that the Commission waive all applicable regulations to permit Fourth Revised Sheet No. 2A to be effective on October 1, 1990.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 385.214). Such motions or protests should be filed on or before September 19, 1990. Such motions or protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-21828 Filed 9-14-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-68-027, et al.]

Transcontinental Gas Pipe Line Corp., et al.; Filing of Pipeline Refund Reports [1]

September 11, 1990.

Take notice that the pipelines listed below have submitted to the Commission for filing proposed refund reports.

Filing date	Company	Docket No.
6-11-90	Transcontinental Gas Pipe Line Corporation	RP88-68-027, *et al.* *
6-29-90	Michigan Consolidated Gas Company	RP84-13-006.
7-02-90	Tennessee Gas Pipeline Company	IN86-6-006.
7-27-90	West Texas Gas, Inc.	RP88-256-007.
7-30-90	Sea Robin Pipeline Company	RP86-94-023, RP88-181-014, RP88-257-007 & RP88-266-006.

* The *et al.* docket numbers are RP87-7-062, RP87-7-064 and RP82-55-044.

Any person wishing to do so may submit comments in writing concerning the subject refund reports. All such comments should be filed with or mailed to the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, on or before September 25, 1990. Copies of the respective filings are on file with the Commission and available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-21829 Filed 9-14-90; 8:45 am]

BILLING CODE 6717-01-M

Office of Energy Research

[Notice 90-7]

Museum Science Education Program; Inviting Grant Applications

AGENCY: Department of Energy.

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Energy Research (OER) of the Department of Energy (DOE), in keeping with the energy-related mission of DOE, announces its interest in receiving special research grant applications from scence museums that will support the development of the media of informal energy-related science education. The media of informal science education include but are not limited to: interactive exhibits, hands-on activities, and film/video productions. Examples of energy-related areas within the fundamental energy sciences include high energy and nuclear physics, nuclear science and technologies, global warming, waste management, energy efficiency, new materials development, fossil energy resources, renewable energy, health effects research including the human genome, emerging energy technologies, risk assement, energy/environment and other timely topics. The emphasis of the program is on cooperative development to design, implement and disseminate crative informal media which focus on energy-related science and technology.

For the purpose of this notice, "science museum" means: a nonprofit institution providing interactive exhibits, demonstrations, and informal educational programs designed to further public understanding of science and technology. The term also includes organizations referred to as science centers, science-technology centers and youth museums. Thus, science museums, as defined in this document, are eligible to submit special research grant applications. In accordance with § 600.7(b)(1), eligibility for awards under this notice is limited to U.S. science museums in order to meet U.S. needs in science and engineering education. While this program anticipates awarding funds only from FY 1991 appropriations, the period of support of a grant may extend up to three years.

PREAPPLICATION AND FURTHER INFORMATION: Before preparing a formal application, potential applicants are asked to submit a brief preapplication in accordance with 10 CFR 600.10(d)(2) and (3) which consists of no more than two pages of narrative describing the major purpose and design; method of evaluation to be utilized by the applicant or its designee to determine the effectiveness of the intended exhibit or media forum; dissemination plan; work schedule; and approximate cost of the project to DOE as well as cost-sharing amounts and entities.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Preapplications should be received by 4:30 p.m., December 7, 1990 and sent to the following address: Dr. Ruth Ann Verell, Deputy Director, Division of University and Industry Programs, ER-44, Office of Field Operations Management, Department of Energy, Washington, D.C. 20585. The preapplication may be faxed to: (202) 586-3119. Refer to Program Notice 90-7 on the preapplication. A response to each preapplication discussing the potential program relevance of a formal application will be communicated within four weeks after receipt of the preapplication. Telephone and telefax numbers are required to be part of the preapplication.

DATES: Preapplications should be received by December 7, 1990. To permit timely consideration for award in Fiscal Year 1991, formal applications submitted in response to this notice should be received no later than 4:30 p.m., February 1, 1991.

ADDRESSES: Completed formal applications referencing Program Notice 90-7 should be fowarded to: U.S. Department of Energy, Division of Acquisition and Assistance Management, ER-64, Office of Energy Research, Washington, DC 20585. Federal Express address is: U.S. Department of Energy, Division of Acquisition and Assistance Management, ER-64, Office of Energy Research, 19901 Germantown Road, Germantown, MD 20874.

FOR FURTHER INFORMATION CONTACT: Dr. Ruth Ann Verell, Deputy Director, Division of University and Industry Programs, Office of Field Operations Management, ER-44, Department of Energy, Washington, D.C. 20585, (202) 586-8949.

SUPPLEMENTARY INFORMATION: The DOE is strongly committed to increasing scientific literacy as well as increasing the number of students interested in science and technology careers. Projects which are designed to enhance public awarness of and to encourage *all* young people to consider careers in, science and technology are strongly desired. While the application must be received from the science museum, collaborative efforts are encouraged. Such efforts by potential applicants may include: partnerships of serveral small museums or of a small and large museum; museums in collaboration with museum organizations; and cooperative enterprises which utilize the scientific and technical expertise of the DOE laboratories, industry, and the broader educational community.

General information about development and submission of applications, eligibility, limitations, evaluations and selection processes, and other policies and procedures are contained in the OER Special Research Grant Application Kit and Guide.

This application kit and guide is available from the U.S. Department of Energy, Office of Energy Research, Division of Acquisition and Assistance Management, ER-64, Washington, DC 20585. Telephone requests may be made by calling (202) 586-8949. The Catalog of Federal Domestic Assistance Number for this program is 81.049.

Each application submitted for support under this notice must include as a minimum 50% cost-sharing from non-Federal sources. In accordance with 10 CFR 600.107, cost sharing will be required under this notice due to the limited anticipated FY 1991 funding proposed for this program. Waivers to this requirement will not be permitted. Multiple applications are permissible; however, each application must be limited to a single exhibit. DOE expects to make several grants in FY 1991 to meet the objectives of this program. It is anticipated that $1 million will be the total funds available in FY 1991, subject to the availability of appropriated funds.

This notice requests further that the "Detailed Description of Research Work Proposed" component of a complete grant application as established by 10 CFR part 605 should not exceed 15 double-spaced, typed pages. This description of work should include the conceptual design and how that design relates to the program objectives; describe how the impact of the project will be maximized (dissemination); identify the target audience(s) the project will serve and efforts planned to serve that audience; identify the mechanisms to be used to organize and manage the project, including the rules and responsibilities, financial and otherwise, of any partnerships; clarify the monitoring and evaluation plan, including how those plans can be used for possible project modification; delineate the planned outcomes and how these outcomes will be assessed and reported; and discuss the anticipated significance of the exhibit and how this will be confirmed.

Issued at Washington, DC on August 31, 1990.

D.D. Mayhew,

Deputy Director for Management, Office of Energy Research.

[FR Doc. 90-21863 Filed 9-14-90; 8:45 am]

BILLING CODE 6450-01-M

Office of Fossil Energy

[FE Docket No. 90-39-NG]

The Public Service Department the City of Burbank, CA; Application for Blanket Authorization To Import Natural Gas from Canada

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of Application for Blanket Authorization to Import Natural Gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on May 10, 1990, of an application filed by the Public Service Department of the City of Burbank, California (Burbank), requesting blanket authorization to import up to 3,832.5 MMcf of Canadian natural gas over a two-year period beginning on the date of first delivery. The proposed imports would be transported in the U.S. by the proposed Pacific Gas Transmission Company/Pacific Gas and Electric Company Expansion Project (PGT-PGE Expansion Project) for which an application for a Certificate of Public Convenience and Necessity has been filed and is pending at the Federal Energy Regulatory Commission (FERC), FERC Docket No. CP-89-460. Burbank stated it would make quarterly reports detailing each import transaction.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed at the address listed below no later than 4:30 p.m., e.d.t., October 17, 1990.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F-056, FE-50, 1000 Independence Avenue, SW., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT:

Lot Cooke, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3H-087, 1000 Independence Avenue, SW., Washington, DC. 20585, (202) 586-8116.

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: Burbank, a municipal corporation organized under the laws of the State of California, is engaged in the generation and distribution of electrical power and energy in California. Burbank stated that the blanket authorization requested will permit it to acquire supplies of natural gas from a variety of reliable Canadian supply sources at market responsive prices for end use in local generation facilities. Burbank asserted further that the proposed authorization will reduce trade barriers and encourage the use of market forces to achieve a more competitive and efficient exchange of goods between the United States and Canada.

The proposed imports would be transported using: (1) New and existing facilities in Canada belonging to NOVA Corporation, Foothills Pipelines, Ltd., and Alberta Natural Gas Company, (2) the proposed PGT-PGE Expansion Project, and (3) local distribution companies in California. The point of import would be near Kingsgate, British Columbia. Further, in addition to this application for blanket authorization, Burbank contemplates filing one or more applications for authority to import natural gas from Canada pursuant to gas purchase agreements for periods in excess of two years. These filings will be made promptly upon the final completion of longer term agreements, currently under negotiation.

The decision on the application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties, especially those that may oppose this application, should comment in their responses on these matters as they relate to the requested import authority. The applicant asserts that this import arrangement will be competitive and in the public interest. Parties opposing the arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires the DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until the DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590.

Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice to all parties will be provided. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Burbank's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, at the above address, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, September 11, 1990.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 90-21857 Filed 9-14-90; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 90-40-NG]

The Public Service Deparment of The City of Glendale, CA; Application for Blanket Authorization To Import Natural Gas From Canada

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of Application for Blanket Authorization to Import Natural Gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on May 11, 1990, of an application filed by the Public Service Department of the City of Glendale, California (Glendale), requesting blanket authorization to import up to 3,832.5 MMcf of Canadian natural gas over a two-year period beginning on the date of first delivery. The proposed imports would be transported in the United States by the proposed Pacific Gas Transmission Company/Pacific Gas and Electric Company Expansion Project (PGT-PGE Expansion Project) for which an application for a Certificate of Public Convenience and Necessity has been filed and is pending at the Federal Energy Regulatory Commission (FERC), FERC Docket No. CP-89-460. Glendale stated it would make quarterly reports detailing each import transaction.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed at the address listed below no later than 4:30 p.m., e.d.t., October 17, 1990.

ADDRESSES:

Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F-056, FE-50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Lot Cooke, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3H-087, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-8116.

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION:

Glendale, a municipal corporation organized under the laws of the State of California, is engaged in the generation and distribution of electrical power and energy in California. Glendale stated that the blanket authorization requested will permit it to acquire supplies of natural gas from a variety of reliable Canadian supply sources at market responsive prices for end use in local generation facilities. Glendale asserted further that the proposed authorization will reduce trade barriers and encourage the use of market forces to achieve a more competitive and efficient exchange of goods between the United States and Canada.

The proposed imports would be transported using: (1) New and existing facilities in Canada belonging to NOVA Corporation, Foothills Pipelines, Ltd., and Alberta Natural Gas Company, (2) the proposed PGT-PGE Expansion Project, and (3) local distribution companies in California. The point of import would be near Kingsgate, British Columbia. Further, in addition to this application for blanket authorization, Glendale contemplates filing one or more applications for authority to import natural gas from Canada pursuant to gas purchase agreements for periods in excess of two years. These filings will be made promptly upon the final completion of longer term agreements, currently under negotiation.

The decision on the application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties, especially those that may oppose this application, should comment in their responses on these matters as they relate to the requested import authority. The applicant asserts that this import arrangements will be competitive and in the public interest. Parties opposing the arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires the DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued on this proceeding until the DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protesters and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590.

Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice to all parties will be provided. If no party requests additional procedures, a final opinon and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Glendale's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, at the above address, (202) 586-9478. The docket room is open between the hours of 8 and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, September 11, 1990.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 90-21858 Filed 9-14-90; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 90-42-NG]

The Department of Water and Power The City of Pasadena, CA; Application for Blanket Authorization To Import Natural Gas from Canada

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of Application for Blanket Authorization to Import Natural Gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on May 11, 1990, of an application filed by the Department of Water and Power of the City of Pasadena, California (Pasadena), requesting blanket authorization to import up to 3,832.5 MMcf of Canadian natural gas over a two-year period beginning on the date of first delivery. The proposed imports would be transported in the U.S. by the proposed Pacific Gas Transmission Company/Pacific Gas and Electric Company Expansion Project (PGT-PGE Expansion Project) for which an application for a Certificate of Public Convenience and Necessity has been filed and is pending at the Federal Energy Regulatory Commission (FERC), FERC Docket No. CP-89-460. Pasadena stated it would make quarterly reports detailing each import transaction.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0240-111 and 0204-127. Protests, motions to intervene,

notices of intervention and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed at the address listed below no later than 4:30 p.m., e.d.t., October 17, 1990.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F-056, FE-50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Lot Cooke, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3H-087, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-8116.

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-586-6667.

SUPPLEMENTARY INFORMATION:

Pasadena, a municipal corporation organized under the laws of the State of California, is engaged in the generation and distribution of electrical power and energy in California. Pasadena stated that the blanket authorization requested will permit it to acquire supplies of natural gas from a variety of reliable Canadian supply sources at market responsive prices for end use in local generation facilities. Pasadena asserted further that the proposed authorization will reduce trade barriers and encourage the use of market forces to achieve a more competitive and efficient exchange of goods between the United States and Canada.

The proposed imports would be transported using: (1) New and existing facilities in Canada belonging to NOVA Corporation, Foothills Pipelines, Ltd., and Alberta Natrual Gas Company, (2) the proposed PGT-PGE Expansion Project, and (3) local distribution companies in California. The point of import would be near Kingsgate, British Columbia. Further, in addition to this application for blanket authorization, Pasadena contemplates filing one or more applications for authority to import natural gas from Canada pursuant to gas purchase agreements for periods in excess of two years. These filings will be made promptly upon the final completion of longer term agreements, currently under negotiation.

The decision on the applciation for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties, especially those that may oppose this application, should comment in their responses on these matters as they relate to the requested import authority. The applicant asserts that this import arrangement will be competitive and in the public interest. Parties opposing the arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires the DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until the DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590.

Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice to all parties will be provided. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR § 590.316.

A copy of Pasadena's application is available for inspection and copying in the Office of Fuels Progams Docket Room, 3F-056, at the above address, (202) 586-9478. The Docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, September 11, 1990.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 90-21860 Filed 9-14-90; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 86-06-NG]

Tennessee Gas Pipeline Co.; Application To Amend Authorization To Import Natural Gas from Canada

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of Application to Amend Long-Term Authorization to Import Natural Gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on July 20, 1990, of an application filed by Tennessee Gas Pipeline Company (Tennessee) to amend Tennessee's natural gas import authority granted April 24, 1981, by the Economic Regulatory Administration (ERA) in DOE/ERA Opinion and Order No. 32 (Order 32), as amended in DOE/ERA Opinion and Order No. 131 (Order 131) issued June 19, 1986. The amendment requested would permit Tennessee to export some or all of the imported Canadian gas volumes back to Canada, and then import the gas a

second time into the northeastern U.S. where it would be sold. In all other respects, the terms and conditions of the current authority would remain unchanged. No new pipeline construction is anticipated to transport the volumes that enter, leave, and reenter the U.S.

The application is filed under section 3 of the Natural Gas Act (NGA) and DOE Delegation Order Nos. 0204-111 and 0204-127. FE assumed the ERA's NGA jurisdiction on February 7, 1989, to authorize imports and exports of natural gas. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., e.d.t., October 17, 1990.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F-056, FE-50, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

P.J. Fleming, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F-094, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-4819.

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION:

Tennessee, a wholly owned subsidiary of Tenneco Inc., is a natural gas transmission company primarily engaged in purchasing, transporting, and selling natural gas in interstate commerce. Tennessee serves customers in 16 states from Texas to New Hampshire. Under Order 131 (1 ERA Para. 70,654), Tennessee is authorized to import from Canada up to 75,000 Mcf of natural gas per day through October 31, 2000. These volumes are supplied by ProGas, Ltd. (ProGas) and enter the U.S. at Emerson, Manitoba, where the pipeline facilities of TransCanada Pipelines Ltd. (TCLP), and Great Lakes Gas Transmission Company (Great Lakes) interconnect. From there, Great Lakes transports the gas to ANR Pipeline Company (ANR) at Farwell, Michigan, with further downstream transportation by Midwestern Gas Transmission Company (Midwestern). Tennessee takes delivery of the gas at Portland, Tennessee.

Tennessee's decision to have the authorization amended arose because ANR imposed new, higher, system-wide transportation rates that Tennessee is unwilling to pay. In its application, Tennessee requests permission to export back to Canada near St. Clair, Michigan, some or all of the authorized import volumes. Between the U.S. points of entry and exit, the Canadian gas would be transported by Great Lakes. At St. Clair, Great Lakes interconnects with TCPL's facilities. When the gas reenters Canada, TCPL would provide transportation within Canada to the international border near Niagara, Ontario, for redelivery to Tennessee. Whatever quantity of gas is exported would be destined for exclusive use in the U.S. According to Tennessee, amending the authorization to reflect the proposed change in transportation arrangements for ProGas' volumes would facilitate moving this supply to Tennessee's system and benefit its customers by providing less expensive gas.

The decision on Tennessee's application will be made pursuant to section 3 of the NGA, the authority contained in DOE Delegation Order Nos. 0204-111 and 0204-127, and DOE's gas import policy guidelines. Under the policy guidelines, the competitiveness of an import arrangement in the markets served is the primary consideration and determining whether it is in the public interest (49 FR 6684, February 22, 1984). Other matters that may be considered in making a public interest determination include need for the gas and security of the long-term supply. In reviewing natural gas export applications, the DOE considers the domestic need for gas to be exported and any other issues determined to be appropriate in a particular case.

The ERA found in Order 131 that Tennessee's import arrangement with ProGas will provide long-term, secure supplies of needed gas on market-responsive terms. This application is essentially a request to add a second import point to the existing authorization. With respect to Tennessee's new transportation proposal, the fact that some or all of this Canadian gas would travel back through Canada before it reenters the U.S. is a minor aspect of the arrangement. Since the exported gas would not be sold or stored in Canada, but would be consumed in the U.S., FE does not believe that it is necessary to consider in its evaluation domestic need for the gas with respect to the proposed export. FE will consider the impact of the proposed import/export arrangement on Great Lakes' other shippers and on Tennessee's customers.

NEPA Compliance

The National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) requires the DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until the DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are revelant and material to a decision and that a trial-type hearing is

necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR Sec. 590.316.

A copy of Tennessee's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, September 10, 1990.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 90-21859 Filed 9-14-90; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 90-31-NG]

Union Gas Limited; Order Granting Blanket Authorization To Import and Export Natural Gas and Liquefied Natural Gas

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of an order granting blanket authorization to import and export natural gas and liquefied natural gas.

SUMMARY: The Office of Fossil Energy of the Department of Energy gves notice that it has issued an order granting Union Gas Limited authorization to export up to a total of 200 Bcf of natural gas to Canada and to import (for export to Canada) up to a total of 100 Bcf of natural gas, including liquefied natural gas, from Canada and other countries over a two year term beginning on the date of first import or export.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal Holidays.

Issued in Washington, DC, September 6, 1990.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 90-21862 Filed 9-14-90; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. FE C&E 90-18; Certification Notice—66]

Notice of Filing Certification of Compliance: Coal Capability of New Electric Powerplant Pursuant to Provisions of the Powerplant and Industrial Fuel Use Act, as Amended

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of filing.

SUMMARY: Title II of the Powerplant and Industrial Fuel Use Act of 1978, as amended, ("FUA" or "the Act") (42 U.S.C. 8301 *et seq.*) provides that no new electric powerplant may be constructed or operated as a base loan powerplant without the capability to use coal or another alternate fuel as a primary energy source (section 201(a), 42 U.S.C. 8311 (a), Supp. V. 1978). In order to meet the requirement of coal capability, the owner or operator of any new electric powerplant to be operated as a base load powerplant proposing to use natural gas or petroleum as its primary energy source may certify, pursuant to section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date it is filed with the Secretary. The Secretary is required to publish in the Federal Register a notice reciting that the certification has been filed. One owner and operator of proposed new electric base load powerplant has filed self certification in accordance with section 201(d).

Further information is provided in the SUPPLEMENTARY INFORMATION section below.

SUPPLEMENTARY INFORMATION: The following company has filed self certification:

Name	Date received	Type of facility	Megawatt capacity	Location
Indeck Energy Services of Suffern, Inc. Wheeling, IL	8-27-90	Combine Cycle	159	Suffern, NY.

Amendments to the FUA on May 21, 1987, (Public Law 100-42) altered the general prohibitions to include only new electric base load powerplants and to provide for the self certification procedure.

Copies of this self certification may be reviewed in the Office of Fuels Programs, Fossil Energy, Room 3F-056, FE-52, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC. 20585, phone number (202) 586-6769.

Issued in Washington, DC on September 10, 1990.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs Fossil Energy.

[FR Doc. 90-21931 Filed 9-14-90; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Notice of Cases Filed During the Week of April 20 through April 27, 1990

During the Week of April 20 through April 27, 1990, the appeals and applications for exception or other relief listed in the appendix to this notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: September 11, 1990.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of April 20 through April 27, 1990]

Date	Name and Location of Applicant	Case No.	Type of Submission
Apr. 23, 1990	Robert Burns, Washington, DC	LFA-0038	Appeal of an Information Request Denial. If granted: The April 12, 1990 Freedom of Information Request Denial issued by the Office of Procurement Operations would be rescinded, and Robert Burns would receive access to five retired contracts awarded to the Analytic Sciences Corporation of Reading, Massachusetts.

REFUND APPLICATIONS RECEIVED

[Week of April 20 Through April 27, 1990]

Received	Name of firm	Case No.
July 14, 1989	Odessa's L.P.G. Transport, Inc	RF307-10121
Apr. 18, 1990	Shaw Oil Company	RF310-349
Apr. 20, 1990 thru Apr. 27, 1990	Texaco Oil Refund Applications Received	RF321-4063 thru RF321-4401
Apr. 20, 1990 thru April 27, 1990	Atlantic Richfield Applications Received	RF304-11698 thru RF304-11822
Apr. 20, 1990 thru Apr. 27, 1990	Gulf Oil Refund Applications Received	RF300-11101 thru RF300-11115
Apr. 20, 1990 thru Apr. 27, 1990	Crude Oil Refund Applications Received	RF272-78583 thru RF272-78602
Apr. 23, 1990	Foster's Spur on First	RF309-1401
Apr. 23, 1990	Conn & Bernice Ward	RF315-9944
Apr. 23, 1990	Norris Shell Service	RF315-9945
Apr. 23, 1990	Medallion Shell	RF315-9946
Apr. 25, 1990	Rodriquez South Grant Shell	RF315-9947
Apr. 26, 1990	Jerry's Westside Shell	RF315-9948

[FR Doc. 90-21930 Filed 9-14-90; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3830-9]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before October 17, 1990.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 382-2740.

SUPPLEMENTARY INFORMATION:

Office of Pesticides and Toxic Substances

Title: Submission of Unreasonable Adverse Effects Information under Section 6(a) (2) of FIFRA. (EPA ICR # 1204.04; OMB # 2070-0039). This request extends the expiration date of a currently approved collection without any change in the substance or in the method of collection.

Abstract: Section 6(a)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) requires registrants of pesticide products (U.S. pesticide industry) to submit to the EPA all data on registered chemicals. Relevant information may include toxicological, epidemiological studies, impact reports on non-target organisms, data on excess residues in ground or surface water, and studies on new metabolites. EPA needs all relevant information to assess whether a chemical product imposes unreasonable adverse effects on human health and the environment.

Burden Statement: The public reporting burden for this collection of information is estimated to average 85 hours per respondent. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Respondents: U.S. Pesticide Manufacturers.

Estimated Number of Respondents: 2,500.

Responses Per Respondent: .05.

Estimated Total Annual Burden on Respondents: 10,260.

Frequency of Collection: On occasion.

Send comments regarding the burden estimate, or any other aspect of these information collections, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223), 401 M Street, SW., Washington, DC 20460

and

Tim Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20530.

OMB Responses To Agency PRA Clearance Requests

EPA ICR # 0002.05; Final Rule to Implement the Recommendations of the Domestic Sewage Study; was approved 08/20/90; OMB # 2040/0150; expires 08/31/90.

EPA ICR # 1393; National Sewage Sludge Questionnaire Survey; expiration date was extended to 12/31/90.

Dated: September 11, 1990.

Jane Stewart,

Acting Director, Regulatory Management Division.

[FR Doc. 90-21898 Filed 9-14-90; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3831-1]

Office of Research and Development; Ambient Air Monitoring Reference and Equivalent Methods: Equivalent Method Designation

Notice is hereby given that EPA, in accordance with 40 CFR part 53, has designated another equivalent method for the measurement of ambient concentrations of sulfur dioxide. This new equivalent method is an automated method (analyzer) which utilizes the measurement principle based on fluorescence detection of SO_2. The new designated method is identified as follows:

EQSA-0990-077, "Advanced Pollution Instrumentation, Inc. Model 100 Fluorescent SO_2 Analyzer", operation on the 0-0.5 ppm range, with an 5 micron TFE filter element installed in the rear-panel filter assembly, either a user- or vendor-supplied vacuum pump capable of providing 20 inches of mercury vacuum at 2.5 L/min, with or without any of the following options:

Rack Mount With Slides
Status Output
RS-232 Interface
TFE Zero/Span Valves
Zero Air Scrubber
Pump Pack

This method is available from Advanced Pollution Instrumentation, Inc., 8815 Production Avenue, San Diego, California 92121-2219. A notice of receipt of application for this method appeared in the **Federal Register**, Volume 55, March 26, 1990, page 11054.

A test analyzer representative of this method has been tested by the applicant, in accordance with the test procedures specified in 40 CFR part 53. After reviewing the results of these tests and other information submitted by the applicant, EPA HAS determined, in accordance with part 53, that this method should be designated as an equivalent method. The information submitted by the applicant will be kept on file at EPA's Atmospheric Research and Exposure Assessment Laboratory, Research Triangle Park, North Carolina 27711, and will be available for inspection to the extent consistent with 40 CFR part 2 (EPA's regulations implementing the Freedom of Information Act).

As a designated equivalent method, the analyzer is acceptable for use by States and other air monitoring agencies under requirements of 40 CFR part 58, Ambient Air Quality Surveillance. For such purposes, the method must be used in strict accordance with the operation or instruction manual associated with the method and subject to any limitations (e.g., operating range) specified in the applicable designation (see description of the method above). Vendor modifications of a designated method used for purposes of part 58 are permitted only with prior approval of EPA, as provided in part 53. Provisions concerning modification of such methods by users are specified under Section 2.8 of Appendix C to 40 CFR part 58 (Modifications of Methods by Users).

In general, this designation applies to any analyzer which is identical to the analyzer described in the designation. In many cases, similar analyzers manufactured prior to the designation may be upgraded (e.g., by minor modification or by substitution of a new operation or instruction manual) so as to be identical to the designated method and thus achieve designated status at a modest cost. The manufacturer should be consulted to determine the feasibility of such upgrading.

Part 53 requires that sellers of designated methods comply with certain conditions. These conditions are given in 40 CFR 53.9 and are summarized below:

(1) A copy of the approved operation or instruction manual must accompany the analyzer when it is delivered to the ultimate purchaser.

(2) The analyzer must not generate any unreasonable hazard to operators or to the environment.

(3) The analyzer must function within the limits of the performance specifications given in Table B-1 of part 53 for at least one year after delivery when maintained and operated in accordance with the operation manual.

(4) Any analyzer offered for sale as a reference or equivalent method must bear a label or sticker indicating that it has been designated as a reference or equivalent method in accordance with part 53.

(5) If such an analyzer has one or more selectable ranges, the label or sticker must be placed in close proximity to the range selector and indicate which range or ranges have been included in the reference or equivalent method designation.

(6) An applicant who offers analyzers for sale as reference or equivalent methods is required to maintain a list of ultimate purchasers of such analyzers and to notify them within 30 days if a reference or equivalent method designation applicable to the analyzer has been cancelled or if adjustment of the analyzers is necessary under 40 CFR 53.11(b) to avoid a cancellation.

(7) An applicant who modifies an analyzer previously designated as a refrence or equivalent method is not permitted to sell the analyzer (as modified) as a reference or equivalent method (although he may choose to sell it without such representation), nor to attach a label or sticker to the analyzer (as modified) under the provisions described above, until he has received notice under 40 CFR 53.14(c) that the original designation or a new designation applies to the method as modified or until he has applied for and received notice under 40 CFR 53.8(b) of a new reference or equivalent method determination for the analyzer as modified.

Aside from occasional breakdowns or malfunctions, consistent or repeated noncompliance with any of these conditions should be reported to: Director, Atmospheric Research and Exposure Assessment Laboratory, Department E (MD-77), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

Designation of this equivalent method will provide assistance to the States in establishing and operating their air quality surveillance systems under part 58. Technical questions concerning the method should be directed to the manufacturer. Additional information concerning this action may be obtained from Frank F. McElroy, Quality Assurance Division (MD-77), Atmospheric Research and Exposure Assessment Laboratory, U.S. Environmental Protection Agency,

Research Triangle Park, North Carolina 27711, (919) 541-2622.

Erich W. Bretthauer,

Assistant Adminsitrator for Research and Development.

[FR Doc. 90-21899 Filed 9-14-90; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-140137; FRL-3798-7]

Access to Confidential Business Information by Certain Contractors and Subcontractors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized the following contractors and subcontractor for access to information which has been submitted to EPA under the Toxic Substances Control Act (TSCA): (1) Science Applications International Corporation (SAIC), of McLean, Virginia, has been authorized access to information which has been submitted to EPA under sections 4, 5, and 8 of TSCA, and (2) Sycom, Inc. (SYM), of Chantilly, Virginia, and Miller Reporting Company (MRC), of Washington, DC have been authorized access to information which has been submitted to EPA under all sections of TSCA. Some of the information may be claimed or determined to be confidential business information (CBI).

DATES: Access to the confidential data submitted to EPA will occur no sooner than October 1, 1990.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-545, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: EPA is issuing this notice to inform all submitters of information under TSCA that EPA may provide the following contractors and subcontractor access to these CBI materials on a need-to-know basis.

Under contract number 68-D9-0007, contractor SAIC, of 8400 Westpark Drive, Mclean VA, will assist the Office of Toxic Substances (OTS) in preparing analyses of the chemical and allied industries. SAIC will assist OTS in designing, developing, and operating chemical and/or regulatory information systems. SAIC personnel will be given access to information submitted under sections 4, 5, and 8 of TSCA. All access to TSCA CBI under this contract will take place at EPA Headquarters. Clearance for access to TSCA CBI under contract number 68-D9-0007 is scheduled to expire on September 30, 1991.

Under contract number 68-01-7361, SYM, of 14532 Lee Road, Chantilly, VA, under subcontract to the Planning Research Corporation (PRC) of 600 Maryland Avenue, Washington, DC, will assist OTS in designing and developing a Management Information Tracking System to support the Premanufacture Notice (PMN) Review program. SYM personnel will be given access to information submitted under all sections of TSCA. All access to TSCA CBI under this subcontract will take place at EPA Headquarters. In a previous notice published in the **Federal Register** of September 27, 1988 (53 FR 37649), PRC was authorized for access to CBI submitted to EPA under all sections of TSCA under contract number 68-01-7361 until September 30, 1991. Clearance for SYM's access to TSCA CBI under contract number 68-01-7361 is scheduled to expire on September 30, 1991.

Under a procurement, contractor MRC, of 507 C St., Washington, DC, will assist OTS, the Office of the Administrative Law Judges, and the Office of Enforcement in providing reporting services for administrative hearings that will require the review of information that may be claimed or determined to be CBI. MRC personnel will be given access to information submitted under all sections of TSCA.

In a previous notice published in the **Federal Register** of July 6, 1989 (54 FR 28471), MRC was authorized for access to CBI submitted to EPA under all sections of TSCA until July 14, 1990. Clearance for access to TSCA CBI under this procurement is scheduled to expire on August 14, 1991.

In accordance with 40 CFR 2.306(j), EPA has determined that under contract numbers 68-D9-0007 and 68-01-7361, and under the MRC procurement, the aforementioned contractors and subcontractor will require access to CBI submitted to EPA under TSCA to perform successfully the duties specified under the respective contracts or procurement.

SAIC, SYM, and MRC personnel, will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

Dated: September 10, 1990.

Linda A. Travers,

Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 90-21892 Filed 9-14-90; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

Applications for Consolidated Hearing; Great American Media, Limited I, et al.

1. The Commision has before it the following groups of mutually exclusive applications for five new FM stations:

Applicant city and state	File No.	MM Docket No.
I		
A. Great American Media, Limited I; Fair Bluff, NC.	BPH-890313MQ	90-383
B. Virginia W. Bledsoe; Fair Bluff, NC.	BPH-890313MX	
Issue Heading and Applicants		
1. Air Hazard, All		
2. Comparative, All		
3. Ultimate, All		
II		
A. Central Baptist Church, Inc. d/b/a Panama City Christian Schools; Panama City, FL.	BPED-870507MA	90-378
B. Chipley Educational Radio; Chipley, FL.	BPED-871124NB	
Issue Heading and Applicants		
1. Comparative, A,B		
2. Contingent Comparative, A,B		
3. Ultimate, A,B		
III		
A. Rio Grande Broadcasting Co.; Rio Grande, PR.	BPH-880815MV	90-380
B. Iglesia Bautista Castillo Fuerte; Rio Grande, PR.	BPH-880815MX	
C. Roberto Passalacqua; Rio Grande, PR.	BPH-880816NN	
D. Rio Grande Broadcasting Corporation, Inc.; Rio Grande, PR.	BPH-880816OL	
E. Irene Rodriguez Diaz de McComas; Rio Grande, PR.	BPH-880816OR	
F. United Broadcasters Company; Rio Grande, PR.	BPH-880816OW	
Issue Heading and Applicants		
1. Financial Qualifications, A		
2. Environmental, F		
3. Air Hazard, B,C,D		
4. Comparative, A,F		
5. Ultimate, A,F		
IV		
A. Gayla Joy Hendren; Bella Vista, AR.	BPH-880701MT	90-376
B. KERM, Inc.; Bella Vista, AR.	BPH-880712MJ	

Applicant city and state	File No.	MM Docket No.
C. JEM Broadcasting Company, Inc.; Bella Vista, AR.	BPH-880714NT (dismissed Herein)	

Issue Heading and Applicants
1. Comparative, A and B
2. Ultimate, A and B

V		
A. SBM Communications, Inc.; Pueblo, CO.	BPH-880824MS	90-381
B. Dynamic Leap Limited Partnership; Pueblo, CO.	BPH-880825MU	
C. Robert C. Wagman; Pueblo, CO.	BPH-880825ND	
D. Claudia Johnson Smith; Pueblo, CO.	BPH-880825NJ	
E. Echonet Corporation; Pueblo, CO.	BPH-880825NR	
F. Pueblo Broadcasters, Inc.; Pueblo, CO.	BPH-880825NX	
G. Barden Radio, Inc.; Pueblo, CO.	BPH-880825OG	
H. Two Rivers Broadcasting, Inc.; Pueblo, CO.	BPH-880825OK	
I. Pueblo FM Partnership, Ltd.; Pueblo, CO.	BPH-880825ON	
J. John Boyd; Pueblo, CO.	BPH-880825NY (Dismissed Herein)	

Issue Heading and Applicants
1. Environmental, D,F
2. Air Hazard, A,E
3. Comparative, A,B,C,D,E,F,G,H,I
4. Ultimate, A,B,C,D,E,F,G,H,I

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

3. If there is any non-standardized issue in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets branch (room 230), 1919 M Street NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division.

[FR Doc. 90-21864 Filed 9-14-90; 8:45 am]

BILLING CODE 6712-01-M

Applications, Hearings, Determinations, Etc.: Nelson, Harry, et al.

1. The Commission has before it the following mutually exclusive applications for 5 new FM stations:

Applicant, City and State	File No.	MM Docket No.
I		
A. Harry Nelson; Eufaula, Alabama.	BPH-890524MI	90-348
B. DeVaughn Toole and Mary L. Toole d/b/a Toole & Company, A General Partnership; Eufaula, Alabama.	BPH-890530MH	
C. Eufaula Broadcast Associates; Eufaula, Alabama.	BPH-890530MO	

Issue Heading and Applicants

1. Air hazard, C
2. Comparative, A, B, C.
3. Ultimate, A, B, C

II		
A. Local Girls & Boys Broadcasting Corp.; Litchfield, CT.	BPH-880815MT	90-350
B. Litchfield Associates; Litchfield, CT.	BPH-880816NF	
C. Litchfield Radio Group; Litchfield, CT.	BPH-880816NK	
D. Furey Communications; Litchfield, CT.	BPH-880816NM	
E. Dianna Devlin Slodowitz; Litchfield, CT.	BPH-880816NT	
F. Bantam River Broadcasting, Inc.; Litchfield, CT.	BPH-880816NV	
G. Italio, Inc.; Litchfield, CT.	BPH-880816OD	
H. Radio Litchfield Limited Partnership; Litchfield, CT.	BPH-880816OD	
I. Field Broadcasting Co.; Litchfield, CT.	BPH-880816OO	
J. Litchfield Radio Partners (Dismissed Herein); Litchfield, CT.	BPH-880816MO	

Issue Heading and Applicants
1. Environmental, F

Applicant, City and State	File No.	MM Docket No.

2. Financial, G
3. Comparative, A, B, C, D, E, F, G, H, I
4: Ultimate, A, B, C, D, E, F, G, H, I.

III		
A. Lightning Bug Broadcasting; Lisbon, NH.	BPH-880809MY	90-347
B. Profile Broadcasting Co., Inc.; Lisbon, NH.	BPH-880809NC	
C. North Country Communications Corp.; Lisbon, NH.	BPH-880810MK	
D. Lisbon Communications, Inc.; Lisbon, NH.	BPH-880810MO	

Issue Heading and Applicants

1. Financial, A, C
2. Comparative, A, B, C, D
3. Ultimate, A, B, C, D

IV		
A. Serafin DelaCruz; Agana, Guam.	BPH-880914MH	90-349
B. Agana Guam FM Radio Limited Partnership; Agana, Guam.	BPH-88091MX	

Issue Heading and Applicants

1. Site Availability, B
2. Comparative, A, B
3. Ultimate, A, B,

A. Knight Communications, Corp. Inc.; Elmwood, Illinois.	BPH-881216NP	90-361
B. Elmwood Broadcasting, Company; Elmwood, Illinois.	BPH-881221MS	
C. Candace K. Scott and Jerald L. Scott d/b/a Rainbow Broadcasting Company; Elmwood, Illinois.	BPH-881221MT	
D. Maureen, Inc.; Elmwood, Illinois.	BPH-881221MU	

Issue Heading and Applicants
1. Air Hazard, A, B, C, D
1. Comparative, A, B, C, D
3. Ultimate, A, B, C, D

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have

been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

3. If there are any non-standardized issues in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 90-21865 Filed 9-14-90; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-878-DR]

Illinois; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Illinois (FEMA-878-DR), dated August 29, 1990, and related determinations.

DATE: September 5, 1990.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: The notice of a major disaster for the State of Illinois, dated August 29, 1990, 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 August 29, 1990:

Kane County for Individual Assistance and Public Assistance; and Kendall County for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 90-21880 Filed 9-14-90; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-879-DR]

Iowa; Notice of Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Iowa (FEMA-879-DR), dated September 6, 1990, and related determinations.

DATE: September 6, 1990.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Eemrgency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: Notice is hereby given that, in a letter dated September 6, 1990, 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.*, Pub. L. 93-288, as amended by Pub. L. 100-707), as follows:

I have determined that the damage in certain areas of the State of Iowa, resulting from severe storms and flooding beginning on July 25, 1990, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Iowa.

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 Individual Assistance and Public Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of Section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, shall be for a period not to exceed six months after the date of this declaration.

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 S. Richard Mellinger 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 Iowa to have been affected adversely by this declared major disaster:

The counties of Buchanan, Chickasaw, Clayton, Fayette, and Fremont for Individual Assistance and Public Assistance; and

The counties of Black Hawk, Cerro Gordo, Franklin, Jones, and Linn for Individual Assistance only.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Wallace E. Stickney,

Director, Federal Emergency Management Agency.

[FR Doc. 90-21881 Filed 9-14-90; 8:45 am]

BILLING CODE 6718-02-M

Final Draft Radiological Emergency Preparedness (REP) Exercise Evaluation Methodology (EEM)

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of availability of the FEMA final draft Radiological Emergency Preparedness (REP) Exercise Evaluation Methodology (EEM) and invitation for submittal of comments.

SUMMARY: The final draft EEM is available for distribution and comment. The EEM is a FEMA instrument to evaluate the performance of offsite emergency organizations in exercises for responding to simulated accidents at commercial nuclear power plants. It incorporates 33 evaluation objectives for Federal evaluators to use to determine if organizational offsite emergency planning and preparedness is in conformity with the established planning standards and evaluation criteria of NUREG-0654/FEMA-REP-1, Revision 1, and Supplement 1. The final draft EEM is designed to achieve greater consistency, uniformity, and objectivity in exercise evaluation by Federal evaluators throughout the country.

The EEM has been in interim use for exercise evaluations since May 1988. Throughout the developmental process, there have been extensive consultations with various organizations, including the National Emergency Management Association (NEMA) and the Conference of Radiation Control Program Directors (CRCPD), as well as industry representatives through the

Edison Electric Institute (EEI) and the Nuclear Management and Resources Council (NUMARC). During this process, many suggestions and recommendations were made that have been adopted and are reflected in this final draft document. The contributions of these groups are appreciated.

Copies will be distributed by the FEMA Regional Offices to State and local governments for their review and comment. EEI and NUMARC will distribute copies to their constituents.

Comments received by FEMA on the final draft EEM will be analyzed and the results of this analysis will be used to develop the final edition of the EEM.

COPIES: Requests for copies of the final draft EEM may be made by writing to: FEMA, P.O. Box 70274, Washington, DC 20024. Please specify Draft FEMA-REP-15, *REP Exercise Evaluation Methodology (EEM),* August 1990.

COMMENTS: Comments on the final draft EEM will be accepted through November 30, 1990, and should be addressed to: Rules Docket Clerk, Federal Emergency Management Agency, Room 840, 500 C Street, SW., Washington, DC 20472.

FOR FURTHER INFORMATION: For further information contract Bill NcNutt, Program Development Branch, FEMA, Room 617-A, 500 C Street, SW., Washington, DC 20472, telephone (202) 646-2857.

Dated: September 7, 1990.

For the Federal Emergency Management Agency.

Grant C. Peterson,

Associate Director, State and Local Programs and Support.

[FR Doc. 90-21882 Filed 9-14-90; 8:45 am]

BILLING CODE 66718-20-M

FEDERAL TRADE COMMISSION

[File No. 901 0072]

Roche Holding Ltd., et al.; Proposed Consent Agreement with Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, Roche, a Swiss pharmaceutical company, to divest either Genentech's interest in GLC Associates, a partnership between Genentech and Lubrizol, Inc., or the partnership's vitamin C assets. Roche would also be required to divest its human growth hormone releasing factor business. Both divestitures would have to be effected to Commission-approved acquirers within one year after the order becomes final; otherwise the Commission may appoint a trustee to make the divestitures.

DATES: Comments must be received on or before November 16, 1990.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Steven Newborn, FTC/S-2308, Washington, DC 20580. (202) 326-2682.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order

Commissioners: Janet D. Steiger, Chairman, Terry Calvani, Mary L. Azcuenaga, Andrew J. Strenio, Jr., Deborah K. Owen.

In the Matter of Roche Holding LTD., a Corporation, Roche Holdings, Inc., a Corporation, Hoffmann-La Roche Inc., a Corporation, and Genentech, Inc. a Corporation.

The Federal Trade Commission (the "Commission") having initiated an investigation of the proposed acquisition of voting securities of Genentech, Inc. ("Genentech") by Roche Holding Ltd., Roche Holdings, Inc., and Hoffmann-La Roche Inc. (collectively "Roche") (Genentech and Roche collectively the "Proposed Respondents"), and it now appearing that Proposed Respondents are willing to enter into an agreement containing an order to divest certain assets, to cease and desist from certain acts, and providing for other relief,

It is hereby agreed by and between Proposed Respondents, by their duly authorized officers and attorneys, and counsel for the Commission that:

1. Proposed Respondent Genentech, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the state of Delaware, with its principal executive offices located at 460 Point San Bruno Boulevard, South San Francisco, CA 94080.

2. Proposed Respondent Roche Holding Ltd. is a corporation organized, existing and doing business under and by virue of the law of Switzerland with its principal executive offices located in Grenzacherstrasse 124, Basle, Switzerland 4002.

3. Proposed Respondent Roche Holdings, Inc. is a corporation organized, existing and doing business under and by virue of the law of the state of Delaware with its principal executive offices located at 345 Route 17 South, Upper Saddle River, New Jersey 07458.

4. Proposed Respondent Hoffmann-La Roche Inc. is a corporation organized, existing and doing business under and by virue of the law of the state of New Jersey with its principal executive offices located at 340 Kingsland Street, Nutley, New Jersey 17110.

5. Proposed Respondents admit all of the jurisdictional facts set forth in the draft of complaint here attached.

6. Proposed Respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this agreement; and

(d) All rights under the Equal Access to Justice Act.

7. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify Proposed Respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

8. This agreement is for settlement purposes only and does not constitute an admission by Proposed Respondents that the law has been violated as alleged in the draft of complaint here attached.

9. This agreement contemplates that, if it is accepted by the Commission, and

if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to Proposed Respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following Order to divest certain assets, and cease and desist from certain acts, and providing for other relief in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the Order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to Order to Proposed Respondents' or to their counsel's addresses as stated in this Agreement shall constitute service. Proposed Respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the Order, and no agreement, understanding, representation, or interpretation not contained in the Order or the Agreement may be used to vary or contradict the terms of the Order.

10. Proposed Respondents have read the proposed complaint and Order contemplated hereby. They understand that once the Order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the Order. Proposed Respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

11. Proposed Respondents acknowledge that nothing contained in this agreement shall bar and the Commission reserves its right to investigate further and take action with respect to the effect, if any, of the acquisition on competition with regard to alpha interferon, including issuing an administrative complaint against Genentech and Roche and seeking judicial relief to enforce any Order arising from any administrative proceeding. Proposed Respondents agree that should the Commission seek in any such proceeding to compel Roche to divest itself of the shares of Genentech that Roche may hold, or to compel Genentech or Roche to divest any assets or businesses Genentech or Roche may hold, or to seek any other injunctive or equitable relief, Proposed Respondents shall not raise any objection based upon the expiration of the applicable Hart-Scott-Rodino Antitrust Improvements Act waiting period, the fact that the Commission has permitted Genentech stock to be acquired, this Agreement, or issuance of the Order contemplated by this Agreement.

Order

I

(Definitions)

As used in this Order, the following definitions shall apply:

a. "Genentech" means Genentech, Inc., a Delaware corporation, its directors, officers, employees, agents and representatives, its predecessors, successors, subsidiaries, divisions, groups and any other corporations, partnerships, joint ventures, companies, and affiliates that Genentech controls, directly or indirectly, and their respective directors, officers, employees, agents and representatives, and their respective successors and assigns.

b. "Roche" means Roche Holding Ltd., a Swiss corporation, Roche Holdings, Inc., a Delaware corporation, and Hoffmann-La Roche Inc., a New Jersey corporation, their directors, officers, employees, agents and representatives, their predecessors, successors, subsidiaries, divisions, groups and any other corporations, partnerships, joint ventures, companies, and affiliates that Roche controls, directly or indirectly, and their respective directors, officers, employees, agents and representatives, and their respective successors and assigns, but not including Genentech.

c. "Respondents" means Genentech and Roche.

d. "Acquisition" means Roche's acquisition of any or all voting securities of Genentech pursuant to the Agreement and Plan of Merger between Roche and Genentech dated February 2, 1990.

e. "Commission" means the Federal Trade Commission.

f. "Patents" means some, all or any portion of all unexpired patents (including inventor's certificates) and patents issued in the future based upon patent applications filed as of the date this Order becomes final, and all substitutions, continuations, continuations-in-part, divisions, renewals, reissues and extensions based on said patents, the applications therefor, or said patent applications.

g. "Corresponding Foreign Patents" means patents in a country other than the United States, entitled to the same priority date (or entitled to the same priority date if it had been timely filed) and based upon the same conception and reduction to practice.

h. "Process Patent" means a patent whose claims are directed to the methods or manipulative steps used for the manufacture of a particular compound, composition of matter or article of manufacture.

i. "Product Patent" means a patent which claims a particular compound, composition of matter or article of manufacture.

j. "Products Subject to Order" means Vitamin C, Human Growth Factor, and CD4-Based Therapeutics.

k. "Vitamin C" means ascorbic acid, however produced, and products produced as intermediates in the production of ascorbic acid, including but not limited to 2-keto-L-gulonic acid (2-KLG), ketogulonic acid (KGA), and L-ascorbic acid.

l. "GLC" means GLC Associates, a partnership between Genentech and the Enterprise Genetics, Inc., a Nevada corporation and wholly-owned indirect subsidiary of the Lubrizol Corporation.

m. "GLC Vitamin C Assets" means all of GLC's assets relating to Vitamin C, wherever located, including all assets, title, properties, interests, rights and privileges, of whatever nature, tangible and intangible, including without limitation, all patents, trade secrets, technology, and know-how, and chemical and biological substances, and all contractual rights, and including, insofar as they relate to Vitamin C, books and records, including but not limited to scientific reports, manuals, drawings, specifications, and supplier lists, and the rights, insofar as they relate to Vitamin C, to any patents or know-how used by Genentech or GLC in conjunction with the research or development of Vitamin C.

n. "Human Growth Factor" means any protein, peptide, or analog thereof, whether produced by recombinant DNA technology, chemical synthesis, purification, or other method, used as a therapeutic for treatment of human growth hormone deficiency, or other short stature deficiency, including but not limited to Human Growth Hormone and Human Growth Hormone Releasing Factor.

o. "Human Growth Hormone" means the protein produced by the human pituitary gland or synthetic versions thereof (including versions with an extra methionine amino acid), which stimulates growth and metabolism, used as a therapeutic for treatment of human growth hormone deficiency or other short stature deficiency, whether produced by recombinant DNA

technology, chemical synthesis, purification, or other method.

p. "Human Growth Hormone Releasing Factor" means growth hormone releasing factor, a polypeptide hormone which stimulates the human pituitary gland to release human growth hormone, or an analog thereof, used as a therapeutic for treatment of human growth hormone deficiency or other short stature deficiency, whether produced by recombinant DNA technology, chemical synthesis, purification, or other method.

q. "Roche's Human Growth Hormone Releasing Factor Business" means all of Roche's assets, title, properties, interests, rights and privileges, or whatever nature, tangible and intangible, including without limitation all patents, trade secrets, technology, and know-how, and chemical and biological substances, and all contractual rights (including all rights under the September 15, 1983 Licensing Agreement between Roche and the Salk Institute relating to Human Growth Hormone Releasing Factor), and including, insofar as they relate to Human Growth Hormone Releasing Factor, books and records, including but not limited to the results of research and development efforts by Roche, filings with the U.S. Food and Drug Administration, scientific and clinical reports, manuals, drawings, specifications, and supplier lists, and the exclusive rights, insofar as they relate to Human Growth Hormone Releasing Factor, to any patents or know-how used by Roche in conjunction with the research or development of Human Growth Hormone Releasing Factor or delivery systems for Human Growth Hormone Releasing Factor, and including Roche's Human Growth Hormone Releasing Factor inventory wherever located; provided that, tangible assets used both in the research, development or production of Human Growth Hormone Releasing Factor as well as in the research, development or production of other compounds shall not be considered part of Roche's Human Growth Hormone Releasing Factor Business.

r. "Roche's Human Growth Hormone Releasing Factor Patent Portfolio" means all Roche United States Patents and Corresponding Foreign Patents, and all United States Patents and Corresponding Foreign Patents of other persons licensed to Roche for which Roche has the right to grant licenses or sublicenses, which may be infringed by the manufacture, use or sale of Human Growth Hormone Releasing Factor, including but not limited to the patents listed in Exhibit A to this Order.

s. "CD4-Based Therapeutic" means a product containing CD4, soluble CD4, truncated soluble CD4, a CD4 fragment, or a CD4 conjugate, CD4 adhesion variant, CD4 hybrid, or CD4 fusion protein, used for the treatment of HIV-infected patients, whether asymptomatic or with ARC or AIDS, including but not limited to soluble CD4, CD4-IgG, CD4-IgC_3, CD4-IgM, CD4-Mu, and CD4-PE.

t. "Roche's CD4-Based Therapeutic Patent Portfolio" means all Roche United States Patents, and all United States Patents of other persons licensed to Roche for which Roche has the right to grant licenses or sublicenses, which may be infringed by the manufacture, use or sale of CD4-Based Therapeutics, including but not limited to the patent application listed in Exhibit B to this Order.

II

(GLC Divestituture)

It is ordered That: A. Respondents shall, within twelve (12) months after the date this Order becomes final, divest, absolutely and in good faith, either Genentech's interest in GLC or the GLC Vitamin C Assets.

B. Respondents shall divest Genentech's interest in GLC or the GLC Vitamin C Assets only to an acquirer that receives the prior approval of the Commission, and only in a manner that receives the prior approval of the Commission. The purpose of this divestiture is to ensure the continuation of GLC or the GLC Vitamin C Assets as an ongoing enterprise engaged in the same business in which GLC is presently employed and to remedy the lessening of competition resulting from the Acquisition alleged in the Commission's complaint.

C. Respondents shall take such action as is necessary to maintain the viability and marketability of GLC, and to prevent the destruction, removal or impairment of any assets subject to divestiture pursuant to this Paragraph II except in the ordinary course of business and except for ordinary wear and tear.

D. Within thirty (30) days after the consummation of the divestiture required by this Paragraph II, Genentech will commence teaching a reasonable number of persons designated by the acquirer how to produce Vitamin C using the GLC technology, if requested by the acquirer. Training session shall be conducted at the acquirer's facilities or at such other place as is mutually satisfactory to Genentech and the acquirer and shall continue for a period of time sufficient to satisfy the management of the acquirer that its personnel are well enough trained to produce Vitamin C as well as Genentech, provided however, that in no event shall Genentech be required to continue the training program for a period of more than one year. The acquirer will pay Genentech its expenses incurred in conducting such training sessions including salaries of its employees and travel and lodging costs.

III

(GRF Divestiture)

It is further ordered That: A. Roche shall, within twelve (12) months after the date this Order becomes final, divest, absolutely and in good faith, Roche's Human Growth Hormone Releasing Factor Business.

B. The divestiture required by this Order shall be made only to an acquirer that receives the prior approval of the Commission, and only in a manner that receives the prior approval of the Commission. The purpose of this divestiture is to ensure the continuation of Roche's Human Growth Hormone Releasing Factor Business as an ongoing enterprise engaged in the same business in which it is presently employed and to remedy the lessening of competition resulting from the Acquisition alleged in the Commission's complaint.

C. Roche shall take such action as is necessary to maintain the viability and marketability of Roche's Human Growth Hormone Releasing Factor Business, and to prevent the destruction, removal or impairment of any assets subject to divestiture pursuant to this Paragraph III except in the ordinary course of business and except for ordinary wear and tear. Pending the divestiture pursuant to this Paragraph III, Roche shall not divulge to Genentech or use for Genentech's benefit any "material confidential information" relating to Roche's Human Growth Hormone Releasing Factor Business not in the public domain, except as such information would be available to Genentech in the normal course of business if the Acquisition had not taken place. ("Material confidential information," as used herein, means competitively sensitive or proprietary information not independently known to Genentech from sources other than Roche, and includes but is not limited to patents, technologies, processes, or other trade secrets).

D. Within thirty (30) days after the consummation of the divestiture required by this Paragraph III, Roche will commence teaching a reasonable

number of persons designated by the acquirer how to produce Human Growth Hormone Releasing Factor, if requested by the acquirer. Training sessions shall be conducted at the acquirer's facilities or at such other place as is mutually satisfactory to Roche and the acquirer and shall continue for a period of time sufficient to satisfy the management of the acquirer that its personnel are well enough trained to produce Human Growth Hormone Releasing Factor as well as Roche, provided however, that in no event shall Roche be required to continue the training program for a period of more than one year. The acquirer will pay Roche its expenses incurred in conducting such training sessions including salaries of its employees and travel and lodging costs.

IV

(Trustee Divestiture)

It is further ordered That A. If Respondents have not divested, absolutely and in good faith and with the Commission's approval, Genentech's interest in GLC or the GLC Vitamin C Assets as required by Paragraph II within the twelve-month period provided for in Paragraph II, Respondents shall consent to the appointment of a trustee by the Commission to divest Genentech's interest in GLC of the GLC Vitamin C Assets. If Respondents have not divested, absolutely and in good faith and with the Commission's approval, Roche Human Growth Hormone Releasing Factor Business as required by Paragraph III within the twelve-month period provided for in Paragraph III, Respondents shall consent to the appointment of a trustee by the Commission to divest Roche's Human Growth Hormone Releasing Factor Business. In the event that the Commission or the Attorney General brings an action pursuant to section 5(*l*) of the Federal Trade Commission Act, 15 U.S.C. 45(*l*), or any other statute enforced by the Commission, for any violation of this Order, Respondents shall consent to the appointment of one or more trustees in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to section 5(*l*) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Respondents to comply with this Order.

B. If a trustee is appointed by the Commission or a court pursuant to Paragraph IV of this Order, the following terms and conditions shall apply:

(1) The Commission shall select the trustee, subject to the consent of Respondents, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures.

(2) The trustee shall have the exclusive power and authority, subject to the prior approval of the Commission, to accomplish the divestitures required by Paragraph II and Paragraph III of this Order. The trustee shall have twelve (12) months from the date of appointment to accomplish the divestitures, which shall be subject to the prior approval of the Commission. If, however, at the end of such twelve-month period the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or by the court for a court-appointed trustee; *provided, however,* That the Commission or court may only extend the divestiture period two (2) times.

(3) The trustee shall have full and complete access to the personnel, books, records, and facilities relating to Genentech's interest in GLC, the GLC Vitamin C Assets, Roche's Human Growth Hormone Releasing Factor Business, and any other relevant information as the trustee may reasonably request. Respondents shall develop such financial or other information as the trustee may reasonably request and shall cooperate with any reasonable request of the trustee. Respondents shall take no action to interfere with or impede the trustee's accomplishment of the divestitures. Any delays in divestiture caused by the Respondents shall extend the time for divestiture under this Paragraph IV in an amount equal to the delay, as determined by the Commission, or the court for a court-appointed trustee.

(4) The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondents' absolute and unconditional obligation to divest at no minimum price and the purpose of the divestitures as stated in Paragraphs II and III of this Order and subject to the prior approval of the Commission. If the trustee receives bona fide offers from more than one prospective acquirer, and if the Commission approves more than one such acquirer, the trustee shall divest to the acquirer selected by Respondents from among those approved by the Commission.

(5) The trustee shall serve, without bond or other security, at the cost and expense of Respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have authority to employ, at the cost and expense of Respondents, such consultants, accountants, attorneys or other persons reasonably necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the divestiture and for all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of Respondents and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's accomplishing the divestiture of Genentech's interest in GLC or the GLC Vitamin C Assets or Roche's Human Growth Hormone Releasing Factor Business.

(6) Within sixty (60) days after appointment of the trustee, and subject to the prior approval of the Commission, and, in the case of a court-appointed trustee, of the court, the Respondents shall, consistent with the provisions of this Order, execute a trust agreement that transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture required by this Order.

(7) Except for cases of misfeasance, negligence, willful or wanton acts, or bad faith by the trustee, the trustee shall not be liable to Respondents for any action taken or not taken in the performance of the trusteeship. Respondents shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, claims, or expenses result from misfeasance, negligence, willful or wanton acts, or bad faith by the trustee.

(8) If the trustee ceases to act or fails to act diligently, one or more substitute trustees shall be appointed in the same manner as provided in Paragraph IV of this Order.

(9) The trustee shall report in writing to Respondents and the Commission every sixty (60) days concerning the trustee's efforts to accomplish the divestiture.

(10) The trustee shall have no obligation or authority to operate or maintain the GLC Vitamin C Assets or Roche's Human Growth Hormone Releasing Factor Business.

V

(Licensing Alternative)

It is further ordered That: A. If Respondents have not divested Roche's Human Growth Hormone Releasing Factor Business as required by Paragraph III within the twelve-month period provided for in Paragraph III, the Commission, rather than appointing a trustee pursuant to Paragraph IV, in its sole discretion, may require that Roche, upon written application made within ten (10) years of the date this Order becomes final, grant non-exclusive licenses to produce and sell Human Growth Hormone Releasing Factor under Roche's Human Growth Hormone Releasing Factor Patent Portfolio for the life of all patents in the portfolio, at a royalty not in excess of 1% of net sales (if only Process Patents are licensed) or 3% of net sales (if any Product Patents are licensed) and reasonable and customary terms and conditions, to any and all sole proprietorships, partnerships, corporations or other business entities which state an intention to produce or sell a Human Growth Hormone Releasing Factor in the United States, or research and develop a Human Growth Hormone Releasing Factor for purposes of later producing or selling a Human Growth Hormone Releasing Factor in the United States.

B. Neither the Commission's invocation of its option under this Paragraph V, nor its decision not to invoke its option under this Paragraph V shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it for any failure by Respondents to comply with this Order.

VI

(CD4 Mandatory Licensing)

It is further Ordered That Roche shall, upon written application made within ten (10) years of the date this Order becomes final, grant non-exclusive licenses to produce and sell CD4-Based Therapeutics under Roche's CD4-Based Therapeutic Patent Portfolio for the life of all patents in the portfolio, at a royalty not in excess of 1% of net sales (if only Process Patents are licensed) or 3% of net sales (if any Product Patents are licensed) and reasoned and customary terms and conditions, to any and all sole proprietorships, partnerships, corporations or other business entities which state an intention to produce or sell a CD4-Based Therapeutic in the United States, or research and develop a CD4-Based Therapeutic for purposes of later producing or selling a CD4-Based Therapeutic in the United States.

VII

(Disposition of Patents)

It is further ordered That Respondents shall not dispose or permit the disposition of any patents or rights thereunder so as to deprive them of the power to grant or cause to be granted the licenses required by this Order; provided that, if, after the expiration of three (3) years from the date this Order becomes final for any patent which has issued prior to the date this Order becomes final, or three (3) years from the date of issuance of any patent which has not issued as of the date this Order becomes final, if no license has been requested under such patent, Respondents may abandon and dedicate to the public such patent.

VIII

(Patent Validity)

It is further ordered That nothing herein shall be deemed to prevent any person from attacking in any proceeding or controversy the validity, scope or enforceability of any present or future patent, nor shall this Order be construed as imputing any validity, enforceability, or value to any such patent.

IX

(Publication of Patent Availability)

It is further ordered That within sixty (60) days after the date this Order becomes final and annually thereafter for nine (9) years, Respondents shall publish in the Official Gazette of the United States Patent Office a notice (1) identifying by number, title, date of issue, and subject matter, or by other appropriate means, all United States Patents which are available for license pursuant to the terms of this Order; (2) stating that Respondents will grant licenses pursuant to the terms of this Order; and (3) stating that a copy of this Order and a copy of all Patents subject to licensing under the Order are available from Respondents upon written request. Respondents shall provide a copy of this Order and the most recent edition of such notice to all persons who inquire as to the availability of a license for any Patent subject to licensing under this Order, and shall provide copies, for a reasonable copying fee, of any Patents subject to licensing under this Order, upon request by any person.

X

(Hold Separate Agreement)

It is further ordered That the Respondents shall comply with all terms of the Agreement to Hold Separate, attached hereto and made a part hereof as Appendix I. Said Agreement shall continue in effect until Respondents' divestiture obligations with respect to GLC under Paragraphs II and IV of the Order are satisfied, or until such other time as the Agreement to Hold Separate provides.

XI

(Prior Approval)

It is further ordered That, for a period of ten (10) years from the date this Order becomes final, each Respondent shall cease and desist from acquiring, without the prior approval of the Commission, directly or indirectly, through subsidiaries or otherwise, except in the ordinary course of business, assets used in, or more than 1% of the stock or share capital of or any interest in any company engaged in, clinical development or the manufacture or sale in the United States of any Products Subject to Order, or any exclusive rights whether by license or otherwise to any United States Patents for use in the clinical development or the manufacture or sale of any Products Subject to Order. This Paragraph XI shall not apply to any acquisition of a non-exclusive license to any United States Patents with respect to any Products Subject to Order and shall not apply to the acquisition of any United States Patents or any exclusive license to any United States Patents, with respect to any Products Subject to Order, for a present value of less than one million dollars ($1,000,000) including initial payments and expected future royalties.

XII

(Compliance Reports)

It is further ordered That: A. Within sixty (60) days after the date this Order becomes final and every sixty (60) days thereafter until Respondents have fully satisfied the divestiture obligations of this Order, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with the Order. Respondents shall include in their compliance reports, among other

things that are required from time to time, a full description of all contacts or negotiations with prospective acquirers for the divestitures required by this Order, including the identity of all parties contacted. Respondents also shall include in their compliance reports copies of all written communications to and from such parties, and all internal memoranda, reports, and recommendations concerning the required divestitures.

B. One year from the date this Order becomes final and annually thereafter for nine (9) years, Respondents shall file with the Commission a verified written report of their compliance with Paragraphs V (if invoked by the Commission), VI, VII, IX and XI of this Order.

XIII

(Investigation)

It is further ordered That for the purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, upon written request and on reasonable notice to Respondents made to their principal offices, Respondents shall make available to any duly authorized representatives of the Commission:

A. All books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession of under the control of Respondents relating to any matters contained in this Order, for inspection and copying during office hours and in the presence of counsel; and

B. Upon five (5) days' notice to Respondents, and without restraint or interference from Respondents, for interview, officers or employees of Respondents, who may have counsel present, regarding such matters. Officers and employees of Respondents whose place of employment is outside the United States will be made available on reasonable notice.

Information or documents obtained by the Commission pursuant to this Paragraph XIV shall be accorded such confidential treatment as is available under sections 6(f) and 21 of the Federal Trade Commission Act, 15 U.S.C. 46(f) and 57b–2.

XIV

(Corporate Changes)

It is further ordered That Respondents shall notify the Commission at least thirty (30) days prior to any proposed change in any Respondent, such as dissolution, assignment or sale resulting in the emergence of a successor, or the creation or dissolution, or sale of subsidiaries or any other change that may affect compliance obligations arising out of this Order.

Exhibit A

U.S. Patent No. 4,622,312, issued Nov. 11, 1986; Arthur M. Felix, Edgar P. Heimer, Thomas F. Mowels; Growth hormone releasing factor analogs; Appl. No. 653,163; Filed Sept. 24, 1984

U.S. Patent No. 4,649,131 issued March 10, 1987; Arthur M. Felix, Edgar P. Heimer, Thomas F. Mowels; Growth hormone releasing factor analogs; Appl. No. 762,891; Filed Aug. 6, 1985

U.S. Patent No. 4,728,609 issued March 1, 1988; Ram S. Bhatt, Kenneth J. Collier, Robert M. Crowl, Mohindar S. Poonian; Recombinant growth hormone releasing factor; Appl. No. 778,779; Filed Sept. 24, 1985

U.S. Patent No. 4,732,972 issued March 22, 1988; Arthur M. Felix, Edgar P. Heimer; Polypeptides having growth hormone releasing activity; Appl. No. 789,922; Filed Oct. 21, 1985

U.S. Patent No. 4,734,399 issued March 29, 1988; Arthur M. Felix, Edgar P. Heimer, Thomas F. Mowels; Growth hormone releasing factor analogs; Appl. No. 922,572; Filed Oct. 23, 1986

Exhibit B

U.S. Patent Pending; Klaus Karjalainen, Andre Traunecker; Chimeric CD4-immunoglobulin polypeptides; Appl. No. 510,773; Filed April 18, 1990

Analysis of Proposed Consent In Order to Aid Public Comment

The Federal Trade Commission has accepted subject to final approval, an agreement containing a proposed consent order from Roche Holding Ltd., Roche Holdings, Inc., and Hoffman-La Roche Inc. (collectively "Roche") and Genentech, Inc. ("Genentech").

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixth (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Commission's investigation of this matter concerned a proposed acquisition by Roche of a controlling interest in Genentech. Roche is a Swiss pharmaceutical company which has developed and markets numerous pharmaceuticals in the United States and has conducted extensive research and development in biotechnology. Genentech, which is a Delaware corporation with its principal offices in California, is a leading biotechology company which has developed and marketed several pharmaceutical products and has other products under development.

The Commission has reason to believe that Roche's proposed acquisition of Genentech may substantially lessen competition in (1) the world market for vitamin C; (2) the United States market for therapeutic drugs for the treatment of growth deficiency, including human growth hormone and growth hormone releasing factor; and (3) the United States market for CD4-based therapeutics for the treatment of AIDS/HIV infection in violation of Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act.

The agreement and order provides that Roche may acquire control of Genentech, but that it must divest Genentech's interest in GLC Associates ("GLC"), a partnership between Genentech and Lubrizol, Inc., which has researched and patented a new vitamin C production process, or divest the partnership's vitamin C assets. The proposed order would also require Roche to divest its human growth hormone releasing factor business. The agreement and order provides that both these divestitures must be approved in advance by the Commission and must occur within one year.

The acquirers of Genentech's interest in GLC or the GLC vitamin C business and the Roche human growth hormone releasing factor business would have the option of obtaining up to one year of training from Genentech and Roche, respectively, in regard to the operation of the divested businesses.

If either divestiture is not accomplished within one year, the Commission may appoint a trustee to accomplish the divestiture. The Commission also has the option, exercisable in its sole discretion, of requiring Roche to license its human growth hormone releasing factor patents on a non-exclusive basis, rather than appoint a trustee to divest the business.

Additionally, the proposed order would require Roche to license its CD4-based therapeutic United States patent for a 3% royalty (if product patents are licensed) or a 1% royalty (if only process patents are licensed) to anyone who requests a license within 10 years of the date the order becomes final. If no licenses are requested within three years Roche may abandon its patent and dedicate it to the public.

In order to ensure that the industry is aware of these licensing opportunities, under the proposed order Roche and Genentech would be required to publish notices of the availability of these licenses and make copies of the relevant patents available to interested persons.

The proposed order also would provide that for a period of ten years neither Roche nor Genentech may acquire any assets used in or any interest in any other firm in the clinical development, manufacture or sale of vitamin C, therapeutic drugs for the treatment of human growth hormone deficiency, or CD4-based therapeutics, without prior approval from the Commission. In addition, neither Roche nor Genentech could obtain an exclusive license for use in the clinical development, manufacture or sale of vitamin C, therapeutic drugs for the treatment of human growth hormone deficiency, or CD4-based therapeutics, with a present value of $1,000,000 or more without prior approval.

The anticipated competitive effect of the proposed order will be to assure that competition will continue in the world vitamin C market and in the United States markets for the research, development and marketing of therapeutic drugs for the treatment of human growth hormone deficiency and CD4-based therapeutics.

The proposed order does not require that the parties take any action with regard to alpha interferon, but would expressly preserve the Commission's right to take future action with respect to the acquisition's effect on alpha interferon.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and the proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 90-21911 Filed 9-14-90; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Statement of Organization, Functions and Delegations of Authority

Part A, of the Office of the Secretary, Statement of Organization, Functions and Delegation of Authority for the Department of Health and Human Services is being amended as follows: Chapter AMS, "Office of Management Acquisition as last amended at 55 FR 29102. This Notice is to correctly identify the "Office of Small and Disadvantaged Business Utilization." The change is as follows:

At section AMS.10 Organization, delete the "Division of Small and Disadvantaged Businesses," and replace with the "Office of Small and Disadvantaged Business Utilization."

Dated: September 15, 1990.

Michael W. Carleton,

Deputy Assistant Secretary for Information and Resources Management.

[FR Doc. 90-21801 Filed 9-14-90; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

[Docket No. 90N-0274]

American Red Cross Blood Services, Northeast Region, Albany, NY; Revocation of U.S. License No. 190

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the revocation of the establishment license (U.S. License No. 190) and the product licenses issued to the Albany, NY location of the American Red Cross, the American Red Cross Blood Servcies, Northeast Region (hereafter referred to as Albany ARC), for the manufacture of Whole Blood, Red Blood Cells, Platelets, Cryoprecipitate AHF, Source Plasma, Source Leukocytes, and Plasma. The American Red Cross has numerous locations throughout the United States. The licenses were revoked at the Albany location only. In a letter dated May 9, 1990, the American Red Cross requested that its establishment and product licenses be revoked for the Albany ARC and waived an opportunity for a hearing.

DATES: The revocation of the establishment and product licenses became effective July 26, 1990.

FOR FURTHER INFORMATION CONTACT: JoAnn M. Minor, Center for Biologics Evaluation and Research (HFB-130), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20892, 301-295-8188.

SUPPLEMENTARY INFORMATION: FDA has revoked the establishment license (U.S. License No. 190) and the product licenses issued to the American Red Cross (ARC), the American Red Cross Blood Services, Northeast Region (Hackett Blvd. at Clara Barton Dr., Albany, NY 12208), for the manufacture of Whole Blood, Red Blood Cells, Platelets Cryoprecipitate AHF, Source Plasma, Source Leukocytes, and Plasma. The ARC has numerous locations across the United States. The licenses have been revoked only at the Albany ARC. U.S. License No. 190 remains in effect for the ARC at its other locations.

FDA inspections of the Albany ARC conducted on May 2, 1988 through June 6, 1980; December 12, 1988 through January 18, 1989; and December 4, 1989 through February 8, 1990, revealed numerous and significant deficiencies from applicable standards in major areas of operation. Many of the deviations uncovered during the three inspections were recurring and reamined uncorrected by the Albany ARC.

During the May 2, 1988 through June 6, 1988, inspection of the Albany ARC, some of the deficiencies included: the release of unsuitable units, donor deferral/recordkeeping problems, and poor training and supervision practices. On September 14, 1988, ARC signed an agreement with FDA to initiate actions to resolve the numerous deficiencies that had occurred in the operation of several ARC regional blood services, including the Albany ARC. The agreement focused on a number of deficiencies including: management control, standard operating procedures (SOP's), donor deferral practices, and employee training.

From December 12, 1988 to January 18 1989, FDA conducted an inspection focusing on the Albany ARC's release of blood and blood components collected from approximately 111 blood donors that had been incorrectly interpreted as nonreactive for the hepatitis B surface antigen (HBsAg) when, in fact, the units should have been designated initially reactive and subjected to additional testing. The December 1988 to January 1989 inspection also revealed serious deficiencies in supervision and management, including failure to detect the hepatitis B surface antigen (HBsAg) problem and failure to ensure adherence to standard operating procedures (SOP's). By a letter dated February 14, 1989, FDA notified ARC that unless they provided comprehensive and acceptable information of the action taken to achieve compliance with the applicable standards and regulations within 10 days of receipt of the letter, FDA intended to institute proceedings to revoke U.S. License No. 190 at the Albany ARC location. In letters dated March 1 and 10, 1989, the ARC provided FDA with a plan and target dates.

FDA's inspection conducted December 4, 1989 through February 8, 1990 revealed continuing deviations from current good manufacturing practices in the following areas: (1) Testing and review of test records, (2) training, (3) release and distribution of blood and blood components, and (4) SOP's.

This inspection revealed a failure of supervisory and management level employees to note and initiate corrective actions in the numerous instances in which employees recorded incubation times and temperatures deviating from the manufacturer's directions for tests for the antibody to the human immunodeficiency virus, type 1 (anti-HIV-1) and the HBsAg.

The inspection revealed an inadequate training program. Training was not adequately documented, the checklists used were unclear as to the training received, and there was no measure of acceptability on the post-training testing. It was noted that two employees in the electronic data processing area performed poorly on post-training tests, and no retraining or corrective action was taken.

The inspection also revealed the release and distribution of blood and blood components collected from approximately 11 blood donors which, while testing nonreactive for anti-HIV-1, were drawn from individuals deemed ineligible by the establishment's SOP's based on previous testing information. These donors had all tested repeatably reactive for anti-HIV-1 on one or more previous donations.

In addition, the inspection revealed that the Albany ARC failed to maintain current and complete written standard operating procedure manuals. Several instances were noted in which two or more versions of a specific procedure were on file without any indication of which version was operative. Also, not all procedures currently conducted were included in the SOP's.

FDA concluded that these violations represented significant and continuing departures from the applicable standards and requirements for which notice had been provided. Such notice included the agreement ARC signed with FDA in September 1988, applicable to all locations of the ARC, and the February 14, 1989 letter of notice of intent to revoke the product and establishment licenses at the Albany ARC location. Despite the assurances of correction by the ARC and the promises to initiate, among other things, employee training programs to ensure that employees understand their duties and responsibilities for the safety of the blood supply, FDA's inspection of December 4, 1989 through February 8, 1990, indicated that Albany ARC had failed to achieve compliance.

By letter dated March 27, 1990, the ARC outlined proposed corrective actions. However, given the history of noncompliance of the Albany ARC location, FDA was not assured that the corrective actions were adequate to properly address the numerous deficiencies or that the Albany ARC would effectively implement each of the corrective actions.

Accordingly, in a letter dated May 2, 1990, FDA notified the American Red Cross National Headquarters of the agency's intent to institute proceedings to revoke U.S. License No. 190 issued to the ARC for the manufacture of Whole Blood, Red Blood Cells, Platelets, Cryoprecipitate AHF, Souce Plasma, Source Leukocytes, and Plasma at the Albany, NY location.

In a letter dated May 9, 1990, the ARC requested that its establishment and product licenses for the Albany ARC be revoked and waived an opportunity for hearing. The agency granted the licensee's request by letter to the firm dated July 26, 1990, issued under 21 CFR 601.5(a), which revoked the establishment license (U.S. License No. 190) and the product licenses of the Albany, NY location of the ARC. FDA has placed copies of the letters of February 14, 1989, May 2, 1990, and July 26, 1990, from the agency and the letters of March 1, 1989, March 10, 1989, March 27, 1990, and May 9, 1990, from the ARC on file at the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

Accordingly, under 21 CFR 12.38 and under section 351 of the Public Health Service Act (42 U.S.C. 262) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated under 21 CFR 5.68, the establishment license (U.S. License No. 190) and the product licenses issued to the Albany, NY location of the ARC for the manufacture of Whole Blood, Red Blood Cells, Platelets, Cryoprecipitate AHF, Source Plasma, Source Leukocytes, and Plasma were revoked effective July 26, 1990.

This notice is issued and published under 21 CFR 601.8 and the redelegation at 21 CFR 5.67.

Dated: September 8, 1990.

Gerald V. Quinnan, Jr.,

Acting Director, Center for Biologics Evaluation and Research.

[FR Doc. 90-21932 Filed 9-14-90; 8:45 am]

BILLING CODE 4160-01-M

Advisory Committee; Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Department of Health and Human Services. This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in open public hearings before this advisory committee. For this meeting the Department is following the procedures in 21 CFR Part 14 that apply to meetings of advisory committees to the Food and Drug Administration.

Meeting: The following advisory committee meeting is announced:

Advisory Committee on Special Studies Relating to the Possible Long-term Health Effects of Phenoxy Herbicide and Contaminants (Ranch Hand Advisory Committee)

Data, time, and place. September 21, 1990, 1 p.m., Rm. 729-G, Hubert H. Humphrey Bldg., 200 Independence Ave. SW., Washington, DC.

Type of meeting and contact person. Open committee discussion, 1 p.m. to 3 p.m.; open public hearing, 3 p.m. to 4 p.m., unless public participation does not last that long; Ronald F. Coene, National Center for Toxicological Research (HFT-10), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3155.

General function of the committee. The advisory committee shall advise the Secretary and the Assistant Secretary for Health concerning its oversight of the conduct of the Ranch Hand Study by the Air Force and other studies in which the Secretary or the Assistant Secretary for Health beleives involvement by the advisory committee is desirable.

Agenda—Open public hearing. Any interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make a formal presentation should notify the contact person before September 20, 1990, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their comments.

Open committee discussion. At this first meeting of the newly created advisory committee, a short history and briefing on the Air Force's Ranch Hand Study will be presented. Also to be discussed will be the outline of future documents the advisory committee will be required to review. A final agenda will be available on September 17, 1990, by contacting the committee contact person.

FDA is giving less than 15 days public notice of the Ranch Hand Advisory Committee meeting because of the necessity to commence the activities of

the committee as soon as possible due to a need to brief a totally new committee on upcoming research reports that will require its members' immediate review and comment.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI-35), Food and Drug Administration, Rm. 12A-16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. App. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: September 13, 1990.

Ronald G. Chesemore,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 90-22091 Filed 9-13-90; 3:27 am]

BILLING CODE 4160-01-M

Consumer Participation; Notice of Open Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following district consumer exchange meeting: New Orleans District Office, chaired by Robert O. Bartz, District Director. The topic to be discussed is proposed food labeling regulations.

DATES: Tuesday, October 2, 1990, 1:30 p.m.

ADDRESSES: Louisiana State University (LSU) Burden Research Plantation, 4560 Essen Lane, Baton Rouge, LA 70809.

FOR FURTHER INFORMATION CONTACT: Eileen P. Angelico, Consumer Affairs Officer, Food and Drug Administration, 4298 Elysian Fields Ave., New Orleans, LA 70122, 504-589-2420.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's district offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: September 12, 1990.

Ronald G. Chesemore,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 90-21934 Filed 9-14-90; 8:45 am]

BILLING CODE 4160-01-M

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Meeting of AIDS Research Advisory Committee, NIAID

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Basic Research Subcommittee of the AIDS Research Advisory Committee, National Institute of Allergy and Infectious Diseases, on November 9, 1990, at the Stone House, National Institutes of Health, Bethesda, Maryland 20892.

The entire meeting will be open to the public from 9 a.m. on November 9 to adjournment at 4:30 p.m. The committee will discuss the challenges confronting basic research in HIV/AIDS and the discovery and development of methods to treat and prevent the disease. Attendance by the public will be limited to space available.

Ms. Patricia Randall, Office of Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, room 7A32, National Institutes of Health, Bethesda, Maryland 20892, telephone (301-496-5717), will provide a summary of the meeting and a roster of the committee members upon request.

Jean S. Noe, Executive Secretary, AIDS Research Advisory Committee, Division of Acquired Immunodeficiency Syndrome, NIAID, NIH, Control Data Building, Room 201N, telephone (301-496-0545), will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.855 Pharmacological Sciences; 13.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: September 11, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90-21867 Filed 9-14-90; 8:45 am]

BILLING CODE 4140-01-M

National Institutes of Diabetes and Digestive and Kidney Diseases; Meeting, National Diabetes Advisory Board

Pursuant to Public Law 92-463, notice is hereby given of the National Diabetes Advisory Board's meeting date which will be October 15-16, 1990. The meeting will begin at 8:30 a.m. on October 15, 1990, and recess at 5:20 p.m. The meeting will reconvene at 8:30 a.m. on October 16, 1990, and adjourn approximately 3:30 p.m. The Board will meet at the Marriott's Lincolnshire Resort, Ten Marriot Drive, Lincolnshire, Illinois 60069. The purpose of the meeting is to discuss the Board's activities and to continue evaluation of the implementation of the long-range plan to combat diabetes mellitus. Although the entire meeting will be open to the public, attendance will be limited to space available. Notice of the meeting room will be posted in the hotel lobby.

For any further information, please contact Mr. Raymond M. Kuehne, Executive Director, National Diabetes Advisory Board, 1801 Rockville Pike, Suite 500, Rockville, Maryland 20852, (301) 496-6045. His office will provide, for example, a membership roster of the Board and an agenda and summaries of the actual meetings.

Dated: September 11, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90-21868 Filed 9-14-90; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Diabetes and Digestive and Kidney Diseases; Meeting, National Digestive Diseases Advisory Board

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the National Digestive Diseases Advisory Board on October 29, 1990. The meeting will begin at 8:30 a.m. and adjourn at 3:30 p.m. The meeting, which will be open to the public, will be held at the Marriott Crystal City Hotel, 1999 Jefferson Davis Highway, Arlington, Virginia 22202. The meeting will include a conference on liver transplantation as well as discussion regarding the Board's activities and continued evaluation of the implementation of the long-range digestive diseases plan. The conference portion of the meeting will enable the Board to develop a position statement on selected issues regarding liver transplantation that will aid the Board in its subsequent recommendations. Attendance by the public will be limited to space available. Notice of the meeting room will be posted in the hotel lobby.

Mr. Raymond M. Kuehne, Executive Director, National Digestive Diseases Advisory Board, 1801 Rockville Pike, Suite 500, Rockville, Maryland 20852, (301) 496-6045, will provide on request an agenda and roster of the members. Summaries of the meeting may also be obtained by contacting his office.

Dated: September 11, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90-21869 Filed 9-14-90; 8:45 am]

BILLING CODE 4140-01-M

Office of Human Development Services

Meeting of the U.S. Advisory Board on Child Abuse and Neglect

Agency Holding the Meeting: Office of the Assistant Secretary for Human Development Services, PHS, HHS.

Times and Dates: 9 a.m., September 26, 1990 to 12 Noon, September 28, 1990.

Place: Hubert H. Humphrey Building, Room 303-A, 200 Independence Avenue, SW., Washington, DC.

Status: The meeting is open to public observation.

Matters To Be Considered: At this meeting the U.S. Advisory Board will: review developments within DHHS concerning the first Board report; meet with the Secretary of Health and Human Services to discuss the DHHS initiative developed in response to the Board report; participate in a hearing on the Board report conducted by the Senate Subcommittee on Children, Families, Drugs, and Alcoholism; discuss an anthropological perspective on the new child-centered, community-based national strategy being developed by the Board; discuss strengths and weaknesses of the Board report with a reactor panel; discuss preliminary work group workplans for second year activities and reports; meet in work groups to formulate strategies and develop final workplans for Board approval; schedule dates for second year meetings, hearings, and activities; and hear from several officials of the Department of Health and Human Services.

Contact Person For More Information: Eileen H. Lohr, Program Assistant, U.S. Advisory Board on Child Abuse and Neglect, Room 2070-C Switzer Building, Washington, DC 20201, (202) 245-6670.

Dated: September 11, 1990.

Byron D. Metrikin-Gold,

Executive Director, U.S. Advisory Board on Child Abuse and Neglect.

[FR Doc. 90-21870 Filed 9-14-90; 8:45 am]

BILLING CODE 4130-01-M

Public Health Service

Advisory Committee on the Food and Drug Administration; Meetings

ACTION: Correction notice.

SUMMARY: This notice announcing the schedule of subcommittee meetings, printed in the August 7th **Federal Register** on page 32153, incorrectly identified the meeting times for the first Drugs and Biologics subcommittee meeting and the date of the second meeting of the Foods, Cosmetics, and Veterianary Medicine subcommittee.

The first Drugs and Biologics subcommittee meeting will take place on Thursday, September 27, 1990 from 8:30 a.m. to 7 p.m. and Friday September 28, 1990 from 8 a.m. to 12 p.m. The meeting is open to the public and will be held in the Montgomery Room I and II at the Guest Quarters Suites Hotel located at 7335 Wisconsin Avenue, Bethesda, Maryland 20814. Public registration will begin one half hour prior to the beginnign of the meeting on each day.

The second meeting of the Foods, Cosmetics, and Veterinary Medicine subcommittee will take place on Friday, October 26, 1990 from 9 a.m. to 5 p.m. The meeting is open to the public and will be held in the Humphrey Auditorium on the first floor of the Humphrey Building located at 200 Independence Avenue, SW., Washington, DC 20201. Public registration will begin at 8:30 a.m.

FOR FURTHER INFORMATION CONTACT: Sheryl Rosenthal, Advisory Committee on the Food and Drug Administration, Department of Health and Human Services, Room 740-G Humphrey Building, 200 Independence Ave., SW., Washington, DC 20201. Telephone number (202) 245-7305.

Dated: September 11, 1990.

Eric M. Katz,

Executive Director, Advisory Committee on the Food and Drug Administration.

[FR Doc. 90-21871 Filed 9-14-90; 8:45 am]

BILLING CODE 4130-01-M

Alcohol, Drug Abuse, and Mental Health Administration; Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter, HM, Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (39 FR 1654, January 11, 1974, as amended most recently as 55 FR

27509, July 3, 1990) is amended to reflect changes within the National Institutes of Mental Health (NIMH). These changes within NIMH strengthens the ability of the Institute to provide treatment for the persistently and severely mentally ill population. The reorganization accomplishes the following: (1) Establishes the Division of Applied and Services Research; (2) modifies the functional statements of the Division of Basic Brain and Behavioral Sciences and the Division of Clinical Research to include a statement providing special emphasis on minorities and special populations; and (3) abolishes the Division of Education and Service Systems Liaison and the Division of Biometry and Applied Sciences;

Section HM-B, Organization and Functions, Alcohol, Drug Abuse, and Mental Health Administration (HM), is amended as follows:

After the statement for the *Division of Extramural Activities (HMMD),* add the following:

Division of Applied and Services Research (HMME): (1) Directs, plans, supports, and conducts programs of research, research demonstrations, research training, and resource development on: (a) Mental health service delivery and economics at the clinical, program, and system levels; (b) quality of care; (c) the understanding, treatment, and prevention of antisocial and violent behavior, including law and mental health interactions, and the prevention, control, and treatment of rape and other sexual assault; (d) traumatic stress, including mental health sequelae of interpersonal violence, combat, and natural disasters; and (e) the applied sciences as they relate to minority and other special populations; (2) directs, plans, supports and conducts programs of research demonstration to test ways to improve community-based care for children, adolescents and adults with serious mental disorders; (3) directs, plans, supports, and conducts programs for: (a) Consultation and technical assistance to national organizations, State and local governments, family and consumer groups, and educational institutions on mental health service development and State planning, with emphasis on services for persons with severe mental disorders, including children and adolescents; (b) State planning and human resource development projects; (c) obtaining, analyzing, and disseminating statistics on mental health services nationally; (d) developing methodologies for research and data collection in biometry, services research, mental health economics, and antisocial and violent behavior; (e) consultation and technical assistance to State and local mental health agencies on statistical methodology, mental health information systems, and the use of statistical and demographic data; (f) enhancing capacity for services research in the public and private sectors; and (g) the provision of statistical and mathematical consultation to the Institute; and (3) serves as the PHS lead in planning for alcohol, drug abuse, and mental health services during national disasters.

Under the heading *Division of Basic Brain and Behavioral Sciences (HMM2),* delete the statement and substitute the following statement:

Division of Basic Brain and Behavioral Sciences (HMM2), Directs, plans, and supports programs of basic and applied research, research training, and resource development to further understand the etiology, psychopathology, treatment and prevention of mental disorders with a focus on: behavioral medicine and prevention; behavioral and social sciences; cognitive sciences, neuroimaging and neurosciences; and, psychopharmacology, with special attention to minority and other special populations.

Under the heading *Division of Clinical Research (HMM6),* delete the statement and substitute the following statement:

Division of Clinical Research (HMM6): Directs, plans, conducts, and supports programs of: (a) Research, research training, and resource development in epidemiology, psychopathology, classification, assessment, etiology, genetics, clinical course, outcome, treatment, and prevention of mental disorders with emphasis on schizophrenic disorders, affective and anxiety disorders, and mental disorders of children and adolescents, the elderly, minorities and other special populations; and (b) mental health education and human resource development for targeted populations.

Under the headings *Division of Education and Service Systems Liaison (HMMC) and Division of Biometry and Applied Sciences (HMM9),* delete the titles and statements.

Dated: September 6, 1990.

Frederick K. Goodwin,

Administrator, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 90-21812 Filed 9-14-90; 8:45 am]

BILLING CODE 4160-20-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Under Secretary

[Docket No. D-90-930; FR-2837]

Redelegation of Authority to Chief Financial Officer Regarding Audit Management Functions

AGENCY: Office of the Under Secretary, HUD

ACTION: Notice of redelegation of authority.

SUMMARY: The Under Secretary of Housing and Urban Development is redelegating to the Chief Financial Officer certain responsibilities respecting the audit management activities of the Department.

EFFECTIVE DATE: September 7, 1990.

FOR FURTHER INFORMATION CONTACT: Donna M. Abenante, Special Assistant to the Under Secretary, Office of the Under Secretary, Department of Housing and Urban Development, 451 Seventh Street SW., room 10126, Washington, DC 20410. Telephone (202) 708-3532 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: By notice published contemporaneously with this notice, the Secretary of Housing and Urban Development delegated to the Under Secretary certain authority to oversee the audit management functions of the Department. Under section 121 of the Department of Housing and Urban Development Reform Act of 1989, Public Law No. 101-235; 103 Stat. 1987, at 2022, Congress established a new position in the Department entitled Chief Financial Officer and provided that the Chief Financial Office shall: (1) Serve as the principal advisor to the Secretary on financial management; (2) develop and maintain a financial management system for the Department (including accounting and related transaction systems, internal control systems, financial reporting systems, credit, and cash and debt management); (3) supervise and coordinate all financial management activities and operations of the Department; (4) assist in the financial execution of the Department's budget in relation to actual expenditures and prepare timely performance reports for senior managers; and (5) issue such policies and directives as may be necessary to carry out section 121.

The Under Secretary is redelegating to the position of Chief Financial Officer certain responsibilities to oversee and implement the audit management activities of the Department.

Accordingly, the Under Secretary redelegates as follows:

Section A. Authority redelegated. The Under Secretary redelegates to the Chief Financial Officer the following basic authority and functions:

1. To establish procedures to assure timely management decisions on findings and recommendations in audit reports prepared or reviewed by the Office of Inspector General.

2. To oversee and coordinate the implementation of management decisions regarding the findings and recommendations included in an audit report.

3. To oversee the preparation of monitoring reports concerning the prompt implementation of audit recommendations.

Section B. Authority expected. The following authority is expected from this delegation of authority from the Under Secretary to the Chief Financial Officer:

1. To sue and be sued.

Authority: Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: September 7, 1990.

Alfred A. DelliBovi,

Under Secretary.

[FR Doc. 90-21837 Filed 9-14-90; 8:45 am]

BILLING CODE 4210-32-M

Office of the Secretary

[Docket No. D-90-928; FR-2804]

Delegation of Authority to the Chief Financial Officer

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of delegation of authority.

SUMMARY: Pursuant to section 121 of the Department of Housing and Urban Development Reform Act of 1989, Public Law No. 101-235, 103 Stat. 1987 (1989), which established the position of HUD Chief Financial Officer within the Department, the Secretary of Housing and Urban Development is delegated to the Chief Financial Officer certain responsibilities respecting the financial management activities, systems and operations of the Department.

EFFECTIVE DATE: September 6, 1990.

FOR FURTHER INFORMATION CONTACT: Donna M. Abbenante, Special Assistant to the Undersecretary, Office of the Undersecretary, Department of Housing and Urban Development, 451 Seventh Street, SW., room 10126, Washington, DC 20410. Telephone (202) 708-3532 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: Under section 121 of the Department of Housing and Urban Development Reform Act of 1989, Public Law No. 101-235; 103 Stat. 1987, at 2022, Congress established a new position in the Department entitled Chief Financial Officer and provided that the Chief Financial Officer shall: (1) Serve as the principal advisor to the Secretary on financial management; (2) develop and maintain a financial management system for the Department (including accounting and related transaction systems, internal control systems, financial reporting systems, credit, and cash and debt management); (3) supervise and coordinate all financial management activities and operations of the Department; (4) assist in the financial execution of the Department's budget in relation to actual expenditures and prepare timely performance reports for senior managers; and (5) issue such policies and directives as may be necessary to carry out section 121.

The Secretary is delegating to the position of Chief Financial Officer those responsibilities enumerated in the statute as well as other related responsibilities.

Accordingly, the Secretary delegates as follows:

Section A. Authority delegated. The Secretary delegates to the Chief Financial Officer the following basic authority and functions:

1. To serve as the principal advisor to the Secretary on financial management;

2. To supervise, coordinate and establish policies to govern all financial management activities and operations of the Department consistent with the requirements of law and regulation. To oversee the development, administration and coordination of the financial and accounting functions of the Department. To issue such policies and directives as may be necessary to carry out the duties of the Chief Financial Officer;

3. To develop and maintain a financial management system for the Department (including accounting and related transaction systems, internal control systems, financial reporting systems, credit, cash and debt management systems). To coordinate systems for audit compliance with external organizations which have responsibilities for the use and management of funds and other resources for which the Department has responsibility;

4. To provide direction to ensure the Department's compliance with OMB, GAO, Treasury and legislative accounting and financial management requirements. To strengthen internal accounting and administrative controls to prevent waste, fraud, and abuse in Federal programs;

5. To assist in the financial execution of the Department's budget in relation to actual expenditures. To prepare timely performance reports for senior managers;

6. To develop, maintin, and revise an annual plan to bring the financial management systems of the Department into full compliance with established policies and standards and to oversee execution of the plan. To estimate resource requirements for the Office of Chief Financial Officer for inclusion in the Department's budget requests;

7. To coordinate with the Inspector General to ensure that all Department financial activities are regularly audited. To ensure that adopted recommendations related to Department financial management issues are promptly implemented;

8. To be responsible for the financial management needs of the Department. To report to the Congress and to external agencies such as OMB, Treasury and GAO on financial management performance, Department financial statements and other information requests required by law and regulation. To develop and maintain a Departmental financial management information system;

9. To provide policy direction and functional supervision to the designated Comptrollers of principal Department organizational components (including the Vice President for Finance of GNMA) as well as other Departmental staff with respect to financial management policies, standards, and responsibilities.

Section B. Authority excepted. The following authority is excepted from this delegation of authority from the Secretary to the Chief Financial Officer:

1. To sue and be sued.

Authority: Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: September 6, 1990.

Jack Kemp,

Secretary.

[FR Doc. 90-21839 Filed 9-14-90; 8:45 am]

BILLING CODE 4210-32-M

[Docket No. D-90-929; FR-2836]

Delegation of Authority to the Under Secretary Regarding Audit Management Functions

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of delegation of authority.

SUMMARY: This notice delegates certain authority of the Secretary regarding the Department's audit management functions.

EFFECTIVE DATES: September 6, 1990.

FOR FURTHER INFORMATION CONTACT: Donna M. Abbenante, Special Assistant to the Under Secretary, Office of the Under Secretary, Department of Housing and Urban Development, 451 Seventh Street, SW., room 10126, Washington, DC 20410. Telephone (202) 708-3532 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: The Secretary is formally delegating to the Under Secretary certain responsibilities to oversee and implement the audit management activities of the Department.

Accordingly, the Secretary delegates as follows:

Section A. Authority delegated. The Secretary delegates to the Under Secretary the following basic authority and functions:

1. To establish procedures to assure timely management decisions on findings and recommendations in audit reports prepared or reviewed by the Office of Inspector General.

2. To make the final management decision on referrals from the Office of Inspector General relating to the Inspector General's nonconcurrence with program management's proposed management decision or final action.

3. To oversee and coordinate the implementation of management decisions regarding the findings and recommendations included in an audit report.

4. To oversee the preparation of monitoring reports concening the prompt implementation of audit recommendations.

Section B. Authority to redelegate. The Under Secretary is authorized to redelegate to the Chief Financial Officer of the Department any of the power and authority delegated under section A.

Section C. Authority excepted. The following authority is excepted from this delegation of authority from the Secretary to the Under Secretary:

1. To sue and be sued.

Authority: Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: September 6, 1990.

Jack Kemp,

Secretary.

[FR Doc. 90-21838 Filed 9-14-90; 8:45 am]

BILLING CODE 4210-32-M

DEPARTMENT OF THE INTERIOR

Department Headquarters; Address Change

AGENCY: Department of the Interior.

ACTION: Notice of address change.

SUMMARY: This notice advises of the address change for the Department of the Interior.

ADDRESSES: Department of the Interior, 1849 C St., NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Division of Directives and Regulatory Management, Office of Management Improvement, Department of the Interior, at the address above or on 202-208-6191.

SUPPLEMENTARY INFORMATION: Effective March 3, 1990, the address for the headquarters offices for the Department of the Interior was changed from "18th & C Streets" to "1849 C Street" as shown in the address section.

Dated: September 7, 1990.

Oscar W. Mueller, Jr.,

Director, Office of Management Improvement.

[FR Doc. 90-21872 Filed 9-14-90; 8:45 am]

BILLING CODE 4310-RK-M

Bureau of Land Management

[(WY-920-08-4120-11); WYW121114]

Invitation for Coal Exporation License; Cheyenne, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Invitation for Coal Exploration License.

SUMMARY: The Powder River Coal Company hereby invites all interested parties to participate on a pro rata cost sharing basis in its coal exploration program concerning federally owned coal underlying the following described land in Campbell County, Wyoming.

T. 41 N., R. 70 W., 6th P.M., Wyoming
Sec. 2: Lots 5 thru 16;
Sec. 3: Lots 5 thru 16;
Sec. 4: Lots 5 thru 15, SWNE;
Sec. 5: Lots 5 thru 18;
Sec. 6: Lots 8 thru 23;
Sec. 7: Lots 5 thru 20;
Sec. 9: Lots 9 thru 13;
Sec. 17: Lots 4, 5, 12, 13;
Sec. 18: Lots 5 thru 20;
Sec. 20: Lots 1 thru 16;

T. 42 N., R. 70 W., 6th P.M., Wyoming
Sec. 31: Lots 5 thru 20;
Sec. 32: Lots 13 thru 16;
Sec. 33: Lots 13 thru 16;
Sec. 34: Lots 1 thru 16;
Sec. 35: Lots 1 thru 16.

Containing 7,142.93 acres.

All of the coal in the above land consists of unleased Federal coal within the Powder River Basin Known Recoverable Coal Resource Area. The majority of the above lands are included within Powder River Coal Company's existing Federal Coal Exploration License, WYW111732 which expires October 3, 1990. The purpose of the exploration program is to drill exploration core holes.

ADDRESSES: A detailed description of the proposed drilling program is available for review during normal business hours in the following offices (under serial number WYW121114): Bureau of Land Management, Wyoming State Office, 2515 Warren Avenue, P.O. Box 1828, Cheyenne, Wyoming 82003; and, Bureau of Land Management, Casper District Office, 1701 East "E" Street, Casper, Wyoming 82601.

SUPPLEMENTARY INFORMATION: This notice of invitation will be published in The News-Record of Gillette, Wyoming, once each week for two (2) consecutive weeks beginning the week of September 10, 1990, and in the **Federal Register**. Any party electing to participate in this exploration program must send written notice to both the Bureau of Land Management and the Powder River Coal Company no later than thirty (30) days after publication of this invitation in the **Federal Register**. The written notice should be sent to the following addresses: The Powder River Coal Company, Attn: Mr. Ronald J. Braig, Caller Box 3034, Gillette, Wyoming 82717, and the Bureau of Land Management, Wyoming State Office, Chief, Branch of Mining Law and Solid Minerals, P.O. Box 1828, Cheyenne, Wyoming 82003.

The foregoing is published in the **Federal Register** pursuant to title 43 Code of Federal Regulations, 3410.2-1(c)(1).

F. William Eikenberry,

Associate State Director.

[FR Doc. 90-21905 Filed 9-14-90; 8:45 am]

BILLING CODE 4310-22-M

[CO-010-00-4320-02]

Craig Colorado Advisory Council Meeting

TIME AND DATE: October 10, 1990, at 10 a.m.

PLACE: BLM—Craig District Office, 455 Emerson Street, Craig, Colorado.

STATUS: Open to public; interested persons may make oral statements at 10:30 a.m. Summary minutes of the meeting will be maintained in the Craig District Office.

Matters To Be Considered

1. Habitat Partnership Program.
2. Holistic Resource Management.
3. Bike Trails.
4. Trans Colorado Gas Transmission Natural Gas Pipeline.
5. "State of the Public Rangeland".

6. Riparian Taskforce Update.
7. Report on Rafting.
8. Coordinated Resource Management.

CONTACT PERSON FOR MORE INFORMATION: Mary Pressley, Craig District Office, 455 Emerson Street, Craig, Colorado 81625-1129, Phone: (303) 824-8261.

Dated: September 5, 1990.

William Pulford,

District Manager.

[FR Doc. 90-21810 Filed 9-14-90; 8:45 a.m.]

BILLING CODE 4310-JB-M

Fish and Wildlife Service

Recipient of Applications for Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

Applicant: San Diego Zoo, San Diego, CA, PRT-750909

The applicant requests a permit to import one male and two female captive-born black-footed cats (*Felis nigripes*) from John Visser, Durbanville, South Africa for the purpose of captive propagation.

Applicant: U.S. Fish and Wildlife Service, Region 7, Migratory Bird Management, PRT-752226

The applicant requests a permit to import up to five dead specimens each of short-tailed albatross (*Diomedea albatrus*) and Hawaiian dark-rumped petrel (*Pterodroma phaeopygia sandwichensis*) salvaged from driftnets set in the North Pacific Ocean for purposes of scientific research. This study is part of the 1990-1991 High Seas Squid Driftnet and Domestic Fisheries Observer Programs.

Applicant: Habitat Restoration Group, Scotts Valley, CA, PRT-751762

The applicant requests a permit to conduct winter and spring surveys for the Santa Cruz long-toed salamander (*Ambystoma macrodactylum croceum*) at the Watsonville Landfill Site and adjacent Gallighen Slough, Santa Cruz County, California, to determine the species' presence or absence on the Municipal Landfill site. Surveys will entail capturing and releasing the species.

Applicant: Lincoln Park Zoological Gardens, Chicago, IL, PRT-752140

The applicant requests a permit to import one captive born female Persian leopard (*Panthera pardus saxicolor*) from the Bristol Zoo, Great Britain, for captive breeding purposes.

Applicant: Cleveland Metroparks Zoo, Cleveland, OH, PRT-751922

The applicant requests a permit to import a male and female Manchurian crane (*Grus japonesis*) which were bred in captivity at the Zha Long Nature Conservation Feed Lot, in China, for the purpose of display and captive-breeding.

Applicant: Kitty Lu Mallory, Roopville, GA, PRT-752437

The applicant requests a permit to import 3 pairs of captive bred parma wallabies (*Macropus parma*) from Bielefeld University, Bielefeld, West Germany, for the purpose of enhancement of propagation.

Applicant: Cincinnati Zoo, Cincinnati, OH, PRT-751648

The applicant requests a permit to import one male Persian leopard (*Panthera pardus saxicolor*) which was bred in captivity at the Zoo Dvur Kralove, in Czechoslovakia, for the purpose of display and captive-breeding.

Applicant: E.I.P. Associates, San Francisco, CA, PRT-757659

The applicant requests an amendment to this permit for authorization to live-trap and release the following species: Morrow Bay kangaroo rat (*Dipodomys heermani morroensis*), giant kangaroo rat (*Dipodomys ingens*), Fresno kangaroo rat (*Dipodomys nitratoides exilis*), Stephen's kangaroo rat (*Dipodomys stephensi*), Amargosa vole (*Microtus californicus scripensis*), desert tortoise (*Gopherus agassizii*), blunt-nosed leopard lizard (*Gambelia silus*), San Francisco garter snake (*Thamnophis sirtalis tetrataenia*), Santa Cruz long-toed salamander (*Ambystoma macrodactulum croceum*) in the following counties within the State of California: San Luis Obispo, Kern, King, Fresno, Riverside, Inyo, Marin, Sonoma, Napa, Solano, Contra Costa, Alameda, Santa Clare, San Mateo, Los Angeles, San Bernardino, Imperial, Tulare, Santa Cruz, and Monterey, for biological survey purposes.

Applicant: Rose Marie Lee, Birmingham, AL, PRT-752216

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*), culled from the captive herd maintained by Mr. D. Parker, Elandsberg Farms, Constantia, Republic of South Africa, for the purpose of enhancement of survival of the species.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 a.m. to 4:15 p.m.) room 432, 4401 N. Fairfax Drive, Arlington, VA 22203, or by writing to the Director, U.S. Office of Management Authority, P.O. Box 3507, Arlington, Virginia 22203-3507.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Dated: September 11, 1990.

Karen Willson,

Acting Chief, Branch of Permits, U.S. Office of Management Authority.

[FR Doc. 90-21830 Filed 9-14-90; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Offshore Minerals Management and Royalty Management Electronic Data Interchange Projects

AGENCY: Minerals Management Service.

ACTION: Notice of solicitation of comments.

SUMMARY: The Minerals Management Service (MMS) is committed to a long-term program lasting 5 to 8 years to provide an orderly and systematic migration, wherever feasible, to electronic submission and evaluation procedures for applications and reports via electronic data interchange (EDI). The word "electronic" in EDI is broadly defined to include data transmitted via telecommunications or physically transported on electronic storage media.

The MMS is requesting indications of interest from impacted parties, other interested parties, and other Federal, State, and local regulatory agencies in participation in projects that will assist in the creation of an operational digital/electronic submission and evaluation system. This system would provide an alternative to paper copy as a means of submission which would lessen the time and effort required for information transfer and the evaluation of applications and reports.

These projects are all directed toward the development of data interchange standards. There are a number of pilot projects being initiated that deal with the implementation of digital and electronic submission of required reports using flat-file transfers with MMS file layouts as proprietary standards. One project deals with the development of data interchange standards through a voluntary consensus development process under the American National Standards Institute's (ANSI) Accredited Standards Committee (ASC) X12. Another project

concerns the development of a data element dictionary that can be used throughout the petroleum industry. This project would create a family of data elements for use in the consensus standards development process.

DATES: Comments should be received on or before October 17, 1990.

ADDRESSES: Comments should be mailed or hand delivered to Gerald D. Rhodes; Chief, Branch of Rules, Orders, and Standards; Minerals Management Service; 381 Elden Street, Mail Stop 4700; Herndon, Virginia 22070–4817.

All comment letters should refer to this notice by date, volume number, and page number. The comments received will be available for public inspection at the address given above.

FOR FURTHER INFORMATION CONTACT: William S. Cook; Branch of Rules, Orders, and Standards; telephone (703) 787–1600.

SUPPLEMENTARY INFORMATION: Following is background information on the development of the pilot projects and a solicitation of comments and interest in participation from mineral lessees and operators, interested members of the general public, and other Federal, State, and local regulatory agencies.

Background

MMS Information Management Systems

This MMS is comprised of two major programs, Offshore Minerals Management (OMM) and Royalty Management (RM). The OMM program administers the Federal minerals management program in the Outer Continental Shelf (OCS), including regulation of lessee and permittee conducted exploration, development, and production activities. The RM program collects and distributes the revenues generated from leasing and production of the minerals from Indian and Federal lands. A similar division of functions is reflected in the structure of most oil and gas producers and State and local minerals management agencies. Each of these MMS program offices has independently developed computer systems designed to support its program activities.

The computer systems of the OMM program have been developed through the years by headquarters and field offices without benefit of a long-term strategic plan. As the need increased to analyze the information available to the OMM program offices to support technical and policy decisions, the number and diversity of automated information systems grew. In July 1987, MMS undertook a major information resource management planning effort to address the long-term goals and objectives for MMS. Using concepts developed under International Business Machines' business systems plan (BSP), the OMM program prepared a structured analysis of its organization.

Strategic Plan for Information Management

Following preparation of the BSP for MMS, a strategic plan for information management in the OMM program was completed in June 1988 which identified over 100 action items to be completed to achieve the goals identified in the BSP. A major finding was the need for consolidation and modernization of the hardware and software supporting the OMM computer systems. As a result, the OMM program has undertaken a systems consolidation and modernization project, Technical Information Management System (TIMS), that focuses on a complete redesign of the corporate data base and data base management system. Similar developments have taken place in the RM program, and a system upgrade is under development.

Several other criteria were identified as critical in the BSP, such as the protection of proprietary data and security of the OMM computer system, the need for standardization between the OMM computer system and the RM system, and the need to provide a more efficient means of processing data submitted by lessees and operators.

The issues of standardization of systems and the reporting and processing of data led to the development of two of the primary action items in the strategic plan: (1) To establish and implement procedures to electronically receive data from industry and (2) to develop a long-term comprehensive program of electronic data reporting and processing.

The first of these action items requires an analysis of the automated data processing (ADP) capability of the reporters of data, including the capability for computer storage of data, the existence of industry data recording and reporting standards, and methods of internal and external data transfer. Further, all approved reporting forms used by the OMM program are to be evaluated for identification of data that could be most readily exchanged electronically. Upon completion of these tasks, the procedures necessary to support electronic transfer of data between MMS and reporters of data were to be developed and implemented.

The second action item was to move beyond the immediate goal of identification and implementation of procedures to conduct EDI and to provide a long-range plan for migration to EDI as a tool used in the regulation of mineral lessee activities. The general goals and respective timeframes for implementation of the long-term program are (1) to begin exchanging data electronically by 1993 and (2) to achieve the majority of data exchange electronically by 1995.

Initial Implementation of Electronic Information

A detailed analysis of the manner in which data are submitted to OMM program offices and alternative means by which that data could be submitted was completed and distributed to MMS field offices in March 1989. The study found that the primary method of reporting was the submittal of hard copies (paper) of standard reporting forms developed by MMS and approved by the Office of Management and Budget (OMB). Larger entities used computer-printed facsimiles of the forms.

Several nonpaper methods of data submittal were identified that could be more efficient. These included submission of data in a digital format on floppy disks or on one of the several varieties of computer tape, as well as electronic reporting via telephone. The study also set out a number of tasks to be completed to enable MMS to receive and process data electronically.

The RM program has already implemented digital submission of data required on some approved MMS reporting forms on 9-track tape (e.g., the data submitted on Form MMS–2014, Report of Sales and Royalty Remittance). Nineteen lessees submit data on tape. Reports filed in this manner account for about 55 percent of the data submitted on Form MMS–2014. Another example of the RM program's implementation of electronic transfer of data is the electronic funds transfer program.

ADP Capability of Lessees

The March 1989 report recognized the increasing use of EDI by mineral lessees, including the oil and gas lessees. A number of Federal lessees, such as major and large independent oil and gas companies, and industry associations, such as the American Petroleum Institute (API), were developing data recording standards to facilitate the electronic exchange of data.

The individual members of the petroleum industry have largely automated the processing of monies due, purchase orders, custody transfers, and other business documents under

proprietary standards modeled after ASC X12 standards. Development of these internal standards has resulted in the increasing use of EDI to process business transactions, often through third-party vendors, such as value-added networks. While the individual members of the petroleum industry have developed proprietary standards for specific scientific and engineering data sets, no consensus data recording and exchange standards have been developed for the exchange of this data between separate entities.

A number of companies submit data to both the OMM and RM programs of MMS on computer-generated facsimile forms. While this is a step toward automation of reporting by reducing the time required to prepare reports, it continues to involve the submission of data on a printed form.

Analysis of MMS Forms

A separate task force has been analyzing the information that is collected by MMS, primarily in the OMM program. As a result, approved reporting forms in the 300 series (wellbore operations) and 1800 series (production rate control) are being redesigned. Duplicate data elements are being eliminated and some of the forms are being eliminated or combined with other approved forms.

The task force found that many duplicate data elements could not be eliminated from approved reporting forms because each report needs to identify the lessee or operator, lease, and well(s) being reported upon. Digital or electronic submission of data would eliminate duplicate data elements through the use of data sets which encompass reports bearing related data with "headers" and "trailers" that carry the identifying information for an entire group of reports. Further, a digital submission is not constrained by the physical limits of paper; i.e., a data element can be as long or as short as needed. The task force concluded that greater reductions in the current information collection burden could be accomplished through electronic or digital reporting of data than through redesign of the approved reporting forms for submission of a hard copy.

Offshore Pilot Project

The March 1989 report included a recommendation to conduct a pilot project to submit data electronically on approved reporting forms. It was recommended that MMS solicit interest in participation in the pilot project through publication of a Federal Register Notice. The project would have been to collect information submitted electronically on one or more of the currently approved reporting forms in the 300 and 1800 series. Upon further analysis, it was felt that the pilot project should be more limited, and the notice was not published.

Further study of the original proposal resulted in a decision in June 1989 to develop a project to digitally transfer (submit) well-test data in the Gulf of Mexico OCS Region. The project would consist of submitting data on either a floppy disk or a tape system.

Migration to direct electronic submission of required data would be addressed in subsequent projects.

The MMS plans to conduct a pilot project which is to be accomplished as a flat-file transfer using MMS file layouts and edit criteria as de facto standards. An implementation guide has been prepared for the pilot project to assist participants. The data set consists of the data filed on Forms MMS–1867, Request for Well Maximum Production Rate (MPR); MMS–1868, Well Potential Test Report; MMS–1869, Quarterly Oil Well Test Report; and MMS–1870, Semiannual Gas Well Test Report. Lessees and operators interested in participation in this pilot project should contact MMS task force member Christopher Gaudry at (504) 736–2911 or Timothy Powers at (504) 736–2731.

Completion of the test phase of the pilot project is projected for the end of 1990. It is anticipated that once the pilot phase has been successfully completed, digital submission of well-test data using flat-file transfers as an alternative means of reporting will be made available to other lessees and operators.

Additional projects establishing digital submission of data for other sets of approved MMS reporting forms are expected to follow. As the TIMS design team models data flow, and programs the new data base management system, the functions necessary to support electronic submission of data, as well as digital submission, will be included.

The RM program is also developing a pilot project to provide the capability of computerized submission of data that is currently submitted on Forms MMS–2014, Report of Sales and Royalty Remittance and on MMS–4025, Payor Information Form. Lessees and operators interested in participation in this project or others being developed within the RM program are encouraged to contact MMS task force member Ronald Hatton at (303) 236–2559.

Petroleum Industry Data Dictionary (PIDD)

Standardization of data elements between the automated systems of the OMM and RM programs was identified as a critical issue in the BSP and was treated as such with the establishment of the position of data administrator within the Offshore Systems Center. The RM program also supports such a function. A standing committee was established to catalog all of the existing data elements in MMS systems and to resolve redundant data elements and data element definitions. The result will be an MMS catalog that will formally control the development and use of data elements in new systems for OMM and RM programs.

During development of MMS's data element dictionary, organizations representing the petroleum, mining, and engineering industry; standards-developing groups such as ANSI; other government agencies; and oil and gas companies were contacted. Many of those contacted suggested a joint effort to develop standard data element definitions. Representatives from MMS, several oil and gas companies, and ANSI standards committees met in November 1989 and formed the PIDD user groups. Cochairs were elected representing MMS and the oil and gas industry, and a draft version of data element standards was developed.

The committee drafted a charter with an objective to develop a government/industrywide data element dictionary with standard naming conventions, definitions, and formats for exploration and production activities. Such a dictionary would facilitate the development of transaction sets and the adoption of EDI. These data elements will be proposed to the ASC X12 committee for incorporation into the existing ASC X12 Electronic Data Interchange Data Element Dictionary.

The working group continues to meet and is being chartered under the API Petroleum Industry Data Exchange (PIDX) as a formal user group. As of May 31, 1990, there are 19 active members representing 8 oil companies, 5 vendors, and MMS. Companies and other Federal, State, and local oil and gas agencies interested in participating in this committee are encouraged to contact MMS's cochair, Carolyne Ridge, at (504) 736–2810 or Harry Waller of Texaco, Incorporated, at (713) 975–4494.

Long-Term Comprehensive Plan

The objective of the long-term comprehensive plan as given in the June 1988 Strategic Plan for Information Management is to move to EDI, wherever feasible, as a means of conducting business. This objective, which originally addressed only the OMM program, now has been expanded to include the RM program.

The basic definition of EDI is "the intercompany electronic transmission of business transactions in a standard format." This definition incorporates several basic concepts. "Intercompany" focuses on the exchange of data between companies, in contrast to the manipulation of data within a company. (These "companies" may include Federal, State, and local agencies and other entities referred to as "trading partners.") "Electronic transmission" refers to computer-to-computer data exchange. In practice, EDI is often implemented as a digital exchange of data rather than an electronic exchange. The phrase "business transactions" focuses on an exchange of data to accomplish business activity, rather than the simple exchange of data. Perhaps the most critical concept is the last, that of "standard format." For EDI to be implemented throughout any industry requires a consensus standard that is usable by all trading partners. This standard provides a universal template that government agencies and private companies can use to map data to and from their respective data bases. This standard data structure can be used by all entities without having to modify the structure of their respective corporate data bases.

In the regulatory context, two of the criteria of EDI are met. The regulatory agency and the regulated industry are trading partners. The filing of applications or reports and approval or acceptance by the regulatory agency constitutes a business transaction. A standard format for the scientific and engineering data commonly exchanged in the oil and gas regulatory programs does not currently exist. A standard format is necessary for EDI to be fully implemented.

A proliferation of proprietary standards exists within the industry. The OMM well-test data pilot project and RM projects are being implemented using MMS file layouts and edit criteria. These are, in effect, "proprietary" standards. As noted previously, industry has exchanged technical and geological data in an EDI environment using data formats that are "proprietary" standards. A number of vendors of oil and gas data have developed sophisticated and complex data bases that constitute "proprietary" standards. Among State agencies that have implemented automated filing systems, the data structures used in each system constitute still other "proprietary" standards.

For EDI to be adopted throughout government and industry, the existence of cross-entity standards is required so that data may be readily exchanged between any lessee or operator and any oil and gas regulatory agency. This means that standards must be developed that are appropriate to regulatory reporting at both the Federal and State levels.

ASC X12 Standards

A policy has begun to evolve that will lead to the adoption of consensus standards as a way of doing business for Federal agencies. Draft policy statements by OMB and the National Institute of Standards and Technology (NIST) identify both ANSI's X12 standards and those developed by United Nations/Electronic Data Interchange for Administration, Commerce, and Transport as appropriate standards (see NIST's request for comments entitled "Second Solicitation of Comments on Proposed Federal Information Processing Standard (FIPS) on Electronic Data Interchange (EDI)" (55 FR 28274, July 10, 1990). If standards have not been developed, Federal agencies are to develop the appropriate standards, referred to as "transaction sets."

A transaction set contains the information for a single business transaction. It represents the standard syntax, structure, and content for the data set. In the United States, ANSI is the primary voluntary consensus standards setting agency. The ASC X12 was chartered by ANSI to develop cross-company, cross-industry standards to encourage and develop the use of EDI.

The MMS feels that Federal, State, and local agencies should engage in a cooperative effort with the oil and gas industry to develop standards appropriate to the reporting requirements of regulatory agencies. To that end, MMS is undertaking a long-term project to develop appropriate transaction sets through the voluntary consensus standards development process of ASC X12.

Development of Consensus Standards

In January 1990, MMS joined the ASC X12 committee as a voting member and began participation in the ASC X12 meetings. In June 1990, MMS established a voting membership on the group representing government subcommittee G.

In March 1990, letters briefly describing the standards development project were sent to all State oil and gas regulatory agencies. The letters identified groupings of data set types, such as wellbore operations, that are appropriate for the development of transaction sets and suggested priorities for the order of development. Thirty-three State agencies responded with comments. The comments indicated that the degree of implementation of automated reporting systems varied from State to State. There was considerable interest on the part of States that have developed or are developing such systems.

In April 1990, MMS's representatives met with the chairman of ASC X12 subcommittee G, representatives from API, and representatives from the Council of Petroleum Accountants Societies (COPAS) to discuss the basic concepts of the project at the PIDX meeting in Corpus Christi, Texas. There was sufficient interest to schedule a subsequent meeting in June 1990 to present a more detailed proposal and discuss tentative time schedules with the larger group.

On June 14, 1990, representatives from the OMM and RM programs of MMS, the chairman of ASC X12 subcommittee G, the EDI coordinator for API, and the EDI coordinator for COPAS met with a group from the oil and gas industry and presented the perspectives of each organization on the project. As a result, a decision was made to form a user group known as REGS to provide a forum for government regulatory agencies to work with each other and industry, where mutually beneficial, in adopting a uniform format for reporting similar information that is currently reported in multiple formats. This group is affiliated with the Revenue and Electronic Data Interchange committee of COPAS and the PIDX committee of API.

The purpose of REGS is to provide a workgroup comprised of oil and gas regulatory agencies and industry to draft prototype transaction sets, where mutually beneficial, to be submitted to the appropriate subcommittees of ASC X12 to be developed into draft standards for trial use (DSTU). The group will address transaction sets to support business and accounting functions pertaining to oil and gas exploration, development, and production. This will include revenue, royalty, production, and severance tax reporting to oil and gas regulatory agencies.

The next meeting of the REGS groups is tentatively scheduled for September 13, 1990, in Houston, Texas. Parties interested in participating in the REGS group are encourged to contact cochair Cary C. Brown, Conoco, Incorporated, at (405) 767-5406 or Mary Stonecipher, Amoco Corporation, at (918) 581-4354. Federal agencies interested in participating in the project are encouraged to contact MMS's EDI

project manager William Cook at (703) 767-1600 or FTS 393-1600.

Transaction Set Development Project

The MMS will continue to integrate the systems of the OMM and RM programs. A primary project for this goal is the PIDD effort. The MMS will continue the development of pilot projects to test digital transfer and movement toward electronic reporting as an alternative reporting system in both the OMM and RM programs. Submittal of data on paper forms will continue to be an option.

The MMS will provide a focus for the regulatory community in developing transaction sets under ASC X12 appropriate to the regulation of oil and gas exploration, development, and production activities. Because of the focus of the OMM program, which is the regulation of lessee conducted activities, the initial contact was with State agencies with corresponding responsibilities. Agencies dealing with related data such as production accounting, royalty accounting, and tax information may have been inadvertently omitted. This public notice is intended to correct any oversights.

The MMS will continue to work toward the development of transaction sets appropriate to the regulation of oil and gas exploration, development, and production activities and will cooperate with and assist other agencies in achieving that goal. The MMS seeks to develop transaction sets that are of mutual benefit. Initial work will first be submitted to the REGS user group and then to ASC X12 as a formal work request for development into DSTU's.

The MMS recognizes that some current rules and regulations concerning signatures and general submission requirements may need to be revised. Prior to making each EDI implementation available for use, MMS will take the necessary steps to accommodate the pilot test project system, including notification of the public in the **Federal Register**.

Comments Concerning Candidate Data Sets Requested

Specific comments are requested as to the appropriateness of the data sets identified below and the proposed order of development. Commenters are asked to indicate EDI activities in which they are currently engaged, including: Trading partner(s); number of transactions; purpose of exchange of the data; identification of the data that is exchanged; the means of exchange, e.g., floppy disk, tape or dial-up, including the name of any software or value-added network provider; and the standards being used, such as company proprietary, joint interest billing exchange (JIBE) or other industry standard, or an ASC X12 transaction set.

The data sets that have tentatively been identified for development into ASC X12 transaction sets are listed separately for the OMM and RM programs. Development of transaction sets in both programs will take place simultaneously. The regulatory agency program offices and industry offices involved in the development of each transaction set will be a different group. The transaction sets are as follows:

Activity	Corresponding form
Royalty Management	
Royalty accounting	
Report of Sales and Royalty Remittance.	MMS-2014 and MMS-4025.
Payor Information Form	MMS-4025.
Bills of Collection	
Field Office Bill for Collection.	MMS-4062.
Royalty Underpayment Bill for Collection.	MMS-4064.
Payor Bill for Collection	MMS-4065.
Production reporting	
Monthly Report of Operations.	MMS-3160.
Oil and Gas Operations Report.	MMS-4054.
Offshore Minerals Management	
Well-test data	
Request for Well Maximum Production Rate (MPR).	MMS-1867.
Well Potential Test Report	MMS-1868.
Quarterly Oil Well Test Report.	MMS-1869.
Semiannual Gas Well Test Report.	MMS-1870.
Logging and survey data	No corresponding forms.
Wellbore operations	
Well (Re)Completion Report.	MMS-330.
Sundry Notices and Reports on Wells.	MMS-331.
Application for Permit to Drill (ADP).	MMS-331C.
Production verification	No corresponding forms. Production run tickets, Meter proving reports, or Gas statements.

Transaction sets that include forms that contain only alpha or numeric data, rather than textual fields, would be developed earlier in the process. Forms bearing textual fields, or requiring textual attachments, would be addressed later in the process. The data sets are intended to include the major information collections that are required of the Oil and gas industry not only by MMS but by other regulatory agencies as well.

The data sets listed are based upon current MMS forms or information collection requirements that would lend themselves to conversion to forms, e.g., production run tickets. The primary factor determining relative order of development was the estimated or observed volume of submittals and the complexity of the data submitted. A secondary consideration was the existence of an ASC X12 transaction set that appeared to be usable with modification. Data sets that would require the development of a completely new transaction set would be undertaken later in the process.

Federal or State agencies that are interested in participation in the development of prototypes through the REGS user group and/or participation in the ASC X12 approval process are requested to contact MMS's EDI project manager, William Cook, at (703) 787-1610. Please include the name of a contact person for your agency including a telephone number and a facsimile number if one is available.

These standards will not be implemented by MMS at this time. Once the standards have been approved by ASC X12, they will be included among the translator routines provided by third-party vendors, such as software developers and value-added network suppliers. At that time, the transaction sets will be available as an off-the-shelf item for use by any interested party. Adoption of these standards for use by regulatory agencies will promote the use of electronic reporting across the industry. Reporters will more readily adopt this means of business transaction if a common standard exists for reporting to all oil and gas agencies.

Dated: September 7, 1990.

Ed Cassidy,

Deputy Director, Minerals Management Service.

[FR Doc. 90-21804 Filed 9-14-90; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Final Supplement to the Final Environmental Impact Statement for the General Management Plan Lassen Volcanic National Park, California; Notice of Record of Decision

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, and specifically to the regulations promulgated by the Council on Environmental Quality at 40 CFR

1505.2, the Department of the Interior, National Park Service (NPS) has prepared and approved a Record of Decision on the Final Supplement to the Final Environmental Impact Statement for the General Management Plan, Lassen Volcanic National Park. The action deals with the Manzanita Lake area of the park. The National Park Service will amend the General Management Plan and implement the amendment in accordance with the proposal (Alternative C) as described in the Draft Supplement To The Final Environmental Impact Statement/ General Management Plan, issued in November 1989, and the Final Supplement, issued in July 1990.

Copies of the Record of Decision may be obtained either from the Superintendent, Lassen Volcanic National Park, P.O. Box 100, Mineral, CA 96093-0100, or the Western Regional Office, National Park Service, P.O. Box 36063, San Francisco, CA 94102.

Dated: August 29, 1990.

Stanley T. Albright,

Regional Director, Western Region.

[FR Doc. 90-21821 Filed 9-14-90; 8:45 am]

BILLING CODE 4310-70-M

National Capital Region, Public Affairs; Public Meeting

The National Park Service is seeking public comments and suggestions on the planning of the 1990 Christmas Pageant of Peace, which opens December 13 on the Ellipse, south of the White House.

A public meeting will be held at the Park Service's National Capital Region Building in East Potomac Park at 1100 Ohio Drive, SW., room 234, at 10 a.m., October 10, 1990.

Persons who would like to comment at the meeting should notify the National Park Service by September 28, by calling the Office of Public Affairs between 9 a.m. and 4 p.m., weekdays at (202) 619-7225. Persons who cannot attend the meeting may send written comments to Regional Director, National Capital Region, 1100 Ohio Drive, SW., Washington, D.C. 20242. Written comments will be accepted until October 5, 1990.

Dated: September 7, 1990.

Bernice T. Kearney,

Acting Regional Director, National Capital Region.

[FR Doc. 90-21822 Filed 9-14-90; 8:45 am]

BILLING CODE 4310-70-M

Office of Surface Mining Reclamation and Enforcement

Conditional Intent To Prepare a Supplement to a Comprehensive Environmental Impact Statement of Permit Application Decisions Under the Federal Program for Tennessee

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

ACTION: Conditional Notice of Intent to Prepare a Supplement to an Environmental Impact Statement.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is requesting public comment concerning the need to provide additional analysis of impacts to the human environment from decisions on permit applications for surface coal mining and reclamation operations under the Federal Program for Tennessee.

DATES: Written comments must be received no later than 5 p.m. (e.s.t.) on November 13, 1990, at the address below.

ADDRESSES: Send comments to Willis L. Gainer, Chief, Southern Branch, Division of Tennessee Permitting, Knoxville Field Office, Office of Surface Mining Reclamation and Reforcement, 530 Gay Street, SW., Suite 500, Knoxville, Tennessee 37902.

FOR FURTHER INFORMATION CONTACT: Willis L. Gainer, Chief, Southern Division of Tennessee Permitting at the above Knoxville, Tennessee, address. (Telephone 615/673-4348.).

SUPPLEMENTARY INFORMATION: On March 15, 1985, OSM-EIS-18 was prepared for the proposed Federal Program for Tennessee that would regulate coal exploration and surface coal mining and reclamation operations on non-Federal and non-Indian lands in the State of Tennessee. The Federal Program for Tennessee became effective on October 1, 1984.

OSM-EIS-18 presented a comprehensive analysis of the impacts on the human environment that would result from decisions by OSM on permit applications submitted in accordance with the Federal Program for Tennessee. The analysis of impacts was limited to a 5-year period which restricted the life of the EIS. Given this 5-year restriction, OSM has reviewed OSM-EIS-18 in light of 40 CFR 1502.9(c) (Council on Environmental Quality regulations) and has found the environmental analysis satisfactory for current Federal actions in Tennessee. However, OSM is opening a public comment period to solicit public comments concerning the possible need for additional analysis under OSM-EIS-18. The comments should focus on substantial changes that are relevant to environmental concerns or if there are significant new circumstances or information relevant to environmental concerns and bearing on the Federal Program for Tennessee.

An announcement will be made within 30 days after the close of the public comment period to notify the public of OSM's intentions to prepare a supplement to OSM-EIS-18.

Dated: September 12, 1990.

Brent Wahlquist,

Assistant Director, Program Policy.

[FR Doc. 90-21902 Filed 9-14-90; 8:45 am]

BILLING CODE 4310-05-M

INTERSTATE COMMERCE COMMISSION

Release of Waybill Data for Use By ALK Associates, Inc.

The Commission has received a request from ALK Associates, Inc. for permission to use certain data from the Commission's 1989 ICC Waybill Sample. The data are requested for a study of trailer traffic and the movement of container traffic in the United States. ALK Associates, Inc. request permission to use:

1. The number of units, net tons, miles and revenue for all trailer traffic as a whole (no commodity information requested), by origination BEA Economic Areas (BEAs are defined by the Bureau of Economic Analysis, U.S. Department of Commerce) to termination BEA pairs.

2. The number of units, net tons, miles and revenue for all container traffic as a whole, by origination BEA to Termination BEA pairs.

The Commission requires rail carriers to file waybill sample information if in any of the past three years they terminated on their lines: (1) 4,500 revenue carloads or (2) 5 percent of revenue carloads in any one State (49 CFR part 1244). From the waybill information, the Commission has developed a Public Use Waybill File that has satisfied the majority of all our waybill data requests while protecting the confidentiality of proprietary data submitted by the railroads. However, if potentially confidential waybill data are requested, as in this case, we will consider releasing the data only after certain protective conditions are met and public notice is given. More specifically, under the Commission's current policy for handling waybill requests, we will not release any confidential waybill data until after: (1)

Public notice is provided so affected parties have an opportunity to object and (2) certain requirements designed to protect the data's confidentiality are agreed to by the requesting party (Ex Parte No. 385 (Sub-No. 2), 52 FR 12415, April 16, 1987).

Accordingly, if any parties object to this request, they should file their objections (an original and 2 copies) with the Director of the Commission's Office of Economics within 14 calendar days of the publication of this notice. They should also include all grounds for objections to the full or partial disclosure of the requested data. The Director of Office of Economics will consider these objections in determining whether to release the requested waybill data. Any parties who objected will be timely notified of the Director's decision.

Contact: James A. Nash, (202) 275-6864.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 90-21908 Filed 9-14-90; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-334 (Sub-No. 1X)]

Crosbyton Railroad Co., Abandonment Exemption in Lubbock and Crosby Counties, TX

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903-10904, the abandonment by Crosbyton Railroad Company, of its entire 36.14-mile line of railroad between a point near Lubbock, TX (milepost 2+1789.43 feet) and the end of the line at Crosbyton, TX (milepost 38.48).

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on October 2, 1990. Formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c)(2), petition to stay, requests for a public use condition, and any trail use statements must be filed by September 27, 1990.

ADDRESSES: Send pleadings referring to Docket No. AB-334 (Sub-No. 1X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioner's respresentative: Richard H. Streeter, Suite 800, 1815 H Street, NW., Washington, DC 20006.

[1] *See Exempt. of Rail Abandonment—Offers of Findn. Assist.*, 4 I.C.C.2d 164 (1987).

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245. (TDD for hearing impaired: (202) 275-1721)

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. (Assistance for the hearing impaired is available through TGDD service (202) 275-1721.)

Decided: September 7, 1990.

By the Commission, Chairman Philbin, Vice Chairman Phillips, Commissioners Simmons, Lamboley, and Emmett. Commissioners Lamboley and Emmett commented with separate expressions. Commissioner Simmons dissented and would have held this proceeding open for additional evidence regarding CRC's intent to provide service over this line. He is concerned about the possible use of Commission procedures to achieve results which were not intended. He would also have assigned OCCA to confirm that the transactions involved here did not have any adverse impacts on labor.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 90-21909 Filed 9-14-90; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree; Colorado and Eastern Railroad Co., Inc.

In accordance with Department policy, 28 CFR 50.7, and § 122(d)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9622(d)(2), notice is hereby given that on August 24, 1990, a proposed Consent Decree in *United States* v. *Colorado & Eastern Railroad Company, Inc.*, Civil Action No. 89-C-1186, was lodged with the United States District Court for the District of Colorado. The Consent Decree requires defendants McKesson Corporation and Farmland Industries, Inc. to pay $700,000.00 in past response costs incurred by the United States at the "Woodbury Chemical" Superfund Site in Commerce City, Colorado, and to perform remedial (i.e., cleanup) actions at that Site.

The Department of Justice will receive for a period of thirty (30) days from the date of publication of this notice comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Colorado & Eastern Railroad Company, Inc.*, DOJ Ref. 90-11-2-503.

The proposed Consent Decree may be examined at the Office of the United States Attorney, 633 17th Street, Suite 1600, Denver, Colorado 80202 and at the Region VIII office of the United States Environmental Protection Agency, 999 18th Street, Denver, Colorado 80202. The proposed Consent Decree may also be examined at the Environmental Enforcement Section Document Center, 1333 F Street, NW., Suite 600, Washington, DC 20004, (202) 347-7829. A copy of the proposed consent decree may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $18.50 (25 cents per page reproduction costs) payable to Aspen Systems Corporation.

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 90-21807 Filed 9-14-90; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree; Manville Sales Corp.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on September 6, 1990, a proposed Consent Decree in *United States* v. *Manville Sales Corporation* ("MSC"), was lodged with the United States District Court for the Eastern District of California. The Complaint in this case sought injunctive relief and civil penalties pursuant to section 113(b) of the Clean Air Act (the "Act"), 42 U.S.C. 7413(b). The Complaint was filed on February 9, 1989, alleging violation by MSC of a Prevention of Significant Deterioration permit (the "permit") issued by the Environmental Protection Agency pursuant to section 165 of the Act, 42 U.S.C. 7475, and 40 CFR § 52.51.

The permit, issued in 1978, authorized the construction and expansion of air pollution sources at MSC's Willows, California facility in Glenn County. The proposed Consent Decree provides that MSC shall demonstrate compliance with the particulate matter ("PM") emission limitations contained in its PSD permit and comply with all the provisions contained in its PSD permit. The Consent Decree also provides that MSC shall pay to the United States a civil penalty of $115,000 within thirty (30) days of the date of entry of the Consent Decree.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. The Department of Justice will consider any comments in determining whether or not to consent to the proposed settlement and may withdraw its consent to the proposed settlement if such comments disclose facts or considerations which indicate that the proposed Consent Decree is inappropriate, improper or inadequate. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Manville Sales Corporation*, DOJ Ref. No. 90-5-2-1-1297.

The proposed Consent Decree may be examined at the Environmental Enforcement Section Document Center, 1333 F Street, NW., Suite 600, Washington, DC 20004, 202-347-7829; at the Office of the United States Attorney for the Eastern District of California, 4303 Federal Building, 1130 O Street, Fresno, California 95814; or at the Office of the Regional Counsel, Environmental Protection Agency, 1235 Mission Street, San Francisco, CA 94103. A copy of the proposed consent decree may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $3.75 payable to Consent Decree Library.

Richard P. Stewart,

Acting Assistant Attorney General, Environment & Natural Resources Division.

[FR Doc. 90-21808 Filed 9-14-90; 8:45 am]

BILLING CODE 4410-10-M

Membership of the Department of Justice, Office of the Inspector General, Senior Executive Service (SES) Performance Review Board

AGENCY: Department of Justice, Office of the Inspector General.

ACTION: Notice of the Office of the Inspector General 1990 SES Performance Review Board.

SUMMARY: Pursuant to the requirements of 5 U.S.C. 4314(c)(4), the Department of Justice, Office of the Inspector General announces the membership of its SES Performance Review Board. The purpose of the Performance Review Board is to provide fair and impartial review of Senior Executive Service performance appraisals.

FOR FURTHER INFORMATION CONTACT: James L. Anadale, Personnel Officer, Office of the Inspector General, Department of Justice, Washington, DC 20530. Telephone: (202) 633-3351.

W. Edward Lee,

Deputy Assistant Inspector General for Administration, Office of the Inspector General.

Department of Justice

Office of the Inspector General (OIG) 1990 Performance Review Board Members

Antitrust Division

Anthony V. Nanni, Chief, Litigation I. Section.

Criminal Division

Theodore G. Gilinsky, Senior Counsel, Office of Special Investigations.

Justice Management Division

Anthony C. Moscato, Deputy Assistant Attorney General, for Administration.

D. Jerry Rubino, Director, Security & Emergency Planning Staff.

[FR Doc. 90-21809 Filed 9-14-90; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984 Specialty Metals Processing Consortium, Inc.

Notice is hereby given that, on August 7, 1990, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Specialty Metals Processing Consortium, Inc. ("SMPC") filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to SMPC and (2) the nature and objectives of SMPC. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to SMPC and its general areas of planned activities are given below:

SMPC is a joint venture corporation. The parties to the venture are:

1. Allegheny Ludlum Steel Corporation.
2. Allied-Signal Aerospace Company, Garrett Engine Division.
3. Cyclops Corporation, Cytemp Specialty Steel Division.
4. Howmet Corporation, Alloy Division/Plymouth Plant.
5. Inco Alloys International, Inc.
6. Special Metals Corporation.
7. Teledyne Allvac Corporation.
8. Teledyne Wah Chang Albany.
9. United Technologies Corporation, Pratt and Whitney Division.
10. Carpenter Technology Corporation.

The general areas of planned activity of the venture include support of and other participation in cooperative research and development activity, and associated licensing activity, for the purpose of advancing the state of the art of specialty metals processing in the United States.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 90-21805 Filed 9-14-90; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research Act of 1984—UNIX International, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), UNIX International, Inc. ("UNIX") on July 30, 1990, filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The additional written notification was filed for the purpose of extending the protections of section 4 of the Act, limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

On January 30, 1989, UNIX filed its original notification pursuant to section 6(a) of the Act. The Department of Justice (the "Department") published a notice in the Federal Register pursuant to section 6(b) of the Act on March 1, 1989 (54 FR 8608). On May 4, 1989, August 1, 1989, October 31, 1989, February 1, 1990, and May 1, 1990, UNIX filed additional written notifications. The Department published notices in the Federal Register in response to the additional notifications on June 22, 1989 (54 FR 26266), August 17, 1989 (54 FR 33985), November 29, 1989 (54 FR 49124), March 14, 1990 (55 FR 9517), and May 21, 1990 (55 FR 20862), respectively.

As of July 23, 1990, the following have become members of UNIX International, Inc.:

Boeing
Cray Research
Daikin
Edinburgh University
Indian Institute
NCST
nCUBE
Sharp Corp.
SRI
Tokyo Univ.—DIS
Tokyo Univ.—CC

Univ. of Helsinki
VERITAS Software
Wipro Info.

Joseph H. Widmar,
Director of Operations, Antitrust Division.

[FR Doc. 90-21806 Filed 9-14-90; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

Sajjan Gangappa Chikkannaiah, M.D. Revocation of Registration

On November 18, 1988, the Administrator of the Drug Enforcement Administration (DEA) issued an Order to Show Cause to Sajjan Gangappa Chikkannaiah, M.D., 300 Francis Street, Goodlettsville, Tennessee, proposing to revoke his DEA Certificate of Registration, AC7647019. The statutory bases for the issuance of the Order to Show Cause were that Dr. Chikkannaiah was not currently authorized to handle controlled substances in the State of Tennessee, and his continued registration would be contrary to the public interest as that term is used in 21 U.S.C. 823(f) and 824(a)(4). Citing his preliminary finding that Dr. Chikkannaiah's continued registration posed an imminent danger to the public health and safety, the Administrator ordered the immediate suspension of Dr. Chikkannaiah's Certificate of Registration during the pendency of these proceedings. 21 U.S.C. 824(d).

On November 21, 1988, DEA Investigators attempted to serve Dr. Chikkannaiah with the Order to Show Cause and Immediate Suspension of Registration. They went to his office and then to his residence. Dr. Chikkannaiah was not at either location. Dr. Chikkannaiah's family and office staff were unable to provide any information as to his whereabouts. Since Dr. Chikkannaiah could not be located, notice of DEA's proposed action was given through publication in the **Federal Register** on March 1, 1989, 54 FR 8608. DEA Investigators made several attempts to locate Dr. Chikkannaiah, and have determined that his whereabouts are unknown. It is quite evident that Dr. Chikkannaiah is no longer practicing at the address listed on his DEA Certificate of Registration. The Administrator concludes that considerable effort has been made to serve Dr. Chikkannaiah with the Order to Show Cause and Immediate Suspension of Registration without success. Consequently, the Administrator now enters his final order in this matter based on the investigative file.

The Administrator finds that on November 12, 1988, the Tennessee Department of Health and Environment, Board of Medical Examiners, held a special meeting regarding the medical license of Dr. Chikkannaiah. After reviewing numerous documents, the results of two separate drug audits, reports from various hospitals, the findings of investigators and the testimony of witnesses, including an expert consultant in pharmacology, the Medical Board issued a summary suspension of Dr. Chikkannaiah's medical license. The Board found that emergency action was required to prevent Dr. Chikkannaiah from continuing his repeated and dangerous prescribing of addictive controlled substances and his grossly negligent, incompetent, and unprofessional practice of medicine. This summary suspension thereby terminated his authority to possess, prescribe, administer, dispense or otherwise handle controlled substances in the State of Tennessee.

DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances. See, 21 U.S.C. 823(f); *Howard J. Reuben, M.D.*, 52 FR 8375 (1987); *Ramon Pla, M.D.*, Docket No. 86-54, 51 FR 41168 (1986); *Dale D. Shahan, D.D.S.*, Docket No. 85-87, 51 FR 23481 (1986); and cases cited therein. The Administrator concludes that Dr. Chikkannaiah's DEA Certificate of Registration should be revoked due to his lack of authority to handle controlled substances in the State of Tennessee.

The Administrator further finds that the continued registration of Dr. Chikkannaiah is inconsistent with the public interest. A review of the investigative files revealed that Dr. Chikkannaiah had prescribed controlled substances to individuals for no legitimate medical purpose and outside the scope of his professional practice. He prescribed controlled substances to patients without conducting a proper physical examination or appropriate tests to determine if the patient's medical condition justified the prescribing of the controlled substances. Dr. Chikkannaiah prescribed an enormous quantity of frequently abused controlled drugs to his patients for patently inappropriate periods of time, sometimes for years. He also prescribed controlled substances to patients he knew, or should have known, were drug abusers or addicts. One physician who testified before the Tennessee Medical Board stated that he was witness to many angry families of patients who had become addicted to narcotics solely from Dr. Chikkannaiah's unethical prescribing practices.

Dr. Chikkannaiah's reputation as an abusive prescriber had reached the point that pharmacists refused to fill his prescriptions. Moreover, Dr. Chikkannaiah's privileges to practice medicine and admit patients were either revoked or suspended at all the Nashville-area hospitals where he practiced. Dr. Chikkannaiah had been suspended from hospital practice for admitting patients with diagnoses for which no subsequent treatment was substantiated and for administering repeated medication for no legitimate medical purpose. His practice had deteriorated to the point that there was not a single hospital in the Nashville area which would allow him to admit patients.

The Administrator may deny an application for registration if he determines that such registration would be inconsistent with the public interest. The factors which are considered in determining whether the registration would be in the public interest are enumerated in 21 U.S.C. 823(f). In addition to the recommendation of the state licensing board, two of the factors to be considered include the registrant's experience in dispensing controlled substances and such other conduct that may threaten the public health and safety. All factors need not be present for the Administrator to revoke a DEA Certificate of Registration. Instead, the Administrator may accord each factor the weight he deems appropriate in determining the public interest. See *Paul Stepak, M.D.*, 51 FR 17556 (1986).

In this instance, there is no question that Dr. Chikkannaiah's experience in dispensing controlled substances was atrocious. He has a history of prescribing controlled substances to drug abusers. He has shown a total disregard for the health and safety of his patients. Dr. Chikkannaiah has demonstrated a lack of appreciation for the inherently dangerous nature of the drugs he prescribed and has abandoned the responsibilities placed upon him as a professional and as a DEA registrant. The Administrator therefore concludes that the continued registration of Dr. Chikkannaiah is inconsistent with the public interest.

Based upon Dr. Chikkannaiah's lack of state authorization to handle controlled substances, the Administrator concludes that his registration must be revoked. Additionally, evidence of Dr. Chikkannaiah's unlawful prescribing practices support the conclusion that his continued registration is contrary to the

public interest. Therefore, the Administrator concludes that Dr. Chikkannaiah's registration must be revoked and that any pending applications for renewal thereof must be denied.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), orders that DEA Certificate of Registration, AC7647019, previously issued to Sajjan Gangappa Chikkannaiah, M.D., be, and it hereby is, revoked. It is further ordered that any pending applications for renewal of said registration be, and they hereby are, denied.

This order is effective September 17, 1990.

Dated: September 11, 1990.

Robert C. Bonner,

Administrator.

[FR Doc. 90-21876 Filed 9-14-90; 8:45 am]

BILLING CODE 4410-09-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meeting; Arts National Council

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the ad hoc Advancement Review Committee to the National Council on the Arts will be held on October 4, 1990 from 9 a.m.-5:30 p.m. and October 5 from 9 a.m.-5:30 p.m. in room M14 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on October 4 from 9 a.m.-10 a.m. The topic will be introductions.

The remaining portions of this meeting on October 4, from 10 a.m.-5:30 p.m. and October 5 from 9 a.m.-5:30 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of August 7, 1990, as amended, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 90-21873 Filed 9-14-90; 8:45 am]

BILLING CODE 7537-01-M

Amended Notice of Meeting; Federal Advisory Committee on International Exhibitions

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Federal Advisory Committee on International Exhibitions which was to have been held on September 19, 1990 has been changed to October 30, 1990 from 9 a.m.-4:30 p.m. in room M14 at the Nancy Hanks Center, 1100 Pennyslvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public from 9 a.m.-10:30 a.m. and from 3 p.m.-4:30 p.m. The topics will be general discussion including a report on the Venice Conference.

The remaining portion of this meeting from 10:30 a.m.-3 p.m. is for the purpose of reviewing final proposals for support for the Sao Paulo Bienal in 1991 and for two other international exhibitions in Turkey and Ecuador under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of August 7, 1990, as amended, this session will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: September 6, 1990.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 90-21874 Filed 9-14-90; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Uranium Mill Facilities: Availability of Final Staff Technical Position on Design of Erosion Protection Covers

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The Nuclear Regulatory Commission (NRC) is announcing the availability of a final Staff Technical Position entitled "Design of Erosion Protection Covers for Stabilization of Uranium Mill Tailings Sites." The Position provides guidance on acceptable methods for meeting the long-term stability requirements established in 10 CFR part 40, appendix A and in 40 CFR part 192, with regard to the design of erosion protection covers.

ADDRESSES: Copies of the Staff Technical Position may be obtained by writing to T. L. Johnson at Mail Stop 5E-2 OWFN, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: T. L. Johnson, Division of Low-Level Waste Management and Decommissioning, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 492-3440.

Dated at Rockville, Maryland, this seventh day of September, 1990.

For the Nuclear Regulatory Commission.

Paul H. Lohaus,

Chief, Operations Branch, Division of Low-Level Waste Management and Decommissioning Office of Nuclear Material Safety and Safeguards.

[FR Doc. 90-21800 Filed 9-14-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-412]

Duquesne Light Company, et al; Notice of Consideration of Issuance of Amendment to Facility Operating License Proposed and No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-73 issued to Duquesne Light Company (the licensee) for operation of the Beaver Valley Power Station, Unit No. 2, located in Beaver County, Pennsylvania.

The proposed amendment would modify the appendix A Technical Specifications (TSs) relating to Containment Isolation Valves (CIVs). Specifically, the proposed amendment would modify Table 3.6-1, Containment Penetrations, to specify a maximum stroke time of 60 seconds vice 10 seconds presently specified. The change would apply only to valves 2CHS-AOV200A, B, and C associated with Penetration No. 28.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the request for amendment involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed change does not involve a significant hazards consideration because:

(1) If the proposed amendment is incorporated in the TSs, the maximum stroke times for the CIVs inside and outside containment in the affected containment penetration would be identical. The maximum stroke times also would be consistent with the isolation time assumed in the Updated Final Safety Evaluation Report (UFSAR). Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) A stroke time not in excess of 60 seconds for the inside CIVs satisfies the UFSAR criteria for containment isolation during a design basis accident. The change to the maximum allowable stroke time would not reduce the reliability of the CIVs. Therefore, the change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) If the proposed change is incorporated into the TSs, the affected penetration would still be isolated within the time assumed in the accident analyses. Therefore, the proposed change does not involve a significant reduction in the margin of safety.

Therefore, based on the above considerations, the Commission has made a proposed determination that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By October 12, 1990, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document room located at B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended pettion must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to

intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisifes these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the request for amendment involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If a final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John F. Stolz: (petitioner's name and telephone number), (date petition was mailed), (plant name), and (publication date and page number of this **Federal Register** notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Towbridge, 2300 N Street, NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated June 21, 1990, which is available for public inspection at the Commission's Public Document room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document room located at B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pannsylvania 15001.

Dated at Rockville, Maryland, this 6th day of September, 1990.

For the Nuclear Regulatory Commission.

Albert W. De Agazio, Sr.,

Project Manager, Project Directorate I-4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 90-21877 Filed 9-14-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 72-1]

General Electric Company; Notice of Issuance of Amendment to Materials License SNM-2500

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 8 to Materials License No. SNM-2500 held by the General Electric Company for the receipt and storage of spent fuel at the Morris Operation, located at 7555 East Collins Road, Morris, Illinois. The amendment is effective as of the date of issuance.

The amendment revises the Technical Specifications making administrative changes which do not affect fuel receipt, handling, and storage safety.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment. Prior public notice of the amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of the amendment will not result in any significant environmental impact and that, pursuant to 10 CFR 51.22(c)(11), an environmental assessment need not be prepared in connection with issuance of the amendment.

For further details with respect to this action, see (1) the application for amendment dated August 17, 1990, and (2) Amendment No. 8 to Materials License No. SNM-2500, and (3) the Commission's letter to the licensee dated September 10, 1990. All of these items are available for public inspection at the Commission's Public Document room, The Gelman Building, 2120 L Street, NW., Washington, DC.

Dated at Rockville, Maryland, this 10th day of September 1990.

For the U.S. Nuclear Regulatory Commission.

Charles J. Haughney,

Chief, Fuel Cycle Safety Branch, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 90-21878 Filed 9-14-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-315 and 50-316]

Withdrawal of Application for Amendment to Facility Operating License; Indiana Michigan Power Co.

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Indiana Michigan Power Company (the licensee) to withdraw its August 30, 1989 application for proposed amendment to Facility Operating License Nos. DPR-58 and DPR-74 for the Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, located in Berrien County, Michigan.

The proposed amendment would have revised Technical Specification (TS) sections 3.0 and 4.0 and the accompanying Bases sections to incorporate changes recommended by the NRC in Generic Letter 87-09. In addition, the licensee had proposed a number of other administrative changes to be incorporated in the TS.

The Commission has previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on May 16, 1990 (55 FR 20359). However, by letter dated July 23, 1990, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated August 30, 1989, and the licensee's letter dated July 23, 1990, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Dated at Rockville, Maryland this 6th day of September 1990.

For the Nuclear Regulatory Commission.

Timothy Colburn,

Sr. Project Manager, Project Directorate III-1, Division of Reactor Projects—III, IV, V & Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 90-21798 Filed 9-14-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-315 and 50-316]

Withdrawal of Application for Amendment to Facility Operating License; Indiana Michigan Power Co.

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Indiana Michigan Power Company (the licensee) to withdraw its March 14, 1989 application for proposed amendment to Facility Operating License Nos. DPR-58 and DPR-74 for the Donald C. Cook Nuclear Plant, Units Nos. 1 and 2, located in Berrien County, Michigan.

The proposed amendment would have revised Technical Specification (TS) 6.12.2 to permit the posting of designated individuals to serve as substitutes for locked doors to prevent access to high radiation areas in those instances in which providing a locked door is not possible or practical due to area size or configuration.

The Commission has previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on November 15, 1989 (54 FR 47605). However, by letter dated June 25, 1990, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated March 14, 1989, and the licensee's letter dated June 25, 1990, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Dated at Rockville, Maryland this 6th day of September 1990.

For the Nuclear Regulatory Commission.

Timothy Colburn,

Sr. Project Manager, Project Directorate III-1, Division of Reactor Projects—III, IV, V, & Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 90-21799 Filed 9-14-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 30-28741; License No. 03-23185-01 EA 89-183]

Tumbleweed X-RAY Company, Greenwood, AR; Order Modifying License

I

Tumbleweed X-Ray Company (Licensee or Tumbleweed) is the holder of Materials License No. 03-23185-01 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR parts 30 and 34 on July 25, 1985 (Tumbleweed X-Ray Company previously held NRC Materials License No. 35-21425-01). The license authorizes the possession and use of sealed radioactive sources (Iridium-192 and Cobalt-60) in various industrial radiography devices. The license was due to expire on September 30, 1988, but remains active due to a timely renewal application having been submitted by the Licensee in August 1988.

II

The application for license describes Tumbleweed as a proprietorship owned and operated by Otho Jones, identifies Otho Jones as the Radiation Safety Officer and identifies Jeanne Jones as the Radiation Safety Manager and Office Manager. In June 1989, NRC's Office of Investigations (OI) began an investigation to determine whether officials of Tumbleweed had: (1) Falsified records related to the utilization of sealed sources, records of which are required by 10 CFR 34.27; (2) falsified records related to its quarterly observations of radiographers employed by the company, records of which are required by 10 CFR 34.11(d)(3); and (3) falsified records of checks of pocket dosimeters for correct response to radiation.

In September 1989, in conjunction with the ongoing investigation, NRC Region IV conducted an inspection of Tumbleweed's records. The results of this inspection were described in an inspection report issued on October 26, 1989. Although record discrepancies were noted, no other violations of NRC requirements were identified.

In March 1990, OI issued Report of Investigation 4-89-010, in which it concluded, among other things, that:

1. Jeanne Jones [1] made false statements to NRC investigators about whether quarterly radiographer audit forms had been signed in advance by the radiographers; and

2. Tumbleweed officials did not perform required annual checks of pocket dosimeters and falsified records indicating that the checks had been performed. During the OI investigation, Jeanne Jones, made a false statement to an NRC investigator concerning the frequency of these checks.

On June 28, 1990, NRC sent Tumbleweed a copy of its investigation report. On July 6, 1990, an enforcement conference was conducted in NRC's

[1] As a matter of clarification, the OI report references at page 21 regarding the agents conclusion should refer to J. Jones and not O. Jones.

office in Arlington, Texas, at which the investigation findings were discussed with Otho Jones. Jeanne Jones had been invited to attend, but did not. At the enforcement conference, Otho Jones provided Tumbleweed's responses to OI's findings as follows:

1. Tumbleweed admits that Jeanne Jones made false statements to the NRC about whether signatures of radiographers had been obtained on radiographer audit forms in advance of the audits, but contends that the audits were conducted as required; and

2. Tumbleweed admits that records of the testing of pocket dosimeters for correct response to radiation were false. However, Otho Jones contends that he did not knowingly provide a false statement to OI when he characterized the company's log as an accurate record; he stated that he did not know the log existed prior to the OI investigation, and did not know the log was false until he later talked to Jeanne Jones and learned that not all of the information contained in the log was accurate.

III

On the basis of the foregoing, it appears that the Radiation Safety Manager, Jeanne Jones, has demonstrated a disregard for NRC requirements, including the requirement to provide accurate information and maintain accurate records, in violation of 10 CFR 30.9. The Commission must be able to rely on its licensees to provide complete and accurate information. This violation raises questions as to whether, if Jeanne Jones remains involved in licensed activities, there will be reasonable assurance that licensed activities will be conducted with due regard for public health and safety. In addition, it appears that Otho Jones, who, as the company's Radiation Safety Officer is vested with the responsibility to ensure that NRC's requirements are being met, has not exercised adequate control of Tumbleweed's licensed activities to ensure that Tumbleweed is in compliance with all NRC regulations and the conditions of its NRC license.

IV

Accordingly, pursuant to sections 81, 161b, 161c, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.204 and 10 CFR parts 30 and 34, *It is hereby ordered* That:

License No. 03-23185-01 is modified to:

A. Prohibit Jeanne Jones from serving in any capacity involving the performance or supervision of any NRC-regulated activities, including the preparation or maintenance of records produced for the purpose of demonstrating compliance with NRC requirements without prior notice to and approval by the Regional Administrator, Region IV; and

B. Require Tumbleweed X-Ray Company to:

1. Engage the services of a qualified independent auditor capable of evaluating the company's NRC-licensed industrial radiography program to determine the effectiveness of its means of ensuring compliance with all NRC requirements applicable to the conduct of industrial radiography and the maintenance of NRC-required records.

2. Submit within 30 days of the effective date of this Order, to NRC Region IV for review and approval, the name and the qualifications of the individual or organization it proposes to conduct the audit of its NRC-licensed industrial radiography program. Once an auditor has been approved by the NRC, the Licensee shall ensure that a comprehensive audit is completed within 60 days of the date of NRC's approval. The audit shall include an evaluation of the effectiveness of the Licensee's means for ensuring that all NRC regulations and license conditions are being followed and shall include interviews with and direct observation of, at a minimum, two Tumbleweed radiographers while they are performing industrial radiography activities with NRC-licensed materials.

3. Have a similar audit performed six months after the first audit with concentration on the deficiencies noted in the first audit.

4. Have the auditor, within 30 days following the completion of each audit, submit an audit report to the Licensee and to NRC Region IV that summarizes the results of the audit and makes recommendations for improvements, if weaknesses are observed. Within 30 days of the date of each audit report, the Licensee shall submit to NRC Region IV its response to the audit report, including any corrective actions or improvements it plans on the basis of the audit report, and the schedule for accomplishing these actions. For recommendations not adopted, the Licensee shall provide a written explanation.

The Regional Administrator, NRC Region IV, may, in writing, relax or terminate any of the above conditions upon demonstration by the licensee of good cause.

The Licensee, Jeanne Jones, or any other person adversely affected by this Order may submit an answer to this Order or request a hearing on this Order within 20 days of the date of this Order. The answer shall set forth the matters of fact and law on which the Licensee, Jeanne Jones, or other person adversely affected relies and the reasons why this Order should not have been issued. Any answer filed within 20 days of the date of this Order may include a request for a hearing.

Any answer or request for a hearing shall be submitted to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555. A copy shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address, and to the Regional Administrator, USNRC Region IV, 611 Ryan Plaza Drive, suite 1000, Arlington, Texas 76011, and to the Licensee if the answer or hearing request is by a person other than the Licensee. If a person other than the Licensee or Jeanne Jones requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by the Licensee, Jeanne Jones, or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

If no hearing is requested, this Order shall become effective upon the Licensee's consent or upon expiration of the time within which a hearing may be requested.

Dated at Rockville, Maryland this 5th day of September, 1990.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support.

[FR Doc. 90-21879 Filed 9-14-90; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Advisory Committee for Trade Policy and Negotiations; Determination of Closing of Meeting

The meeting of the Advisory Committee for Trade Policy and Negotiations (ACTPN) to be held September 16-18, 1990 in Geneva, Switzerland, will include the development, review and discussion of current issues which influence the trade policy of the United States. Pursuant to section 2155(f)(2) of title 19 of the United States Code, I have determined that this meeting will be concerned with matters

the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions.

Additional information can be obtained by contacting Mollie Van Heuven, Director, Office of Private Sector Liaison, Office of the United States Trade Representative, Executive Office of the President, Washington, DC 20506.

Julius L. Katz,

Acting United States Trade Representative.

[FR Doc. 90-21921 Filed 9-14-90; 8:45 am]

BILLING CODE 3190-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-28423; File No. SR-Amex-90-13]

Self-Regulatory Organizations; Notice of Proposed Rule Change by American Stock Exchange, Inc. Relating to Amendments to the Exchange's Short Sale Rule

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 26, 1990, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to make certain technical amendments to Amex Rule 7, which governs short sales. The Amex also proposes to add a Commentary to Rule 7 which would specify that normal short sale restrictions will be applied on the opening sale of newly listed securities that are being distributed in an initial public offering ("IPO").

The text of the proposed rule change is available at the Office of the Secretary, Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Orgainzation's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Rule 10a-1 of the Act prohibits the short sale of any exchange-registered security on a "minus" tick (*i.e.*, below the price at which the last sale of that security was reported), or on a "zero minus" tick (*i.e.*, at the price of the last sale, if such price is below that of the next preceding different price). The Amex has codified these restrictions and incorporated the text of Rule 10a-1 in Amex Rule 7 and its Commentary.

The Commission staff ruled a number of years ago that the short sale rule does not apply to sales made on the opening trade of a newly listed security.[1] The Exchange now believes that the marketplace would benefit if the restrictions of the short sale rule were applied on the opening of newly listed securities that are being distributed in an IPO. To implement this policy, the Exchange proposes that the opening trade of an IPO be deemed to be on a "zero minus" tick if it takes place at the offering price, and on a "minus" tick if it takes place below the offering price. Thus, on the opening trade of an IPO, a short sale would be permissible only at a price above the initial public offering price or, if the seller is the specialist in the security selling under the equalizing exemption of Rule 10a-1(e)(5), at a price equal to the initial public offering price. After the opening trade, of course, the short sale rule will continue to apply as it normally does.[2]

The rules against short selling on "downticks" reflect a belief that it is appropriate to restrict short sellers from accentuating a price decline. The Exchange believes that no real purpose is served by permitting unrestricted short sales on the opening trade of an IPO. Permitting unrestricted short sales on the opening trade of an IPO creates the possibility that the initial sale may be unduly influenced by speculative activity—primarily on the part of market professionals who have no investment interest in the security—that does not contribute to the quality of the market or to price discovery and may devalue the investment of those who purchased in the initial distribution. Such short selling also could create additional pressure on the underwriters to make stabilizing purchases to maintain the price of the stock.

The Exchange also proposes to make a technical amendment to Amex Rule 7 is order to specify what in practice has been understood—that the rule includes not only all exceptions specifically set forth in paragraph (e) of Rule 10a-1 (as the Amex rule currently provides), but also the other exceptions which the Commission establishes from time to time under paragraph (f) of Rule 10a-1. In recent years, for example, the Commission has exempted both Equity Index Participations ("EIPs") and certain transactions in Americus Trust Components from Rule 10a-1.[3]

2. Basis

The proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(5) in particular, in that it will foster cooperation and coordination with persons engaged in facilitating transactions in securities, and is designed to promote just and equitable

[1] *See* Letter from Harold C. Patterson, Division of Trading and Exchanges, Commission, to Frank J. Coyle, Vice President, New York Stock Exchange dated July 20, 1955. This letter states that Rule 10a-1 may be construed so that the first transaction of a security just admitted to trading on a national securities exchange, and succeeding transactions at the same price, may be short sales. Once a sale occurs at a different price, however, short sales may be made in accordance with Rule 10a-1 only at a price higher than the next preceding different price.

[2] This proposal is similar to a proposed rule change submitted by the New York Stock Exchange ("NYSE") to amend NYSE Rule 440B. See Securities Exchange Act Release No. 27939 (April 24, 1990), 55 FR 18207 (May 1, 1990) in which the Commission noticed several proposals recommended by the NYSE's Market Regulation Review Committee (File No. SR-NYSE-90-10). The NYSE also has petitioned the Commission to issue an interpretation under Rule 10a-1 that the opening trade on the Exchange of a security being distributed in an IPO be deemed on a "zero minus" tick if the opening trade is at the offering price, or on a "minus" tick if the opening trade is below the offering price. *See* letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Jonathan G. Katz, Secretary, Commission dated February 24, 1989.

[3] *See* File No. TP 89-288, letter from Larry E. Bergmann, Associate Director, Commission, to Carrie E. Dwyer, Senior Vice President and General Counsel, Amex, dated April 28, 1989 in which the Commission granted an exemption from Rule 10a-1 to permit EIP participants to engage in short sales of EIPs without complying with the "tick" provisions of the Rule. See also File No. TP 88-458; letter from Larry E. Bergmann, Associate Director, Commission, to Carrie E. Dwyer, Senior Vice President and General Counsel, Amex, dated December 30, 1988 in which the Commission granted the Amex an exemption from Rule 10a-1 to permit specialists in Americus Trust to sell Trust Components short without complying with the "tick" provisions of the Rule, subject to five specified conditions.

principles of trade and to protect the investing public.

B. Self-Regulatory Organization's Statement on Burden on Competition.

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statements on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-90-13 and should be submitted by October 9, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 10, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-21918 Filed 9-14-90; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-28421; File No. SR-NYSE-90-19]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Amendments to Arbitration Procedures and Fees

I. Introduction

On April 17, 1990, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] a proposed rule change designed to amend certain of the Exchange's series of rules that govern the administration of its arbitration forum. On August 3, 1990, the Exchange submitted to the Commission Amendment No. 1 to the proposed rule change, which adds explanatory notes to several fee provisions as well as makes technical and conforming changes to several of the other rules that are the subject of this order. In general, the proposed rule change is designed to clarify certain of the Exchange's arbitration procedures and improve the efficiency of arbitration, as well as increase certain fees associated with arbitrations at the Exchange. The Exchange states that the proposed rule change is based for the most part on proposals developed by the Securities Industry Conference on Arbitration.

Notice of the proposed rule change was provided by the issuance of a Commission release (Securities Exchange Act Release No. 28000, May 7, 1990), and by publication in the **Federal Register** (55 FR 20003, May 14, 1990). The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposal

A. Proposed Amendments

1. Rule 601: Simplified Arbitration; Rule 619: General Provisions Governing Pre-Hearing Proceeding

The proposed amendments to rules 601 and 619 codify the practice of the Exchange in appointing a public arbitrator to decide customer claims under ten thousand dollars ($10,000.00) and to preside over pre-hearing conferences (unless a customer requests a majority of industry arbitrators). The Exchange believes that the codification of this existing policy should raise customer confidence in arbitration by amending rules 601 and 619 to expressly provide for a public arbitrator to determine small claims and preside at pre-hearing conferences, respectively.

2. Rule 612: Initiation of Proceedings

The proposed amendment to Rule 612 sets forth the elements required for joinder and consolidation of actions. More specifically, the amendment establishes that claimants may join in one action, if they assert any right to relief, whether jointly, severally, or arising out of the same transaction, occurrence or series of transactions or occurrences, and if any questions of law or fact common to all these parties will arise in the action. All persons may be joined in one action as respondents if there is asserted against them jointly or severally, any right to relief arising out of the same transaction, occurrence, or series of transactions or occurrences, and if any question of law or fact common to all respondents will arise in the action. A claimant or respondent need not assert rights to, or defend against, all the relief demanded. Judgment may be given for one or more of the claimants according to their respective rights to relief, and against one or more respondents according to their respective liabilities.

Moreover, in arbitrations where there are multiple claimants, respondents, and/or third-party respondents, the proposal authorizes the Director of Arbitration to determine preliminarily whether such parties should proceed in the same or separate arbitration. The proposed rule change also authorizes the Director of Arbitration to determine preliminarily whether claims filed separately are related and consolidate such claims for hearing and award purposes. Additionally, further determinations with respect to joining, consolidation, and multiple parties under Rule 612(d) may be made by the arbitration panel, and are deemed final.

The Exchange believes that the amendments to Rule 612 should avoid confusion regarding the instances in which actions may be joined or consolidated by setting forth the elements required for joinder or consolidation.

3. Rule 613: Designation of Time and Place for Hearing

The proposed amendment to rule 613 clarifies the authority of the Exchange to

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1990).

determine the time and place for hearings by deleting the rule's prefatory language, "[u]nless the law directs otherwise." The Exchange believes the amendment to rule 613 should eliminate any potential confusion regarding authority of the Exchange to set the time and place for the initial hearing, thus promoting the efficiency of the arbitration process by reducing the number of adjournment requests based on last-minute requests for changes of venue.

4. Rule 617: Adjournments

The proposed amendment to rule 617 increases the fee for adjournments and grants the arbitrators express authority to dismiss cases without prejudice in the event of repeated adjournments. The Exchange states that there presently are a significant number of last-minute adjournments that waste arbitrator time and Exchange resources—despite months of notice for hearing dates. The Exchange believes the proposed rule change should operate to discourage adjournments and thus promote the efficiency and equity of the arbitration process by increasing the fee for adjournments and providing arbitrators with the authority to dismiss cases without prejudice in instances of repeated adjournments. The Exchange intends to use part of the recouped adjournment fees to compensate arbitrators.

5. Rule 627: Awards; Rule 638: Failure to Honor Award

The proposed amendment to rule 627 provides arbitrators with express authority to award interest and with discretion to determine the rate of interest. It also provides that awards will bear interest from the date of award and requires that awards be paid within thirty (30) days of receipt. Additionally, the adoption of new Rule 638 will provide the Exchange with express authority to discipline its members for failure to pay an award. At present, the Exchange relies upon its implicit authority to take such disciplinary action against its members. The Exchange believes the amendments to rules 627 and 638 should encourage prompt payment of awards and increase confidence in the arbitration process by expressly providing that interest on awards accrues from the date of award and empowering the Exchange to discipline its members who fail to pay awards.

6. Rule 628: Agreement to Arbitrate

The proposed amendment to rule 628 incorporates by reference the NYSE's Arbitration rules into every agreement to arbitrate pursuant to the Constitution and Rules of the Exchange.[3] The Exchange believes the amendment should operate to prevent the frustration of the provisions of its arbitration rules by a party's refusal to sign a submission agreement.

7. Rule 629: Schedule of Fees; Rule 631: Schedule for Member Controversies; Rule 633: Filing Fee for Member/Non-Member Controversies

The proposed amendments to rule 629 require the parties to customer and industry disputes to make a hearing session deposit in addition to the filing fee and permits the Exchange to retain a larger portion of the deposit when a case is resolved in any manner other than by a hearing. The retained amount will be used in part to compensate arbitrators for time spent in preparation for the hearing. Currently, the Exchange retains a fixed amount when a case is resolved within eight days of a scheduled hearing in any manner other than by a hearing, regardless of the amount of the claim or the number of claims and parties involved. The proposed amendments to rule 629 also delete the provision in the rule that permitted arbitrators to assess multiple fees for hearing sessions based upon the number of parties (*i.e.*, claimant, respondent, and/or cross-claimant) pursuing claims in a matter. The amendment limits hearing session fees to a single fee per hearing session. The Exchange believes these amendments will promote the equitable nature of arbitration by allocating the costs of arbitration among users of the forum in proportion to the size and complexity of the claim.

The proposed amendments to rule 629 also provide a schedule of fees for a pre-hearing conference with an arbitrator. At present, the rules provide merely the rate of calculation for pre-hearing conference fees. The Exchange believes the amendment to rule 629 will eliminate uncertainty regarding the fees for pre-hearing conferences by setting forth a table of fees for such conferences based on the amount of the claim.

The proposed amendment to rule 631 requires parties to member controversies to pay a filing fee in addition to the hearing session deposit and provides a schedule of fees for a pre-hearing conference with an arbitrator.

Finally, the Exchange is proposing to delete rule 633, which establishes a separate filing fee for member/non-member controversies. The Exchange believes the deletion of rule 633 and the related amendments to rules 629 and 631 should eliminate the ambiguity regarding classification of disputes by setting forth three distinct categories of claimants: customer claimants, industry claimants against non-members and member claimants against member respondents ("member/member controversies").

B. Statutory Basis

The Exchange believes the proposed rule change is consistent with sections 6(b) (4) and (5) of the Act,[4] because it provides for the equitable allocation of reasonable dues, fees, and other charges among the members of the Exchange and issuers and other persons using its facilities and because it promotes just and equitable principles of trade by insuring that members and member organizations and the public have an impartial forum for the resolution of their disputes.

III. Discussion and Conclusion

The Commission has considered carefully the Exchange's proposed rule change, and finds, for the following reasons, that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder and, in particular, the requirements of section 6.[5] The Commission finds the proposed rule change should improve the speed and efficiency of arbitration, while at the same time maintaining the traditional qualities of arbitration.

More specifically, the Commission finds that the proposed amendments to rules 601 and 619, which codify the Exchange's practice of appointing a public arbitrator to decide customer claims under ten thousand dollars and preside over pre-hearing conferences, should increase customer confidence with regard to the fairness of the administration of the arbitration process for cases involving small claims.

The Commission finds that the proposed amendment to Rule 612, which sets forth the elements required for the joinder and consolidation of actions and parties, establishes sufficiently clear standards for the Director of Arbitration to determine preliminarily, and for the arbitration panel to make a final determination, regarding whether related claims should proceed in the same or a separate proceeding.

Moreover, the Commission agrees with the Exchange that the technical amendment to rule 613 should eliminate

[3] See NYSE rule 637.

[4] 15 U.S.C. 78f (b) (4) and (5) (1988).

[5] 15 U.S.C. 78f (1988).

confusion regarding the Exchange's authority to set the time and place for the initial hearing, as well as reduce the number of adjournment requests based on last-minute requests for changes of venue.

The Commission believes that the amendment to rule 617, which grants the arbitrators express authority to dismiss cases without prejudice after repeated adjournments, should operate to discourage adjournments and should thus result in a more efficient allocation of the Exchange's arbitration resources and a more timely resolution of parties' disputes. The Commission further believes that the amendment to rule 617 that increases the fee for adjournments provides for an equitable method for the retention of reasonable fees to recover the costs associated with the empanelment of the arbitrators following repeated adjournments, as well as a means to defray the arbitrators' compensation.

The Commission agrees with the Exchange that the amendment to rule 627 and the adoption of rule 638 should encourage prompt payment of awards and increase confidence in the arbitration process. The Commission believes that it is appropriate to amend rule 627 to provide arbitrators with the express authority to award interest and with the discretion to determine the rate of interest in order to more fully compensate parties for economic damages incurred by claimants. Similarly, the Commission believes that the rule's provision that awards will bear interest from the date of award and the additional requirement that awards be paid within thirty (30) days of receipt should likewise ensure that parties' economic damages are more fully, fairly and promptly redressed. Additionally, the Commission finds that the adoption of new rule 638, which provides the Exchange with express authority to discipline its members for failure to pay an award, should strengthen the Exchange's enforcement program with respect to arbitration awards, and should provide the Exchange with the capacity to enforce compliance by its members with the rules of the Exchange, consistent with section 6(b)(1) of the Act.[6]

Furthermore, the Commission agrees with the Exchange that the amendment to rule 628, which incorporates by reference the NYSE's Arbitration rules into every agreement to arbitrate pursuant to the Constitution and rules of the Exchange, should operate to prevent the frustration of the provisions of its arbitrations rules by a party's refusal to sign a submission agreement. The Commission believes the amendment to rule 628 should raise customer confidence in the arbitration process by ensuring that the safeguards provided by the NYSE's arbitration rules will be incorporated by reference into every agreement to arbitrate.

Finally, the Commission believes the general restructuring of the Exchange's fee provisions and the proposed fee increases provide for the equitable allocation of reasonable fees among Exchange members and other persons using its facilities. As stated above, the proposed amendment to rule 629 requires filing fees in addition to the hearing session deposits, provides a schedule of fees for a pre-hearing conference with an arbitrator, and permits the Exchange to retain the filing fee even when a case is resolved in any manner other than by a hearing. The Commission believes that rule 629's explicit fee structure should promote certainty regarding the fees for pre-hearing conferences through its published fees. Likewise, the Commission believes that the proposed amendment to rule 631, which requires parties to member controversies to pay a filing fee and provides a schedule of fees for a pre-hearing conference with an arbitrator, provides for an equitable schedule of a fee assessments against Exchange members. In summary, the Commission believes that the amendments to rule 629 and 631 and the related deletion of rule 633 equitably allocate reasonably apportioned fees among the users of the Exchange's arbitration forum in proportion to the costs associated with the respective parties.

For the reasons discussed above, the Commission finds that the proposed rule change is consistent with the requirements of section 6 of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission finds that because these rules will aid in the just resolution of disputes between investors and broker-dealers, the Commission concludes that the proposed rule change is consistent with section 6(b)(5) of the Act,[7] which requires that national securities exchanges have rules designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and, in general, further investor protection and the public interest in the fair administration of arbitration proceedings conducted pursuant to such rules. In addition, because these rules will empower the Exchange to discipline members who fail to pay awards, the Commission finds that the proposed rule change is consistent with section 6(b)(1) of the Act, which requires an exchange to have the capacity to enforce compliance by its members with rules of the Exchange.[8] The Commission also finds that the proposed rule change is consistent with section 6(b)(4) of the Act,[9] in that it provides for the equitable allocation of reasonable fees among Exchange members and other persons using its facilities.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[10] that the proposed rule change (SR-NYSE-90-19) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 10, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-21919 Filed 9-14-90; 8:45 am]

BILLING CODE 8010-01-M

[6] 15 U.S.C. 78f(b)(1) (1988).

[7] 15 U.S.C. 78f(b)(5) (1988).

[8] 15 U.S.C. 78f(b)(1) (1988).

[9] 15 U.S.C. 78f(b)(4) (1988).

[10] 15 U.S.C. 78s(b)(2) (1988).

[Rel. No. IC-17734; 811-5427]

FG Series, Inc.; Application for Deregistration

September 10, 1990.

AGENCY: Securities and Exchange Commission (the "SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: FG Series, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application on Form N-8F was filed on July 18, 1990 and amended on August 31, 1990.

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 applicant 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 9, 1990 and should be accompanied by proof of service on applicant, 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 may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 7800 E. Union Avenue, Suite 800, Denver, CO 80237.

FOR FURTHER INFORMATION CONTACT: Nicholas D. Thomas, Staff Attorney, at (202) 504-2263, or Jeremy N. Rubenstein, Branch Chief, at (202) 272-3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee at the SEC's Public Reference Branch or by contacting the SEC's commercial copier at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant is a Maryland corporation and an open-end diversified management investment company registered under the Act which had four separate portfolios: FG Global Fixed Income Fund, FG Asset Allocation-Conservative Fund, FG Asset Allocation-Aggressive Fund, and FG Money Fund. On December 22, 1987, applicant filed a notification of registration on Form N-8A pursuant to section 8(a) of the Act. On the same date, applicant filed a registration statement on Form N-1 under the Securities Act of 1933. Following two pre-effective amendments, the registration statement was declared effective on July 29, 1988. Applicant's initial public offering commenced shortly thereafter.

2. At a meeting held on January 17, 1990, applicant's board of directors adopted a plan of liquidation and dissolution under which all of applicant's assets would be liquidated, all liabilities would be paid, and the remaining assets would be distributed to the shareholders of each of applicant's four portfolios. On April 12, 1990, at a special meeting, the plan of liquidation and dissolution was approved by a majority of the shares of each of the four portfolios. Accordingly, on May 30, 1990, applicant made a liquidating distribution to the shareholders of each of its portfolios. The per share distributions were as follows: FG Global Fixed Income Fund, approximately $11.93 per share; FG Assest Allocation-Conservative Fund, approximately $14.36 per share; FG Asset Allocation-Aggressive Fund, approximately $14.78 per share; and FG Money Fund, $1.00 per share.

3. Applicant's unamortized organizational expenses of approximately $136,564 were borne by INVESTCO Trust Company, applicant's investment adviser. Applicant's liquidation expenses of approximately $39,356.52 were paid by Financial Programs, Inc., applicant's principal underwriter.

4. As of the date of the application, applicant had no shareholders, assets, or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-21920 Filed 9-14-90; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice No. 1265]

Advisory Committee on International Communications and Information Policy; Meeting

The Department of State announces that the Subcommittee on Industrialized Country Policy Issues of the Advisory Committee on International Communications and Information Policy will hold an open meeting on Tuesday, October 2, 1990, in the East Auditorium (room 2729) of the Department of State at 10 a.m.

The Subcommittee provides advice to the Department on communications and information policy issues of concern to industrialized countries, and includes advice on communications and information policy issues being addressed in the Organization for Economic Cooperation and Development (OECD) and, more particularly, the OECD's Committee for Information, Computer and Communications Policy (ICCP).

The October 2 meeting will first hear a report on the June 11, 1990 meeting of the Joint Working Group (CMIT/ICCP) on computer services, computerized information services and value-added network services, and the June 13-14, 1990 meeting of the Working Party on Telecommunication and Information Services Policies (TISP).

The October 2 meeting will then hear a report on the September 24-26 meeting of the Expert Group on the Economic Implications of Information and Communications Technologies (EIIT). The EIIT will consider at its September meeting a number of consultant papers on the economic dimension of standards setting in information technologies.

The meeting will then consider issues on the agenda of the October 8-10 meeting of the ICCP Committee. These include a forum presentation on government policies and programs in information technology in the United States, the November 1990 Special Session of the Committee on Telecommunications Policies, and the draft program of a seminar on a policy dialogue with Eastern European countries on information technology developments, to be held in Vienna in February 1991.

The meeting will end with a discussion of several issues related to a number of past and continuing activities of the ICCP. These include a draft proposal by the Commission of the European Communities for a Council Directive approximating certain laws, regulations and administrative provisions of the Member States concerning the protection of individuals in relation to the processing of personal data, and OECD and EC activities concerning network security.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. Prior to the meeting, persons who plan to attend should so advice the office of Mrs. Lucy H. Richards, Department of State, Washington, DC, telephone (202) 647-5230. Attendees should use the 22nd Street diplomatic entrance to the Department of State, and plan to reach the 22nd Street entrance with sufficient time to be processed into the building, as access to the State Department building is controlled.

Dated: August 30, 1990.

Bohdan Bulawka,

Executive Secretary, Advisory Committee on International Communications and Information Policy.

[FR Doc. 90-21875 Filed 9-14-90; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended September 7, 1990

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412

and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 47148.
Date filed: September 4, 1990.
Parties: Members of the International Air Transport Association.
Subject: Mail Vote 424 (Fares between Japan and Hong Kong).
Proposed Effective Date: October 28, 1990.

Docket Number: 47155.
Date filed: September 7, 1990.
Parties: Members of the International Air Transport Association.
Subject: Mid Atlantic-Europe Resolutions R-1 To R-39.
Proposed Effective Date: October 1, 1990.

Docket Number: 47156.
Date filed: September 7, 1990.
Parties: Members of the International Air Transport Association.
Subject: USA-Europe Agreement.
Proposed Effective Date: October 1, 1990.

Docket Number: 47157.
Date filed: September 7, 1990.
Parties: Members of the International Air Transport Association.
Subject: Composite Resolution 003w.
Proposed Effective Date: October 1, 1990.

Docket Number: 47158.
Date filed: September 7, 1990.
Parties: Members of the International Air Transport Association.
Subject: Composite Resolution 003ww.
Proposed Effective Date: October 1, 1990.

Docket Number: 47159.
Date filed: September 7, 1990.
Parties: Members of the International Air Transport Association.
Subject: Composite Expedited Resolutions.
Proposed Effective Date: October 15, 1990.

Phyllis T. Kaylor,
Chief, Documentary Services Division.
[FR Doc. 90-21856 Filed 9-14-90; 8:45 am]
BILLING CODE 4910-62-M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended September 7, 1990

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 47160.
Date filed: September 7, 1990.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope:
October 5, 1990.
Description: Application of Lignes Aeriennes Inter-Quebec Inc. d/b/a Intair, pursuant to Section 402 of the Act and Subpart Q of the Regulations applies for issuance of a foreign air carrier permit and for charter authority for flights from Canada to any point or points in the United States.

Docket Number: 47161.
Date filed: September 7, 1990.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope:
October 5, 1990.
Description: Application of Intair, Inc. d/b/a Intair, pursuant to Section 402 of the Act and Subpart Q of the Regulations applies for issuance of a foreign air carrier permit and for charter authority for flights from Canada to any point or points in the United States.

Docket Number: 47163.
Date filed: September 7, 1990.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope:
October 5, 1990.
Description: Application of LTU Lufttransport-Unternehmen Sud GmbH. & Co. Fluggesellschaft, pursuant to Section 402 of the Act and Subpart Q of the Regulations requests a foreign air carrier permit for authority to engage in charter foreign air transportation of persons and property, separately or in combination:

A. Between any point or points in the Federal Republic of Germany and any point or points in the United States, including intermediate and beyond points;

B. Between a point or points in the United States and a point or points in neither the Federal Republic of Germany nor the United States, provided such charters stopover for at least two consecutive nights in the Federal Republic of Germany; and

C. Between any point or points in the United States and any point or points in neither the Federal Republic of Germany nor the United States which charters do not stopover in the Federal Republic of Germany for at least two consecutive nights.

Phyllis T. Kaylor,
Chief, Documentary Services Division
[FR Doc. 90-21855 Filed 9-14-90; 8:45 am]
BILLING CODE 4910-62-M

Federal Aviation Administration

Air Traffic Procedures Advisory Committee Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Air Traffic Procedures Advisory Committee Meeting.

SUMMARY: The FAA is issuing this notice to advise the public that a meeting of the Federal Aviation Administration Air Traffic Procedures Advisory Committee (ATPAC) will be held to review present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures.

DATES: The meeting will be held from October 22, at 8 a.m., through October 25, 1990, at 4:30 p.m.

ADDRESS: The meeting will be held in the McCracken Room, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Theodore H. Davies, Executive Director, ATPAC, Air Traffic Rules and Procedures Service, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-3725.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. 1), notice is hereby given of a meeting of the ATPAC to be held from October 22, at 8 a.m., through October 25, 1990, at 4:30 p.m., in the McCracken Room, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC. The agenda for this meeting is as follows: a continuation of the Committee's review of present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures. It will also include:

1. Approval of minutes.
2. Discussion of agenda items.
3. Discussion of urgent priority items.
4. Report from Executive Director.
5. Old Business.
6. New Business.
7. Discussion and agreement of location and dates for subsequent meetings.

Attendance is open to the interested public but limited to the space available. With the approval of the Chairperson, members of the public may present oral statements at the meeting. Persons desiring to attend and persons desiring to present oral statements should notify the person listed above not later than October 19, 1990. The next quarterly meeting of the FAA ATPAC is planned to be held from January 15 through January 18, 1991, in Orlando, FL. Any member of the public may present a written statement to the Committee at any time.

Issued in Washington, DC, on September 10, 1990.

Theodore H. Davies,

Executive Director, Air Traffic Procedures Advisory Committee.

[FR Doc. 90-21850 Filed 9-14-90; 8:45 am]

BILLING CODE 4910-13-M

[Special Committee 166]

Radio Technical Commission for Aeronautics (RTCA); User Requirements for Future Airport and Terminal Area Communication, Navigation and Surveillance Systems; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., appendix I), notice is hereby given for the Eighth meeting of RTCA Special Committee 166 on User Requirements For Future Airport and Terminal Area Communication, Navigation and Surveillance Systems to be held October 1-2, 1990, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005, Commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Chairman's Introductory Remarks; (2) Approval of minutes of the Seventh Meeting Held on July 9-11, 1990; (3) Discussion of Open Systems Interconnection (OSI) and Aeronautical Telecommunication Network (ATN) as Related to Committee Activity; (4) Report on GPS Trajectory Data Collected at Manchester Airport; (5) Review of Edited Draft Committee Report; (6) Reports by Committee Members Attenting the First Annual Aviation System Capacity Conference Held September 12-13, 1990; (7) Other Business; (8) Date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on September 5, 1990.

Geoffrey R. McIntyre,

Designated Officer.

[FR Doc. 90-21851 Filed 9-14-90; 8:45 am]

BILLING CODE 4910-13-M

National Highway Traffic Safety Administration

[Docket No. 90-21-IP-No. 1]

Supreme Corp., Inc.; Receipt of Petition for Determination of Inconsequential Noncompliance

Supreme Corporation of Goshen, Indiana (Supreme) has petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for an apparent noncompliance with 49 CFR 571.217, Federal Motor Vehicle Safety Standard No. 217, "Bus Window Retention and Release," on the basis that it is inconsequential as it relates to motor vehicle safety.

This notice of receipt of a petition is published under Section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

S5.3.1. of Standard No. 217 specifies the region where the window release mechanisms must be located. Specifically, release mechanisms must be located at least five (5) inches above the adjacent seat or at least two (2) inches above the armrest, if any, whichever is higher. Supreme manufactured 188 buses which do not comply with S5.3.1. These buses have the release mechanism located approximately even with or an inch above the top of the adjacent seat. Supreme supports its petition for inconsequential noncompliance with the following:

(1) The location of the release mechanism does not affect motor vehicle safety since the location of the release mechanism is only a few inches different than that required in S5.3.1. of the standard.

(2) The location of the release mechanism is readily noticeable, observable and clearly identified.

(3) The location of the release mechanism is unobstructed and within the easy reach and access to the occupant of the seat or others in the bus.

(4) The location of the release mechanism was dictated by the size of the window which is larger than those installed in other model transit buses manufactured by Supreme; the larger size of the windows would enable an occupant to more readily exit from the bus in an emergency."

Interested persons are invited to submit written data, views and arguments on the petition of Supreme, described above.

Comments should refer to the Docket Number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC, 20590. It is requested, but not required, that six copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, a Notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: October 17, 1990.

Authority: 15 U.S.C. 1417; delegation of authority at 49 CFR 1.50 and 49 CFR 501.8.

Issued on September 12, 1990.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 90-21933 Filed 9-14-90; 8:45 am]

BILLING CODE 4910-59-M

National Driver Register Advisory Committee, Public Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C. App. I), notice is hereby given of a meeting of the National Driver Register Advisory Committee to be held on September 25, and 26, 1990, in Lincoln, Nebraska. The meeting will be held at the Department of Motor Vehicles, 301 Centennial Mall, South, from 9 a.m. to 4:30 p.m. on September 25, and from 8:30 a.m. to noon on September 26 in room A on the lower level. The NDR Notice of Proposed Rulemaking (NPRM) which is related to procedures for States' transition to the Problem Driver Pointer

System, will be the principal topic of discussion.

The meeting is open to the interested public, but may be limited in attendance to space available. Members of the public may present a written statement to the Committee at any time. With the approval of the Chairperson, members of the public may present oral statements at the meeting. Additional information is available from the National Driver Register, room 6124, 400 Seventh Street, SW., Washington, DC 20590, telephone 202/366-4800.

Issued in Washington, DC on September 10, 1990.

Clayton E. Hatch,

Chief, National Driver Register.

[FR Doc. 90-21833 Filed 9-14-90; 8:45 am]

BILLING CODE 4910-59-M

UNITED STATES INFORMATION AGENCY

United States Advisory Commission on Public Diplomacy

A meeting of the U.S. Advisory Commission on Public Diplomacy will be held September 18, 1990 in room 600, 301 4th Street, SW., Washington, DC from 10 a.m. to 12 p.m.

The Commission will meet with Acting Associate Director for Programs Michael Schneider for a discussion of public diplomacy in the Middle East; Mr. Richard Carlson, Director, Voice of America, on the coverage of events in the Middle East; Mr. Ron Hinkley, Director, Office of Research for a briefing on the role of the Office of Research; and Mr. Henry Hockeimer, Associate Director for Management and Mr. Stanley Silverman, Comptroller, for a discussion of USIA's budget.

Please call Gloria Kalamets, (202) 619-4468, if you are interested in attending the meeting since space is limited and entrance to the building is controlled.

Dated: September 12, 1990.

Rose Royal,

Management Analyst, Federal Register Liaison.

[FR Doc. 90-21915 Filed 9-14-90; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 55, No. 180
Monday, September 17, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Change in Subject Matter of Agency Meeting

Pusuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 2:00 p.m. on Tuesday, September 11, 1990, the Corporation's Board of Directors determined, on motion of C.C. Hope, Jr., Director (Appointive), second by Andrew C. Hove, Jr., Vice Chairman of the Board of Directors, concurred in by L. William Seidman, Chairman of the Board of Directors and T. Timothy Ryan, Jr., Director (Office of Thrift Supervision), that Corporation business required the withdrawal from the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matter:

Memorandum and resolution re: Proposed amendments to part 325 of the Corporation's rules and regulations, entitled "Capital Maintenance," which would establish the criteria and standards the Corporation would use in calculating the minimum leverage capital requirement and in determining capital adequacy.

The Board further determined, by the same majority vote, that no earlier notice of the change in the subject matter of the meeting was practible.

Dated: September 12, 1990.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 90-21971 Filed 9-13-90; 10:23 am]

BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Tuesday, September 11, 1990, the Corporation's Board of Directors determined, on motion of C. C. Hope, Jr., Director (Appointive), seconded by Andrew C. Hove, Jr., Vice Chairman of the Board of Directors, concurred in by T. Timothy Ryan, Jr., Director (Office of Thrift Supervision), Robert L. Clarke, Director (Comptroller of the Currency), and L. William Seidman, Chairman of the Board of Directors, that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of recommendations regarding assistance agreements with depository institutions.

The Board further determined, by the same majority vote, that no earlier notice of the changes in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4) and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4) and (c)(9)(B).

Dated: September 12, 1990.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 90-21972 Filed 9-13-90; 10:23 am]

BILLING CODE 6714-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 9:30 a.m., Thursday, September 20, 1990.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: September 12, 1990

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-21973 Filed 9-13-90; 10:24 am]

BILLING CODE 6210-01-M

RESOLUTION TRUST CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 3:08 p.m. on Tuesday, September 11, 1990, the Board of Directors of the Resolution Trust Corporation met in closed session to consider matters relating to the resolution of failed thrift institutions.

In calling the meeting, the Board determined, on motion of Director C. C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, Vice Chairman Andrew C. Hove, and Director T. Timothy Ryan, Jr. (Director of the Office of Thrift Supervision), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the Federal Deposit Insurance Corporation Building located at 550—17th Street, NW., Washington, DC.

Dated: September 12, 1990.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Executive Secretary.

[FR Doc. 90-22014 Filed 9-13-90; 2:58 pm]

BILLING CODE 6714-01-M

TENNESSEE VALLEY AUTHORITY

[Meeting No. 1433]

TIME AND DATE: 10 a.m. (CDT), September 19, 1990.

PLACE: National Fertilizer and Environmental Research Center Auditorium, Muscle Shoals, Alabama.

STATUS: Open.

AGENDA: Approval of minutes of meeting held on August 15, 1990.

ACTION ITEMS:

New Business

A—Budget and Financing

A1. Short-term Borrowing from the Treasury.

A2. Section 13 Payments in Lieu of Taxes, Fiscal Year 1990.

B—Purchase Awards

B1. Indefinite Quantity Term Agreement for United Conveyor Corporation Ash Disposal Equipment Repair Parts for Any TVA Power Plant (Negotiation KS-95362B).

B2. Purchase Contract with Westinghouse Electric Corporation for Combustion Turbine Renovation and Maintenance at Gallatin Power Plant (Negotiation BJ-79024B).

B3. Purchase Contract with Custodis-Cottrell, Inc., for Chimney Rehabilitation at Allen Power Plant (Negotiation GB-79118A).

B4. Contract with United Engineers and Constructors, Inc., for Initial Engineering for Flue Gas Desulfurization Project at Cumberland and Paradise Power Plants (Negotiation 2S-79058B).

C—Power

C1. Increases in Prices Under Dispersed Power Price Schedule—GSPP.

E—Real Property Transactions

E1. Sale of Permanent Easement Affecting 2.2 Acres of Johnsonville Power Plant Property in Humphreys County, Tennessee.

E2. Sale of Massengale Mountain Lease Affecting Approximately 530 Acres in the Koppers Coal Reserve, Campbell County, Tennessee.

E3. Sale of Permanent Easement Affecting Approximately 0.14 Acre of Tellico Reservoir Shoreland in Monroe County, Tennessee.

E4. Grant of Easement Affecting Approximately 1.6 Acres of South Holston Reservoir Land in Sullivan County, Tennessee.

E5. Sale of Approximately 64.88 Acres of Tims Ford Reservoir Land in Moore County, Tennessee.

E6. Sale for Industrial Development of Approximately 14.8 Acres of Watts Bar Reservoir Land in Roane County, Tennessee.

E7. Grant of Easement Affecting Approximately 34.4 Acres of Pickwick Reservoir Land in Lauderdale County, Alabama.

F—Unclassified

F1. TVA Contribution to the TVA Retirement System for Fiscal Year 1991.

F2. Filing of Condemnation Cases.

F3. Supplement No. 7 to Personal Services Contract No. TV-76659A with RHR International Company.

F4. Contract No. TV-82042V with MPR Associates,Inc.

F5. Contract with Associated Project Analysts.

F6. Recommendations Resulting from the Thirty-Eighth Salary Policy Negotiations.

CONTRACT PERSON FOR MORE INFORMATION: Alan Carmichael, Manager, Media Relations, or a member of his staff can respond to requests for information about this meeting. Call (615) 532-6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 479-4412.

Dated: September 12, 1990.

William L. Osteen, Jr.,

Associate General Counsel and Assistant Secretary.

[FR Doc. 90-22051 Filed 9-13-90; 2:59 pm]

BILLING CODE 8120-01-M

Corrections

Federal Register
Vol. 55, No. 180
Monday, September 17, 1990

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 775

[Docket No. 900801-0201]

Establishment of Import Certificate/ Delivery Verification Procedure for Sweden

Correction

In rule document 90-20644 beginning on page 35896 in the issue of Tuesday, September 4, 1990, make the following correction:

On page 35896, in the first column, beginning in the fourth line from the bottom, "March 14, 1990." should read "March 14, 1991."

BILLING CODE 1505-01-D

DEPARTMENT OF DEFENSE

Office of the Secretary

Privacy Act of 1974; System of Records

Correction

In notice document 90-20458 beginning on page 35448, in the issue of Thursday, August 30, 1990, make the following corrections:

1. On page 35449, in the second column, in the fifth paragraph, in the next to last line, "a" should read "the".
2. On the same page, in the third column, under **DISCLOSURE TO CONSUMER REPORTING AGENCIES:**, in the third line, "system" was misspelled.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

[Regulations No. 4]

RIN 0960-AD03

Determining Disability and Blindness; Extension of Expiration Date for Adult Mental Disorders Listings

Correction

In rule document 90-20344 beginning on page 35286, in the issue of Tuesday, August 28, 1990, make the following correction:

Appendix 1 to Subpart P [Corrected]

On page 35287, in the second column, under **Appendix 1 to Supart P— Listing of Impairments**, in the second and third lines, "August 38, 1991," should read "August 28, 1991,".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

National Park Service

Delaware Water Gap National Recreational Area

Correction

In notice document 90-20149 appearing on page 35191 in the issue of Tuesday, August 28, 1990, make the following corrections:

On page 35191, in the first column, under **SUMMARY** in the 9th and 14th lines, the times given should read "7 p.m." and "9 a.m.", respectively.

BILLING CODE 1505-01-D

federal register

Monday
September 17, 1990

Part II

Department of Education

Direct Grant Programs and Fellowship Programs; Notice Inviting Applications for New Awards for Fiscal Year 1991

DEPARTMENT OF EDUCATION

Direct Grant Programs and Fellowship Programs

AGENCY: Department of Education.

ACTION: Notice inviting applications for new awards for fiscal year 1991.

SUMMARY: The Secretary invites applications for new awards for fiscal year (FY) 1991 under many of the Department's direct grant and fellowship programs and announces deadline dates for the transmittal of applications under these programs. This combined application notice contains fiscal and programmatic information for potential applicants under the Department's programs announced in this issue of the **Federal Register**. This notice also lists all FY 1991 programs previously announced in the **Federal Register**, as well as FY 1991 programs to be announced at a later date.

DATES: The deadline dates for transmitting applications under these programs (except programs to be announced at a later date) are listed in Chart 1. For programs announced in this issue of the **Federal Register**, these deadline dates are repeated in Charts 2 through 7.

For programs announced in this issue of the **Federal Register** that are subject to Executive Order (EO) 12372 (Intergovernmental Review of Federal Programs), the deadline dates for the transmittal of State Process Recommendations by State Single Points of Contact (SPOCs) and comments by other interested parties are listed in Charts 2 through 7.

For programs announced in this issue of the **Federal Register**, the charts also list the dates on which applications will be available.

ADDRESSES: The addresses for obtaining applications for, or further information about, individual programs announced in this issue of the **Federal Register** are in the respective announcements for those programs following the appropriate chart in Part II of this notice.

The address for transmitting recommendations and comments under intergovernmental review, together with the addresses of individual SPOCs, is in the appendix to this notice.

SUPPLEMENTARY INFORMATION: The Secretary believes that placing as many program announcements as possible in a single notice will assist potential applicants in planning projects and activities. Further, this notice offers a complete picture of virtually all the Department's direct grant and fellowship competitions available for FY 1991. If additional competitions are carried out in FY 1991 because of new legislation or other events not known at this time, the Secretary will announce those competitions in future issues of the **Federal Register**.

In the Department's first combined application notice—for FY 1990 awards—published on September 15, 1989 (58 FR 38324), the Secretary invited comments on the utility of the combined notice to prospective applicants and other parties. Thirteen entities, including State agencies, local educational agencies, institutions of higher education, and other institutions and organizations responded to this invitation. All were favorable regarding the concept of the combined notice and asked that it be continued. The comments included a number of helpful suggestions for improving the combined notice.

Organization of Notice

This notice is organized in two parts.

Part I lists, by principal program offices of the Department, in Chart 1 all direct grant program announcements and certain fellowship program announcements for awards in FY 1991. The listing for each principal office includes three categories of program announcements: those already published, those published in this issue of the **Federal Register**, and those to be published at a later date. However, in response to public comments received on the September 15, 1989 notice, the programs are listed in order of their Catalog of Federal Domestic Assistance (CFDA) number irrespective of category or closing date for applications. The listing for each office contains the following information:

- The CFDA number of each program.
- The name of that program.
- A reference to the program announcement.
- The deadline date for transmitting applications.

Program Announcements

If the announcement for a particular program has already been published, the date of publication is listed, together with a reference to the issue of the **Federal Register** in which the announcement appeared. If the announcement is included in this combined application notice, it is designated by the words "In this issue." The chart also identifies any program announcements published elsewhere in this issue of the **Federal Register**. If the announcement is to be published at a later date, it is designated by the words "To be announced (TBA)."

Application Deadline Dates

All deadline dates announced in this notice or previously announced are listed in Chart 1. Each deadline date announced in this notice is also repeated in the appropriate program chart (Charts 2 through 7). Any deadline date to be announced later is designated by the initials "TBA."

Part II contains fiscal and programmatic information for all programs announced in this notice.

Each principal program office is assigned a separate chart as follows:

Chart 2—Office of Bilingual Education and Minority Languages Affairs.

Chart 3—Office of Educational Research and Improvement.

Chart 4—Office of Elementary and Secondary Education.

Chart 5—Office of Postsecondary Education.

Chart 6—Office of Special Education and Rehabilitative Services.

Chart 7—Office of Vocational and Adult Education.

Each of the charts contains the following information:

- The CFDA number and the name of each affected program.
- The date of availability of applications.
- The deadline date for transmitting applications.
- For any program subject to the requirements of EO 12372 and the regulations in 34 CFR part 79, the deadline date for transmitting comments under intergovernmental review.
- The estimated range of awards.
- The estimated average size of awards.
- The estimated number of awards.

Following the chart for each principal program office are additional details for each affected program, including—

- A brief statement of the purpose of the program;
- A list of regulations applicable to the program;
- Information regarding priorities, if any;
- Supplemental information, if necessary, regarding selection criteria or other matters;
- The project period in months;
- The name, address, and telephone number of the person or office at the Department to contact for applications or information; and
- A citation of the statutory or other legal authority for the program.

These announcements also specify if a program is affected by a notice of priorities, either previously published or published elsewhere in this issue of the

Federal Register, and inform readers where that notice may be found.

Programs To Be Announced at a Future Date

It is the Secretary's goal to announce as many programs as possible by the date of publication of the combined application notice each year. However, for FY 1991 a number of programs will be governed by new regulations or funding priorities. Some of these programs may also be affected by legislation currently pending in the Congress and may require regulations if that legislation is enacted.

Since it is the Secretary's general policy not to announce programs on the basis of proposed regulations or funding priorities, the combined application notice references some of these programs as "To be announced." Program announcements for these programs will be published when final regulations or priorities are completed. Programs expected to be affected by new regulations or funding priorities are marked in Chart 1 with an asterisk (*) following the abbreviation "TBA." For further information regarding many of these programs, readers are referred to the following notices of proposed rulemaking and notices of proposed funding priorities that have been published in the **Federal Register:**

Rehabilitation Services Administration Combined Notice of Proposed Funding Priorities for Fiscal Year 1991	In this issue
Office of Special Education and Rehabilitative Services Proposed Funding Priorities—Fiscal Year 1991	55 FR 31148 (7/31/90)
Cooperative Demonstration Program (Building Trades)—Notice of Proposed Priorities for Fiscal Year 1991	55 FR 24198 (6/14/90)
Fund for the Improvement and Reform of Schools and Teaching (FIRST)—Dwight D. Eisenhower National Mathematics and Science Education Program.	55 FR 31093 (7/31/90)
Notice of Proposed Funding Priorities for the National Institute on Disability and Rehabilitation Research for Fiscal Years 1991–1992.	55 FR 27786 (7/5/90)
Drug-Free Schools and Communities Program—Notice of Proposed Rulemaking	55 FR 33616 (8/16/90)
Projects With Industry—Notice of Proposed Funding Priorities for Fiscal Years 1991 and 1992	55 FR 21506 (5/24/90)

Available Funds

The Congress has not yet enacted a fiscal year 1991 appropriation for the Department of Education. However, the Department is publishing this notice in order to give potential applicants adequate time to prepare applications. Estimates of the amount of funds available for these programs are based in part on the President's 1991 budget request and in part on the level of funding available for fiscal year 1990. THE DEPARTMENT OF EDUCATION IS NOT BOUND BY ANY OF THE ESTIMATES IN THIS NOTICE.

Applicability of Section 5301 of the Anti-Drug Abuse Act of 1988

A number of programs covered by this combined application notice and listed in Chart 1 provide that a grant, fellowship, traineeship, or other monetary benefit may be awarded to an individual. This award may be made to the individual either directly by the Department or by a grantee that receives Federal funds for the purpose of providing, for example, fellowships, traineeships, or other awards to individuals.

Section 5301 of the Anti-Drug Abuse Act of 1988 (Pub. L. 100–690; 21 U.S.C. 853g) provides that a sentencing court may deny eligibility for certain Federal benefits to an individual convicted of drug trafficking or possession. Thus, an individual who applies for a grant, fellowship, or other monetary benefit under a program covered by this notice should understand that, if convicted of drug trafficking or possession, he or she is subject to denial of eligibility for that benefit if the sentencing court imposes such a sanction.

This denial applies whether the Federal benefit is provided to the individual directly by the Department or is provided through a grant, fellowship, traineeship, or other award made available with Federal funds by a grantee institution.

Any persons determined to be ineligible for Federal benefits under the provisions of section 5301 are listed in the General Services Administration's "List of Parties Excluded from Federal Procurement or Nonprocurement Programs."

Intergovernmental Review of Federal Programs

Certain programs in this notice are subject to the requirements of EO 12372 and the regulations in 34 CFR part 79. These programs are identified in Charts 2 through 7 with a date in the column headed "Deadline for Intergovernmental Review." For further information, an applicant under a program subject to the Executive order—and other parties interested in that program—are directed to the appendix to this notice.

Part I

CHART 1.—LIST OF PROGRAM ANNOUNCEMENTS

CFDA No.	Name of program	Program announcement	Application deadline date
	Office of Bilingual Education and Minority Languages Affairs		
84.003A	Transitional Bilingual Education Program	In this issue	12/7/90
84.003E	Special Alternative Instructional Program	In this issue	12/7/90
84.003G	Academic Excellence Program	In this issue	11/21/90
84.003J	Family English Literacy Program	In this issue	1/30/91
84.003L	Special Populations Program	7/12/90 (55 FR 28671)	10/12/90
84.003Q	State Educational Agency Program	In this issue	1/18/91
84.003R	Educational Personnel Training Program	In this issue	1/30/91
84.003T	Fellowship Program	In this issue	12/14/90
84.003V	Short-Term Training Program	7/12/90 (55 FR 28671)	10/12/90

Part I—Continued

CFDA No.	Name of program	Program announcement	Application deadline date
	Office of Educational Research and Improvement		
	Library Programs		
84.036B	Library Career Training Program—Fellowship Awards	7/13/90 (55 FR 28868)	10/10/90
84.039A	Library Research and Demonstration Program	7/13/90 (55 FR 28868)	2/4/91
84.091A	Strengthening Research Library Resources Program	7/13/90 (55 FR 28868)	10/29/90; 12/3/90
84.163A	Library Services to Indian Tribes and Hawaiian Natives Program—Basic Grants.	7/13/90 (55 FR 28868)	10/2/90
84.163B	Library Services to Indian Tribes and Hawaiian Natives Program—Special Projects Grants.	7/13/90 (55 FR 28868)	4/2/91
84.167A	Library Literacy Program	7/13/90 (55 FR 28868)	11/9/90
84.197A	College Library Technology and Cooperation Grants Program	7/13/90 (55 FR 28868)	1/14/91
	Fund for the Improvement and Reform of Schools and Teaching (FIRST)		
84.168D	National Program for Mathematics and Science Education	To be announced (TBA)*	TBA
84.211A	FIRST—Schools and Teachers Program: Other Schools and Teachers Projects.	To be announced (TBA)	TBA
84.211B	FIRST—Schools and Teachers Program: School-Level Projects	To be announced (TBA)	TBA
84.212A	FIRST—Family-School Partnership Program	To be announced (TBA)	TBA
84.215	Secretary's Fund for Innovation in Education (FIE):		
84.215A	FIE—Innovation in Education Program	To be announced (TBA)	TBA
84.215B	FIE—Comprehensive School Health Education Program	In this issue	12/17/90
84.215C	FIE—Technology Education Program	In this issue	1/14/91
84.215D	FIE—Computer-Based Instruction Program	To be announced (TBA)*	TBA
	Office of Research		
84.117E	Educational Research Grant Program—Field-Initiated Studies	In this issue	2/6/91
84.117G	Educational Research and Development Centers	3/8/90 (55 FR 8876)	6/15/90
84.117H	Educational Research Grant Program	To be announced (TBA)*	TBA
	Programs for the Improvement of Practice		
84.073A	National Diffusion Network Program—Developer Demonstrator Projects.	In this issue	4/10/91
84.073E	National Diffusion Network Program—Dissemination Process Projects.	In this issue	6/10/91
84.073F	National Diffusion Network Program—Private School Facilitator Project.	In this issue	6/10/91
84.206A	Javits Gifted and Talented Students Education Program	To be announced (TBA)*	TBA
84.228A	Educational Partnerships Program	To be announced (TBA)	TBA
84.232A	Mid-Career Teacher Training Program	9/7/90 (55 FR 37132)	11/30/90
	Office of Elementary and Secondary Education		
84.004C	Desegregation of Public Education—State Educational Agency Desegregation Program.	In this issue	11/14/90
84.061A	Educational Services for Indian Children	In this issue	11/30/90
84.061C	Planning, Pilot, and Demonstration Projects for Indian Children (Planning Projects).	In this issue	11/30/90
84.061D	Planning, Pilot, and Demonstration Projects for Indian Children (Pilot Projects).	In this issue	11/30/90
84.061E	Planning, Pilot, and Demonstration Projects for Indian Children (Demonstration Projects).	In this issue	11/30/90
84.062A	Educational Services for Indian Adults	In this issue	11/30/90
84.072A	Indian Controlled Schools—Enrichment Projects	In this issue	11/30/90
84.087A	Indian Fellowship Program	To be announced (TBA)	TBA
84.123A	Law-Related Education Program	In this issue	11/23/90
84.144A	Chapter 1 Migrant Education Coordination Program	To be announced (TBA)*	TBA
84.165A	Magnet Schools Assistance Program	To be announced (TBA)	TBA
84.184A	Drug-Free Schools and Communities Program—Demonstration Grants to Institutions of Higher Education.	To be announced (TBA)*	TBA
84.184B	Drug-Free Schools and Communities Program—Federal Activities Grants Programs.	To be announced (TBA)*	TBA
84.190A	Christa McAuliffe Fellowship Program	In this issue	12/21/90
84.201A	School Dropout Demonstration Assistance Program	To be announced (TBA)*	TBA
84.207A	Drug-Free Schools and Communities—Educational Personnel Training Grants.	To be announced (TBA)*	TBA
84.214A	Migrant Education Even Start Program	In this issue	3/29/91
84.233A	Drug-Free Schools and Communities—Emergency Grants	To be announced (TBA)*	TBA
	Office of Postsecondary Education		
84.015A	National Resource Centers and Fellowships	8/20/90 (55 FR 33949)	11/16/90
84.016A	Undergraduate International Studies and Foreign Language Program.	7/30/90 (55 FR 30962)	11/5/90

Part I—Continued

CFDA No.	Name of program	Program announcement	Application deadline date
84.017A	International Research and Studies	To be announced (TBA)	TBA
84.019A	Fulbright Hays—Faculty Research Abroad	8/13/90 (55 FR 32954)	10/29/90
84.021A	Fulbright Hays—Group Projects Abroad	8/16/90 (55 FR 33554)	10/22/90
84.022A	Fulbright Hays—Doctoral Dissertation Research Abroad	8/13/90 (55 FR 32954)	10/29/90
84.031A	Strengthening Institutions Program	To be announced (TBA)	TBA
84.031G	Endowment Challenge Grant Program	In this issue	6/11/91
84.031H	Strengthening Institutions Program and Endowment Challenge Grant Program—Designation as an Eligible Institution for Fiscal Year 1991 (under 84.031A and 84.031G).	6/27/90 (55 FR 26249)	8/27/90
84.042A	Student Support Services	To be announced (TBA)*	TBA
84.044A	Talent Search	To be announced (TBA)*	TBA
84.047A	Upward Bound—Math/Science Centers	To be announced (TBA)*	TBA
84.055A	Cooperative Education Program—Administration Projects	In this issue	12/21/90
84.055B	Cooperative Education Program—Demonstration Projects	In this issue	12/21/90
84.055C	Cooperative Education Program—Research Projects	In this issue	12/21/90
84.055D	Cooperative Education Program—Training and Resource Center Projects.	In this issue	12/21/90
84.066A	Educational Opportunity Centers	In this issue	11/27/90
84.094B	Patricia Roberts Harris Fellowships Program—Graduate and Professional Study Fellowships.	To be announced (TBA)*	TBA
84.094C	Patricia Roberts Harris Fellowships—Public Service Fellowships	To be announced (TBA)	TBA
84.097A	Law School Clinical Experience Program	In this issue	1/18/91
84.120A	Minority Science Improvement Program—Institutional, Cooperative, and Design Projects.	8/6/90 (55 FR 31874)	2/1/91
84.120B	Minority Science Improvement Program—Special Projects	8/6/90 (55 FR 31874)	10/5/90
84.153A	Business and International Education Program	7/30/90 (55 FR 30962)	11/8/90
84.170A	Jacob K. Javits Fellows Program	In this issue	2/1/91
84.200	Graduate Assistance in Areas of National Need	8/23/90 (55 FR 34656)	10/19/90
84.202A	Minority Participation in Graduate Education	8/3/90 (55 FR 31740)	9/14/90
84.204A	School, College, and University Partnerships Program	In this issue	5/17/91
84.219A	Student Literacy Corps Program	9/12/90 (55 FR 37505)	11/5/90
	Fund for the Improvement of Postsecondary Education (FIPSE)		
84.116A	Comprehensive Program (Preapplications)	8/29/90 (55 FR 35339)	10/16/90
84.116B	Comprehensive Program (Applications)	8/29/90 (55 FR 35339)	3/1/91
84.116F	Innovative Projects for Student Community Service	To be announced (TBA)	TBA
84.116G	Fund for the Improvement of Postsecondary Education—Practitioner Scholars (Invitational Priority: Lecture Series).	In this issue	3/1/91
84.183A	Drug Prevention Programs in Higher Education—Institution-Wide Program.	In this issue	1/22/91
84.183B	Drug Prevention Programs in Higher Education—Special Focus Program Competition: National College Student Organizational Network Program.	In this issue	2/27/91
84.183C	Drug Prevention Programs in Higher Education—Special Focus Program Competition: Approaches to Accountability in Prevention Program.	7/25/90 (55 FR 30263)	10/25/90
84.183D	Drug Prevention Programs in Higher Education—Special Focus Program Competition: Specific Approaches to Prevention Projects (Invitational Priority: Higher Education Consortia for Drug Prevention).	In this issue	2/21/91
84.183E	Drug Prevention Programs in Higher Education—Analysis and Dissemination Program Competitions: Dissemination of Successful Institution-Wide Projects.	In this issue	1/14/91
84.183F	Drug Prevention Programs in Higher Education—Analysis and Dissemination Program Competitions: Analysis of Institution-Wide Projects.	In this issue	1/14/91
	Office of Special Education and Rehabilitative Services		
	Office of Special Education Programs		
84.023A	Small Grants Program	To be announced (TBA)*	TBA
84.023B	Student-Initiated Research	8/1/90 (55 FR 31340)	1/25/91
84.023C	Field-Initiated Research	8/1/90 (55 FR 31340)	10/19/90
84.023L	Improving Learning Through Home/School Collaboration	To be announced (TBA)*	TBA
84.023N	Initial Career Awards	To be announced (TBA)*	TBA
84.023Q	Improving the Retention of Special Education Teachers	To be announced (TBA)*	TBA
84.023U	Examining High School Curricula and the Demands on Personnel Educating Students with Disabilities.	To be announced (TBA)*	TBA
84.024B	Nondirected Model Demonstration Projects	To be announced (TBA)*	TBA
84.024D	Outreach Projects	To be announced (TBA)*	TBA
84.024P	Model Inservice Training Projects	To be announced (TBA)*	TBA
84.024R	Early Childhood Research Institute—Substance Abuse	To be announced (TBA)*	TBA
84.024T	Early Childhood Research Institute—Service Implementation and Capacity for Providing Early Intervention Services.	To be announced (TBA)*	TBA
84.026A	Closed-Captioned Sports Programs	To be announced (TBA)*	TBA
84.026B	Descriptive Video	To be announced (TBA)*	TBA
84.026L	Closed-Captioned Local and Regional Programming	To be announced (TBA)*	TBA

Part I—Continued

CFDA No.	Name of program	Program announcement	Application deadline date
84.026R	Special Research, Development and Evaluation Projects	To be announced (TBA)*	TBA
84.028A	Regional Resource and Federal Centers	To be announced (TBA)*	TBA
84.029B	Preparation of Personnel for Careers in Special Education and Early Intervention.	To be announced (TBA)*	TBA
84.029D	Preparation of Leadership Personnel	7/13/90 (55 FR 28874)	10/9/90
84.029F	Preparation of Related Services Personnel	To be announced (TBA)*	TBA
84.029H	Grants to State Education Agencies and Institutions of Higher Education.	7/13/90 (55 FR 28874)	3/12/91
84.029K	Special Projects	7/13/90 (55 FR 28874)	10/9/90
84.029M	Parent Training and Information Centers	7/13/90 (55 FR 28874)	10/9/90
84.078C	Career Placement Opportunities for Students with Disabilities in Postsecondary Programs.	To be announced (TBA)*	TBA
84.086B	Symposium—Children and Youth with Severe Disabilities: Effective Communication.	To be announced (TBA)*	TBA
84.086D	Innovations for Educating Children with Severe Disabilities in General Education Settings.	To be announced (TBA)*	TBA
84.086F	Innovations for Educating Children with Deaf-Blindness in General Education Settings.	To be announced (TBA)*	TBA
84.086L	Utilization of Best Educational Practices for Students with Deaf-Blindness.	To be announced (TBA)*	TBA
84.086Q	Symposium on Provision of Educational and Related Services to Children and Youth with Deaf-Blindness.	To be announced (TBA)*	TBA
84.086U	Utilization of Best Educational Practices for Students with Severe Disabilities.	To be announced (TBA)*	TBA
84.158K	Demonstration Projects to Identify and Teach Skills Necessary for Self-Determination.	To be announced (TBA)*	TBA
84.158P	Research Projects on the Transition of Special Populations to Integrated Postsecondary Environments.	To be announced (TBA)*	TBA
84.158Q	Multi-District Outreach Projects	To be announced (TBA)*	TBA
84.159A	State Agency/Federal Evaluation Studies Projects	To be announced (TBA)*	TBA
84.159F	State Agency/Federal Evaluation Studies Projects—Feasibility Studies of Impact and Effectiveness.	To be announced (TBA)*	TBA
84.180M	Center to Advance the Quality of Technology, Media, and Materials for Providing Special Education and Related Services to Children with Disabilities.	To be announced (TBA)*	TBA
84.180N	Center to Advance the Use of Technology, Media, and Materials in Specially Designed Instruction for Children with Disabilities.	To be announced (TBA)*	TBA
84.180R	Educational Implications of Using Assistive Technology	To be announced (TBA)*	TBA
	National Institute on Disability and Rehabilitation Research		
84.133A	Research and Demonstration Projects	To be announced (TBA)*	TBA
84.133B	Rehabilitation Research and Training Centers	To be announced (TBA)*	TBA
84.133C	Innovation Grants	8/1/90 (55 FR 31318)	4/12/91
84.133D	Knowledge Dissemination and Utilization	To be announced (TBA)*	TBA
84.133E	Rehabilitation Engineering Centers	To be announced (TBA)*	TBA
84.133F	Fellowships	8/1/90 (55 FR 31318) [1]	12/14/90
84.133G	Field-Initiated Research	8/1/90 (55 FR 31318) [1]	10/15/90
84.133P	Research Training Grants	8/1/90 (55 FR 31318) [1]	9/14/90
84.224A	State Grants Program for Technology-Related Assistance for Individuals with Disabilities.	8/23/90 (55 FR 34605)	12/14/90
84.	Training and Public Awareness	To be announced (TBA)*	TBA
	Rehabilitation Services Administration		
84.128A	Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Individuals with Severe Handicaps—Supported Employment.	7/3/90 (55 FR 27489)	9/14/90
84.128G	Vocational Rehabilitation Service Projects Program for Migratory Agricultural and Seasonal Farmworkers with Handicaps.	To be announced (TBA)*	TBA
84.128H	Vocational Rehabilitation Service Projects for American Indians with Handicaps.	To be announced (TBA)*	TBA
84.129	Rehabilitation Long-Term Training	In this issue	11/30/90
84.129B	Rehabilitation Long-Term Training—Rehabilitation Counseling	In this issue	2/12/91
84.129T	Experimental and Innovative Training	In this issue	3/15/91
84.129V	State Vocational Rehabilitation Unit In-Service Training	In this issue	6/5/91
84.132	Centers for Independent Living	In this issue	3/28/91 and 4/26/91
84.177A	Independent Living Services for Older Blind Individuals	In this issue	11/30/90
84.234	Projects with Industry (PWI)		
84.234A	PWI—National Projects	To be announced (TBA)*	TBA
84.234B	PWI—Local Projects	To be announced (TBA)*	TBA
84.234C	PWI—State/Multi-State Projects	To be announced (TBA)*	TBA
84.234D	PWI—Industry-Based Training	To be announced (TBA)*	TBA
84.234E	PWI—Young Adults	To be announced (TBA)*	TBA
84.234F	PWI—Rural Projects	To be announced (TBA)*	TBA
84.234G	PWI—Older Disabled Workers	To be announced (TBA)*	TBA

Part I—Continued

CFDA No.	Name of program	Program announcement	Application deadline date
84.235A	Special Projects and Demonstrations for Providing Rehabilitation Services to Individuals with Severe Handicaps—Specific Learning Disabilities.	To be announced (TBA)*	TBA
84.235B	Special Projects and Demonstrations for Providing Rehabilitation Services to Individuals with Severe Handicaps—Long-Term Mental Illness.	To be announced (TBA)*	TBA
	Office of Vocational and Adult Education		
84.077	Bilingual Vocational Training Program	4/16/90 (55 FR 14182)	9/4/90
84.099	Bilingual Vocational Instructor Training Program	4/16/90 (55 FR 14182)	9/4/90
84.101A	Indian Vocational Education Program	3/23/90 (55 FR 10908)	7/16/90
84.101C	Vocational Education Program for Hawaiian Natives	In this issue	5/3/91
84.192	Adult Education for the Homeless	3/28/90 (55 FR 11430)	6/15/90
84.193	Demonstration Centers for the Retraining of Dislocated Workers Program.	4/16/90 (55 FR 14182)	9/6/90
84.198	National Workplace Literacy Program	4/17/90 (55 FR 14382)	7/13/90
84.199C	Cooperative Demonstration Program (Building Trades)	To be announced (TBA)*	TBA

*See, also, separate correction notice in this issue of the Federal Register.

Part II

The following Charts 2 through 7 contain fiscal and programatic information about each of the programs announced in this notice. Each chart is followed by additional information regarding these programs.

CHART 2.—OFFICE OF BILINGUAL EDUCATION AND MINORITY LANGUAGES AFFAIRS

CFDA No. and name	Applications available	Application deadline date	Deadline for intergovernmental review	Estimated range of awards	Estimated avg. size of awards	Estimated number of awards
84.003A Transitional Bilingual Education Program	9/26/90	12/7/90	2/5/91	$75,000-300,000	$164,000	78.
84.003E Special Alternative Instructional Program	9/26/90	12/7/90	2/5/91	$75,000-300,000	$164,000	36.
84.003G Academic Exellence Program	9/26/90	11/21/90	1/22/91	$150,000-200,000	$175,000	4.
84.003J Family English Literacy Program	9/26/90	1/30/91	4/1/91	$100,000-175,000	$147,000	19.
84.003Q State Educational Agency Program	9/26/90	1/18/91	3/19/91	N/A	$75,000	3.
84.003R Educational Personnel Training Program	9/26/90	1/30/91	4/1/91	$75,000-200,000	$151,000	35.
84.003T Fellowship Program	9/26/90	12/14/90	N/A	$2,000-15,000 (per indiv. fellow)	$10,000 (per indiv. fellow)	100 (indiv. fellowships).

84.003A Transitional Bilingual Education Program

Purpose of Program: To provide grants to local educational agencies (LEAs) and institutions of higher education applying jointly with one or more LEAs to establish, operate, or improve programs of transitional bilingual education for limited English proficient (LEP) children.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR parts 500 and 501.

Priorities: The Secretary is particularly interested in applications that meet one or both of the following invitational priorities:

(1) Projects that would focus on improving the achievement of LEP students in mathematics and science.

(2) Supplementary summer school programs that otherwise would not be available for LEP students.

However, under 34 CFR 75.105(c)(1) an application that meets one or both of these invitational priorities does not receive competitive or absolute preference over other applications.

Selection Criteria: In evaluating applications for grants under this program, the Secretary uses the selection criteria in 34 CFR 501.31.

In addition to the maximum of 100 points awarded under 34 CFR 501.31, the program regulations in 34 CFR 501.32(b) provide that the Secretary distributes 15 additional points among the factors listed in 34 CFR 501.32(a). For this competition the Secretary distributes the 15 additional points as follows:

(1) The need to assist LEP children who have been historically underserved by programs for limited English proficient persons (34 CFR 501.32(a)(1))—4 points.

(2) The relative need of the particular LEA(s) for the proposed program (34 CFR 501.32(a)(2))—4 points.

(3) The need to provide assistance in proportion to the distribution of LEP children throughout the Nation and within each of the States (34 CFR 501.32(a)(3))—3 points.

(4) The number and proportion of children from low-income families to be benefited by the program (34 CFR 501.32(a)(4))—4 points.

Project Period: 36 months.

For Applications or Information Contact: Luis A. Catarineau, U.S. Department of Education, 400 Maryland Avenue SW., room 5615, Switzer Building, Washington, DC 20202-6641. Telephone: (202) 732-5701.

Program Authority: 20 U.S.C. 3291(a)(1).

84.003E Special Alternative Instructional Program

Purpose of Program: To provide grants to local educational agencies (LEAs) and institutions of higher education applying jointly with one or more LEAs to establish, operate, or improve special alternative instructional programs for limited English proficient (LEP) children.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR parts 500 and 501.

Priorities: The Secretary is particularly interested in applications that meet one or both of the following invitational priorities:

(1) Projects that would focus on improving the achievement of LEP students in mathematics and science.

(2) Supplementary summer school programs that otherwise would not be available for LEP students.

However, under 34 CFR 75.105(c)(1) an application that meets one or both of these invitational priorities does not receive competitive or absolute preference over other applications.

Selection Criteria: In evaluating applications for grants under this program, the Secretary uses the selection criteria in 34 CFR 501.31.

In addition to the maximum of 100 points awarded under 34 CFR 501.31, the program regulations in 34 CFR 501.32(b) provide that the Secretary distributes 15 additional points among the factors listed in 34 CFR 501.32(a). For this competition the Secretary distributes the 15 additional points as follows:

(1) The need to assist LEP children who have been historically underserved by programs for limited English proficient persons (34 CFR 501.32(a)(1))—4 points.

(2) The relative need of the particular LEA or LEAs for the proposed program (34 CFR 501.32(a)(2))—4 points.

(3) The need to provide assistance in proportion to the distribution of LEP children throughout the Nation and within each of the States (34 CFR 501.32(a)(3))—3 points.

(4) The number and proportion of children from low-income families to be benefited by the program (34 CFR 501.32(a)(4))—4 points.

In addition to the 15 points distributed among the factors listed in 34 CFR 501.32(a), the program regulations in 34 CFR 501.33(b) provide that the Secretary may distribute 5 additional points among the factors listed in 34 CFR 501.33(a). For this competition the Secretary distributes the 5 additional points as follows:

(1) The administrative impracticability of establishing a bilingual education program due to the presence of a small number of students of a particular native language (34 CFR 501.33(a)(1))—2 points.

(2) The unavailability of personnel qualified to provide bilingual instructional services (34 CFR 501.33(a)(2))—2 points.

(3) The presence of a small number of LEP students in the LEA's schools and the LEA's inability to obtain native language teachers because of isolation or regional location (34 CFR 501.33(a)(3))—1 point.

Project Period: 36 months.

For Applications or Information Contact: Robert M. Trifiletti, U.S. Department of Education, 400 Maryland Avenue, SW., room 5617, Switzer Building, Washington, DC 20202–6641. Telephone: (202) 732–5701.

Program Authority: 20 U.S.C. 3291(a)(3).

84.003G Academic Excellence Program

Purpose of Program: To provide grants to local educational agencies, institutions of higher education, and private nonprofit organizations to disseminate effective bilingual education practices for limited English proficient (LEP) students.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR parts 500 and 524.

Selection Criteria: In evaluating applications for grants under this program, the Secretary uses the selection criteria in 34 CFR 524.31.

In addition to the maximum of 100 points awarded under 34 CFR 524.31, the program regulations in 34 CFR 524.32(b) provide that the Secretary distributes 15 additional points among the factors listed in 34 CFR 524.32(a). For this competition the Secretary distributes the 15 additional points as follows:

(1) The need to assist LEP children who have been historically underserved by programs for limited English proficient persons (34 CFR 524.32(a)(1)(i))—6 points.

(2) The need to provide funding according to the distribution of LEP children throughout the Nation and within each of the States (34 CFR 524.32(a)(1)(ii))—8 points.

(3) The relative numbers of children from low-income families likely to be benefited by the project (34 CFR 524.32(a)(2))—1 point.

Project Period: 36 months.

For Applications or Information Contact: Dr. Mary T. Mahony, U.S. Department of Education, 400 Maryland Avenue, SW., room 5620, Switzer Building, Washington, DC 20202–6642. Telephone: (202) 732–5722.

Program Authority: 20 U.S.C. 3291(a)(4).

84.003J Family English Literacy Program

Purpose of Program: To provide grants to local educational agencies, institutions of higher education, and private nonprofit organizations to establish, operate, and improve family English literacy programs for limited English proficient (LEP) persons and their families.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR parts 500 and 525.

Selection Criteria: In evaluating applications for grants under this program, the Secretary uses the selection criteria in 34 CFR 525.31.

In addition to the maximum of 100 points awarded under 34 CFR 525.31, the program regulations in 34 CFR 525.32(b) provide that the Secretary distributes 15 additional points among the factors listed in 34 CFR 525.32(a). For this competition the Secretary distributes the 15 additional points as follows:

(1) The need to assist LEP children who have been historically underserved by programs for limited English proficient persons (34 CFR 525.32(a)(1))—6 points.

(2) The need to provide assistance in proportion to the distribution of LEP children throughout the Nation and within each of the States (34 CFR 525.32(a)(2))—6 points.

(3) The need for financial assistance to establish, operate, or improve programs for limited English proficient persons (34 CFR 525.32(a)(3))—2 points.

(4) The relative numbers of children from low-income families sought to be benefited by the program (34 CFR 525.32(a)(4))—1 point.

Project Period: 36 months.

For Applications or Information Contact: Dr. Mary T. Mahony, U.S. Department of Education, 400 Maryland Avenue, SW., room 5620, Switzer Building, Washington, DC 20202–6642. Telephone: (202) 732–5722.

Program Authority: 20 U.S.C. 3291(a)(5).

84.003Q State Educational Agency Program

Purpose of Program: To provide grants to State educational agencies to collect, aggregate, analyze, and publish data on

limited English proficient persons and to improve the effectiveness of bilingual education programs.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR parts 500 and 548.

Project Period: 12 or 36 months.

For Applications or Information Contact: Luis A. Catarineau, U.S. Department of Education, 400 Maryland Avenue, SW., room 5615, Switzer Building, Washington, DC 20202–6641. Telephone: (202) 732–5701.

Program Authority: 20 U.S.C. 3302.

84.003R Educational Personnel Training Program

Purpose of Program: To provide grants to institutions of higher education to meet the needs for additional or better trained educational personnel for programs for limited English proficient persons.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR parts 500 and 561.

Priorities: The Secretary is particularly interested in applications that meet one or more of the following invitational priorities:

(1) Projects that would provide certification-oriented training to prepare teachers of mathematics, science, or early childhood education to participate in programs for limited English proficient (LEP) children.

(2) Projects that would provide certification- and degree-oriented training to prepare teacher aides to participate as teachers in programs for LEP children.

(3) Projects that would provide certification-oriented training conducted in collaboration with local educational agencies (LEAs) to prepare LEA educational personnel to participate in programs for LEP children.

However, under 34 CFR 75.105(c)(1) an application that meets one or more of these invitational priorities does not receive competitive or absolute preference over other applications.

Selection Criteria: In evaluating applications for grants under this program, the Secretary uses the selection criteria in 34 CFR 561.31.

In addition to the maximum of 100 points awarded under 34 CFR 561.31, the program regulations in 34 CFR 561.32(b) provide that the Secretary distributes 10 additional points among the factors listed in 34 CFR 561.32(a). For this competition the Secretary distributes the 10 additional points as follows:

(1) Job placement and development (34 CFR 561.32(a)(1))—1 point.

(2) Evidence of prior participant's success in serving LEP children in accordance with the needs identified in the prior project (34 CFR 561.32(a)(2))—1 point.

(3) Evidence of demonstrated capacity and cost effectiveness as described in 34 CFR 561.31 (d) and (f) (34 CFR 561.32(a)(3))—8 points.

Project Period: Up to 36 months.

For Applications or Information Contact: Cynthia J. Ryan, U.S. Department of Education, 400 Maryland Avenue, SW., room 5622, Switzer Building, Washington, DC 20202–6642. Telephone: (202) 732–5722.

Program Authority: 20 U.S.C. 3321(a)(1).

84.003T Fellowship Program

Purpose of Program: To provide financial assistance, through approved institutions of higher education, to full-time students pursuing a graduate degree in areas related to programs for limited English proficient persons.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR 75.51 and parts 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR parts 500 and 562.

Priority: The Secretary is particularly interested in applications that meet the following invitational priority:

Applications proposing programs of study that would lead to a doctoral degree.

However, under 34 CFR 75.105(c)(1) an application that meets this invitational priority does not receive competitive or absolute preference over other applications that do not meet this invitational priority.

Project Period: Up to 36 months.

For Applications or Information Contact: Joyce M. Brown, U.S. Department of Education, 400 Maryland Avenue, SW., room 5630, Switzer Building, Washington, DC 20202–6642. Telephone: (202) 732–5727 or 5729.

Note: Only institutions of higher education (IHEs) are eligible to apply to the Department for participation in the Fellowship Program. Individuals wishing to obtain fellowships must submit fellowship applications to an IHE approved by the Department for participation in the program.

Program Authority: 20 U.S.C. 3323.

CHART 3.—OFFICE OF EDUCATIONAL RESEARCH AND IMPROVEMENT

CFDA No. and name	Applications available	Application deadline date	Deadline for intergovernmental review	Estimated range of awards	Estimated average size of awards	Estimated number of awards
Fund for the Improvement and Reform of Schools and Teaching (FIRST)						
84.215B FIE—Comprehensive School Health Education Program	10/15/90	12/17/90	2/19/91	50,000–150,000	100,000	5
84.215C FIE—Technology Education Program	11/2/90	1/14/91	3/18/91	100,000–400,000	200,000	3
Office of Research						
84.117E Educational Research Grant Program—Field-Initiated Studies	11/19/90	2/6/91	N/A	40,000–80,000	67,000	15
Programs for the Improvement of Practice						
84.073A National Diffusion Network—Developer Demonstrator Projects	2/22/91	4/10/91	6/10/91	60,000–75,000	67,000	10
84.073E National Diffusion Network—Dissemination Process Projects	4/26/91	6/10/91	8/9/91	90,000–114,000	110,000	3
84.073F National Diffusion Network—Private School Facilitator Project	4/26/91	6/10/91	8/9/91	195,000–225,000	200,000	1

84.215B FIE—Comprehensive School Health Education Program

Purpose of Program: To encourage the provision of comprehensive school health education for elementary and secondary students through assistance to State educational agencies, local educational agencies, institutions of higher education, private schools, and other public and private agencies, organizations, and institutions.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for Student Rights in Research, Experimental Programs, and Testing in 34 CFR part 98.

Invitational Priorities: The Secretary is particularly interested in applications that meet one or more of the following invitational priorities.

(a) Applications that propose (1) strategies for disseminating successful comprehensive school health education models, or (2) projects that would provide technical assistance to State and local educational agencies interested in implementing these models.

(b) Applications that propose projects to provide—for teachers and administrators in elementary and secondary schools—in-service training related to the improvement of and implementation of a comprehensive school health education program, including training concerning personal health and fitness, nutrition, prevention of chronic diseases, and accident prevention and safety.

Within these priorities the Secretary is particularly interested in projects involving parents in the planning and implementation of comprehensive health education programs.

The Secretary encourages applicants to include evaluation components to assess the impact of the project activities on both school practices and students. The Secretary particularly encourages evaluation plans that would lead to approval by the Department of Education's Program Effectiveness Panel and to subsequent dissemination through the National Diffusion Network.

However, under 34 CFR 75.105(c)(1) an application that meets one or more of these invitational priorities does not receive competitive or absolute preference over other applications.

Selection Criteria: In evaluating applications for grants under this program, the Secretary uses the selection criteria in EDGAR, 34 CFR 75.210.

The regulations in 34 CFR 75.210(c) provide that the Secretary may award up to 100 points for the selection criteria, including a reserved 15 points. For this competition the Secretary distributes the 15 points as follows:

Plan of operation (34 CFR 75.210(b)(3)). Five points are added to this criterion for a possible total of 20 points.

Evaluation plan (34 CFR 75.210(b)(6)). Ten points are added to this criterion for a possible total of 15 points.

Project Period: Up to 36 months.

For Applications or Information Contact: Dr. Allen A. Schmieder, U.S. Department of Education, 555 New Jersey Avenue, NW., room 522, Washington, DC 20208–5524. Telephone: (202) 357–6496 (as of Oct. 26, 1990: (202) 219–1496).

Program Authority: 20 U.S.C. 3151, 3155.

84.215C FIE Technology Education Program

Purpose of Program: To provide assistance to State educational agencies, local educational agencies, institutions of higher education, private schools, and other public and private agencies, organizations, and institutions to develop materials for educational television and radio programming, and programs that use telecommunications and video resources for the instruction of students in public and private elementary and secondary schools and for related teacher training programs for teachers in public and private elementary and secondary schools. Telecommunications means the full range of technologies that can be used for educational instruction.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86.

Invitational Priority: The Secretary is particularly interested in applications that meet the following invitational priority:

Applications for projects that would demonstrate innovative uses of technologies in educational instruction—including educational television, closed circuit television systems, cable television, radio broadcasts, and video and audio discs and tapes—in ways that strengthen the school curriculum, particularly in critical subject matter areas, especially mathematics, science, reading, and foreign languages. The Secretary encourages projects that would include strong evaluation components to document program effectiveness and outcome.

Within this invitational priority the Secretary is particularly interested in—

(a) Projects that would substantially expand the use of educational technology in elementary and secondary instruction;

(b) Projects that would show potential for increasing the educational attainment of students; and

(c) Projects that would involve parents working cooperatively with teachers and schools.

However, under 34 CFR 75.105(c)(1) an application that meets this invitational priority does not receive competitive or absolute preference over other applications.

Selection Criteria: In evaluating applications for grants under this program, the Secretary uses the selection criteria in EDGAR, 34 CFR 75.210.

The regulations in 34 CFR 75.210(c) provide that the Secretary may award up to 100 points for the selection criteria, including a reserved 15 points. For this competition, the Secretary distributes the 15 points as follows:

Evaluation plan (34 CFR 75.210(b)(6)). Fifteen points are added to this criterion for a possible total of 20 points.

Project Period: Up to 36 months.

For Applications or Information Contact: Dr. Allen A. Schmieder, U.S. Department of Education, 555 New Jersey Avenue NW., room 522, Washington, DC 20208–5524. Telephone (202) 357–6496 (as of Oct. 26, 1990: (202) 219–1496).

Program Authority: 20 U.S.C. 3151, 3153.

84.117E Educational Research Grant Program—Field-Initiated Studies

Purpose of Program: To support field-initiated studies designed to advance educational theory and practice.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 700.

Selection Criteria: In evaluating applications for grants under this program, the Secretary uses the selection criteria in 34 CFR 700.22.

The program regulations in 34 CFR 700.20(b)(2) provide that the Secretary may award up to 100 points for the selection criteria, including a reserved 25 points. For this competition the Secretary distributes the 25 points as follows:

Significance (34 CFR 700.22(f)). Fifteen points are added to this criterion for a possible total of 30 points.

Technical soundness (34 CFR 700.22(g)). Ten points are added to this criterion for a possible total of 25 points.

Project Period: Up to 18 months.

For Applications or Information Contact: Delores Monroe, U.S. Department of Education, 555 New Jersey Avenue NW., room 620, Washington, DC 20208-5646. Telephone: (202) 357-6223 (as of Oct. 26, 1990: (202) 219-2223).

Program Authority: 20 U.S.C. 1221e.

84.073A National Diffusion Network—Developer Demonstrator Projects

Purpose of Program: To provide grants to disseminate to new sites nationwide, exemplary education programs that have been previously approved by the Department of Education's Program Effectiveness Panel.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; (b) The regulations for Student Rights in Research, Experimental Programs, and Testing in 34 CFR part 98; and (c) The regulations for this program in 34 CFR parts 785 and 786.

Absolute Priorities: Under 34 CFR 75.105(c)(3) and 34 CFR 786.3(b), the Secretary gives an absolute preference to applications that meet the following priorities:

Applications proposing projects in mathematics or higher mathematics at the secondary level, science at the secondary level, or history. The Secretary intends to reserve $335,000 to fund applications that meet this priority. The Secretary may adjust this amount if the Secretary does not receive sufficient high-quality applications addressing these priorities to use the funds reserved. The Secretary uses the remainder of the funds to support applications in any order subject areas listed in 34 CFR 786.3(b).

Project Period: Up to 48 months.

For Applications or Information Contact: Ms. Carolyn S. Lee, U.S. Department of Education, 555 New Jersey Avenue NW., room 510, Washington, DC 20208-5645. Telephone: (202) 357-6134 (as of Oct. 26, 1990: (202) 219-2134).

Program Authority: 20 U.S.C. 2962.

84.073E National Diffusion Network—Dissemination Process Projects

Purpose of Program: To provide grants to disseminate to new sites nationwide, information, instructional materials, and services concerning specific content areas, bodies of research, or fields of professional development that have been previously approved by the Department of Education's Program Effectiveness Panel.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85 and 86; (b) The regulations for Student Rights in Research, Experimental Programs, and Testing in 34 CFR part 98; and (c) The regulations for this program in 34 CFR parts 785 and 787 and 34 CFR 786.3.

Project Period: Up to 48 months.

For Applications or Information Contact: Mrs. Linda Jones, U.S. Department of Education, 555 New Jersey Avenue, NW., room 510, Washington, DC 20208-5645. Telephone: (202) 357-6134 (as of Oct. 26, 1990: (202) 219-2134).

Program Authority: 20 U.S.C. 2962.

84.073F National Diffusion Network—Private School Facilitator Project

Purpose of Program: To provide a grant to disseminate exemplary education programs to private schools nationwide.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; (b) The regulations for Student Rights in Research, Experimental Programs, and Testing in 34 CFR part 98; and (c) The regulations for this program in 34 CFR parts 785 and 789.

Project Period: Up to 48 months.

For Applications or Information Contact: Dr. Thomas Wikstrom, U.S. Department of Education, 555 New Jersey Avenue, NW., room 510, Washington, DC 20208-5645. Telephone: (202) 357-6134 (as of Oct. 26, 1990: (202) 219-2134.

Program Authority: 20 U.S.C. 2962.

CHART 4—OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

CFDA No. and name	Applications available	Application deadline date	Deadline for intergovernmental review	Estimated range of awards	Estimated average size of awards	Estimated number of awards
84.004C Desegregation of Public Education—State Educational Agency Desegregation Program	10/3/90	11/14/90	1/14/91	$71,650-737,110	$270,000	53
84.061A Educational Services for Indian Children	10/5/90	11/30/90	1/29/91	34,482-450,000	218,000	10
84.061C Planning, Pilot, and Demonstration Projects for Indian Children (Planning Projects)	10/5/90	11/30/90	1/29/91	89,696-178,868	115,000	2
84.061D Planning, Pilot, and Demonstration Projects for Indian Children (Pilot Projects)	10/5/90	11/30/90	1/29/91	64,060-157,512	130,000	3
84.061E Planning, Pilot, and Demonstration Projects for Indian Children (Demonstration Projects)	10/5/90	11/30/90	1/29/91	26,715-186,014	130,000	2
84.062A Educational Services for Indian Adults	10/5/90	11/30/90	1/29/91	50,824-250,225	197,000	11
84.072A Indian-Controlled Schools—Enrichment Projects	10/5/90	11/30/90	1/29,91	95,704-308,297	170,000	6
84.123A Law-Related Education Program	10/1/90	11/23/90	1/22/91	10,000-500,000	105,000	36
84.190A Christa McAuliffe Fellowship Program	9/28/90	12/21/90	N/A	16,650-33,300	28,760	70
84.214A Migrant Education Even Start Program	2/4/91	3/29/91	5/28/91	85,000-210,000	200,000	4

84.004C Desegregation of Public Education—State Educational Agency Desegregation Program

Purpose of Program: To provide technical assistance and training, at the request of school boards and other responsible governmental agencies, in issues related to race, sex, and national origin desegregation of public schools.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR parts 270 and 271.

Project Period: Up to three years beginning July 1, 1991.

For Applications or Information Contact: Sylvia L. Wright, U.S. Department of Education, 400 Maryland Avenue, SW., room 2059, Washington, DC 20202-6439. Telephone: (202) 401-0358.

Program Authority: 42 U.S.C. 2000c–2000c–2, 2000c–5.

84.061A Educational Services for Indian Children

Purpose of Program: (1) To provide grants to State and local educational agencies and Indian tribes, organizations, and institutions for educational services for Indian children; and (2) to provide grants to consortia of Indian tribes or Indian organizations, local educational agencies, and institutions of higher education for programs to encourage Indian students to acquire a higher education and to reduce the incidence of dropouts among Indian elementary and secondary school students.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR parts 250 and 253.

Project Period: Up to 36 months.

For Applications or Information Contact: Elsie Janifer, U.S. Department of Education, 400 Maryland Avenue, SW., room 2166, Washington, DC 20202–6335. Telephone: (202) 401–1918.

Program Authority: 25 U.S.C. 2621 (a), (c).

84.061C Planning, Pilot, and Demonstration Projects for Indian Children (Planning Projects)

Purpose of Program: To provide grants to State and local educational agencies, Indian tribes, organizations, and institutions, and federally-supported elementary and secondary schools for Indian children for projects designed to plan effective educational approaches for Indian children.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR parts 250 and 254.

Project Period: Up to 12 months.

For Applications or Information Contact: George Williams, U.S. Department of Education, 400 Maryland Avenue, SW., room 2166, Washington, DC 20202–6335. Telephone: (202) 401–1943.

Program Authority: 25 U.S.C. 2621 (a)(1), (b).

84.061D Planning, Pilot, and Demonstration Projects for Indian Children (Pilot Projects)

Purpose of Program: To provide grants to State and local educational agencies, Indian tribes, organizations, and institutions, and federally-supported elementary and secondary schools for Indian children for projects designed to test the effectiveness of educational approaches for Indian children.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) the regulations for this program in 34 CFR parts 250 and 254.

Project Period: Up to 36 months.

For Applications or Information Contact: George Williams, Department of Education, 400 Maryland Avenue, SW., room 2166, Washington, DC 20202–6335. Telephone: (202) 401–1943.

Program Authority: 25 U.S.C. 2621 (a)(1), (b).

84.061E Planning, Pilot, and Demonstration Projects for Indian Children (Demonstration Projects)

Purpose of Program: To provide grants to State and local educational agencies, Indian tribes, organizations, and institutions, and federally-supported elementary and secondary schools for Indian children for projects designed to demonstrate effective educational activities for Indian children.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR parts 250 and 254.

Project Period: Up to 36 months.

For Applications or Information Contact: George Williams, U.S. Department of Education, 400 Maryland Avenue, SW., room 2166, Washington, DC 20202–6335. Telephone: (202) 401–1943.

Program Authority: 25 U.S.C. 2621 (a)(1), (b).

84.062A Educational Services for Indian Adults

Purpose of Program: To provide grants to Indian tribes, Indian organizations, and Indian institutions for educational service projects designed to improve educational opportunities for Indian adults.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, and 85; and (b) the regulations for this program in 34 CFR parts 250 and 257.

Invitational Priority: The Secretary is particularly interested in applications that meet the following invitational priority:

Projects that would address the special educational needs of Indian adults who reside in rural or isolated areas where adult educational services are not available in sufficient quantity or quality or both.

However, under 34 CFR 75.105(c)(1) an application that meets this invitational priority does not receive competitive or absolute preference over other applications.

Project Period: Up to 36 months.

For Applications or Information Contact: George Williams, U.S. Department of Education, 400 Maryland Avenue, SW., room 2166, Washington, DC 20202–6335. Telephone: (202) 401–1943.

Program Authority: 25 U.S.C. 2631.

84.072A Indian-Controlled Schools—Enrichment Projects

Purpose of Program: To provide grants for educational enrichment projects designed to meet the special educational and culturally related academic needs of Indian children in those Indian-controlled elementary and secondary schools or local educational agencies eligible under the statute and regulations.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR parts 250 and 252.

Project Period: Up to 36 months.

For Applications or Information Contact: George Williams, U.S. Department of Education, 400 Maryland Avenue, SW., room 2166, Washington, DC 20202–6335. Telephone: (202) 401–1943.

Program Authority: 25 U.S.C. 2602(c).

84.123A Law-Related Education Program

Purpose of Program: To provide persons with knowledge and skills pertaining to the law, the legal process, the legal system, and the fundamental principles and values on which these are based.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) the regulations for this program in 34 CFR part 241.

Priority: The Secretary is particularly interested in applications that meet the following invitational priority:

Projects that would develop, test, demonstrate, and disseminate new approaches or techniques in law-related education that can be used or adopted and eventually institutionalized by other agencies and institutions.

Within this invitational priority the Secretary is particularly interested in projects designed to—

(1) Show the significance of moral and ethical choices in the making and following of laws; or

(2) Increase knowledge and understanding of the differing jurisdictional authorities and functions of local, State, and Federal court and legal systems in the United States.

However, under 34 CFR 75.105(c)(1) an application that meets this invitational priority does not receive a competitive or absolute preference over other applications.

Project Period: Up to 36 months.

For Applications or Information Contact: Frank B. Robinson, Jr., U.S. Department of Education, 400 Maryland Avenue, SW., room 2059, Washington, DC 20202-6440. Telephone: (202) 401-1342.

Program Authority: 20 U.S.C. 2965.

84.190A Christa McAuliffe Fellowship Program

Purpose of Program: To provide fellowships to enable and encourage outstanding teachers to continue their education or to develop educational projects and programs.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 77, 82, 85, and 86; and (b) the regulations for this program in 34 CFR part 237.

Project Period: Up to 12 months.

For Applications: Call or write State Contact Persons (see list at end of this program announcement).

For Information Contact: Janice Williams-Madison, U.S. Department of Education, 400 Maryland Avenue, SW., room 2049, Washington, DC 20202-6439. Telephone: (202) 401-1059.

Program Authority: 20 U.S.C. 1113-1113e.

State Contact Persons For Applications:

Alabama

Mr. Bill Ward, Alabama Department of Education, 111 Coliseum Boulevard, Montgomery, Alabama 36193, (205) 242-8082.

Alaska

Ms. Terri Campbell, Alaska Department of Education, P.O. Box F, Juneau, Alaska 99811-0500, (907) 465-2884.

American Samoa

Mr. Russell Aab, Department of Education, American Samoa Government, Pago Pago American Samoa 96799, (684) 633-5237.

Arizona

Mr. Bill Hunter, Arizona Department of Education, 1535 West Jefferson Street, Phoenix, Arizona 85007, (602) 542-2147.

Arkansas

Ms. Brenda Matthews, Arkansas Department of Education, #4 Capitol Mall, Little Rock, Arkansas 72201, (501) 682-4251.

California

Ms. Terry Rule, Governor's Office of Education, State Capitol, Office of Education, Room 1145, Sacramento, California 95814, (916) 323-0611.

Colorado

Ms. Sue Million, Colorado Department of Education, 201 East Colfax Avenue, Denver, Colorado 80203, (303) 866-6866.

Connecticut

Mr. Thomas Lovia Brown, Connecticut State Department of Education, Post Office Box 2219, Hartford, Connecticut 06145, (203) 566-2283.

Delaware

Dr. Bill Barkley, Department of Public Instruction, Townsend Building, Dover, Delaware 19903, (302) 736-2770.

District of Columbia

Ms. Jean Green, Office of Postsecondary Education, Research and Assistance, 1331 H Street, N.W., Suite 600, Washington, DC 20005, (202) 727-3685.

Florida

Ms. Mary Lou Carothers, Florida State Department of Education, G20-Collins, Tallahassee, Florida 32099, (904) 488-6503.

Georgia

Ms. Gale Samuels, Georgia Department of Education, Twin Towers East, Atlanta, Georgia 30334, (404) 656-2476.

Guam

Ms. Ernestine Cruz, Administrator of Federal Programs, P.O. Box DE, Agana, Guam 96910, (671) 472-8524.

Hawaii

Mr. Ronald Toma, Hawaii Department of Education, P.O. Box 2360, Room 301, Honolulu, Hawaii 96864, (808) 586-3269.

Idaho

Mr. Brad Foltman, Executive Office of the Governor, State House, Boise, Idaho 83720, (208) 334-3309.

Illinois

Mr. Frank Llano, State Capitol, Room 2½, Springfield, Illinois 62706, (217) 782-4921.

Indiana

Ms. Betty Johnson, Indiana Department of Education, 251 East Ohio, Indianapolis, Indiana 46204, (317) 232-9141.

Iowa

Ms. Sharon Slezak, Iowa Department of Education, Grimes State Building, Des Moines, Iowa 50319, (515) 281-3750.

Kansas

Mr. Warren Bell, Kansas State Department of Education, 120 East 10th Street, Topeka, Kansas 66612, (913) 296-2306.

Kentucky

Mr. Jack D. Foster, Secretary, Education and Humanities Cabinet, Office of the Governor, State Capitol Building, Room 105, Frankfort, Kentucky 40601, (502) 564-2611.

Louisiana

Dr. Janie Ponthieux, Department of Education, Post Office Box 94064, Baton Rouge, Louisiana 70804-9064, (504) 342-6200.

Maine

Ms. Marquerite MacDonald, Maine Department of Education, State House Station 23, Augusta, Maine 04333, (207) 289-5113.

Maryland

Mr. Michael A. Smith, Maryland State Scholarship Administration, The Jeffrey Bldg., Suite 219, 16 Francis Street, Annapolis, Maryland 21401, (301) 974-5370.

Massachusetts

Ms. Barbara Libby, State Department of Education, 1385 Hancock Street, Quincy, Massachusetts 02169, (617) 770-7610.

Michigan

Ms. Ellen Carter Cooper, Michigan Department of Education, P.O. Box 30008, Lansing, Michigan 48909, (517) 373-3608.

Minnesota

Mrs. Pat Hutchison, Minnesota Department of Education, 632 Capitol Square Building, 550 Cedar Street, St. Paul, Minnesota 55101, (612) 296-9737.

Mississippi

Ms. Julia Sullivan, Mississippi Department of Education, Post Office Box 771, Jackson, Mississippi 39205, (601) 359-3519.

Missouri

Ms. Georganna Beachboard, Missouri Department of Education, Post Office Box 480, Jefferson City, Missouri 65102, (314) 751-2661.

Montana

Ms. Nancy Coopersmith, Office of Public Instruction, Capitol Station, Helena, Montana 59620, (406) 444-5541.

Nebraska

Mr. Dean Bergman, Curriculum Services, Nebraska Department of Education, P.O. Box 94987, Lincoln, Nebraska 68509, (402) 471-2437.

Nevada

Ms. Mary Peterson, Nevada Department of Education, 400 West King Street, Carson City, Nevada 89710, (702) 885-3136.

New Hampshire

Mr. William B. Ewert, New Hampshire Department of Education, 101 Pleasant Street, Concord, New Hampshire 03301, (603) 271-2632.

New Jersey

Mr. Anthony Villane, New Jersey Department of Education, CN 500, Trenton, New Jersey 08625, (609) 984-6409.

New Mexico

Mr. James Gontis, State Department of Education, Education Building, De Varges and Don Gasper Streets, Santa Fe, New Mexico 87501-2786, (505) 827-6565.

New York

Dr. Charles Mackey, State Education Department, Albany, New York 12230, (518) 474-6440.

North Carolina

Ms. Grace Drain, North Carolina Department of Public Instruction, 116 West Edenton Street, Raleigh, North Carolina 27603, (919) 733-0701.

North Dakota

Ms. Pat Laubach, Department of Public Instruction, State Capitol, Bismarck, North Dakota 58505, (701) 224-4525.

Northern Marianas

Ms. Jean Olopai, Public School System, Commonwealth of the Northern Mariana Islands, Saipan, MP 96950, (670) 322-3194.

Ohio

Ms. Donna Boylan, Ohio Department of Education, 65 S. Front Street, Columbus, Ohio 43266, (614) 466-2407.

Oklahoma

Ms. Patsy McCarley, State Department of Education, 2500 N. Lincoln Boulevard, Oklahoma City, Oklahoma 73105, (405) 521-3577.

Oregon

Ms. Ardis Christenson, Oregon Department of Education, 700 Pringle Parkway, S.E., Salem, Oregon 97310, (503) 373-7898.

Palau

Mr. Masa-Aki Emesiochl, Palau Department of Education, P.O. Box 189, Koror, Palau 96940, Intl. Op. 160+680 Palau #570.

Pennsylvania

Ms. Joan Lawhead, Pennsylvania Higher Education, Assistance Agency, 660 Boas Street, Harrisburg, Pennsylvania 17102-1398, (717) 975-3327.

Puerto Rico

Ms. Carmen Morales, G.P.O. Box 759, Lieutenant Cesar Gonzalez & Calas Street, Hato Rey, Puerto Rico 00919, (809) 756-5820.

Rhode Island

Ms. Vanessa Cooley, Rhode Island Department of Education, 22 Hayes Street, Providence, Rhode Island 02908, (401) 277-6865.

South Carolina

Ms. Betty Davidson, Governor's Office, P.O. Box 11369, Columbia, South Carolina 29211, (803) 734-0448.

South Dakota

Ms. Roxie Thielen, South Dakota Department of Education, 700 Governor's Drive, Pierre, South Dakota 57501, (605) 773-3134.

Tennessee

Mr. James Swain, Tennessee Department of Education, Cordell Hull Building, 4th Floor, North Wing, Nashville, Tennessee 37219, (615) 741-0878.

Texas

Ms. Evangelina Cuellar, Texas Education Agency, 1701 N. Congress, Austin, Texas 78701, (512) 463-9327.

Utah

Mr. Roger C. Mouritsen, Utah State Office of Education, 250 East Fifth South, Salt Lake City, Utah 84111, (801) 538-7515.

Vermont

Mr. George Tanner, Chief, Curriculum and Instruction Unit, Department of Education, Montpelier, Vermont 05602, (802) 828-3111.

Virgin Islands

Dr. Gloria Gawrych, Department of Education, P.O. Box 6640, Charlotte Amalie, St. Thomas, Virgin Islands 00801, (809) 774-4679.

Virginia

Ms. Diane Jay, Virgina Department of Education P.O. Box 6Q, Richmond, Virginia 23216, (804) 225-2013.

Washington

Ms. Warren Burton, Office of Superintendent of Public Instruction, Old Capitol Building, Mail Stop FG-11, Olympia, Washington 98504, (206) 753-6701.

West Virgina

Mr. Tony Smedley, 1900 E. Washington Street, Capitol Complex—Building 6, Room B337, Charleston, West Virginia 25305, (304) 348-2703.

Wisconsin

Ms. Harlene Ames, Department of Public Instruction, P.O. Box 7841, Madison, Wisconsin 53707, (608) 267-2443.

Wyoming

Mr. Jim Lendino, State Department of Education, Hathaway Building, Cheyenne, Wyoming 82002, (307) 777-6268.

84.214A Migrant Education Even Start Program

Purpose of Program: To establish and improve programs to meet the special educational needs of migrant children by integrating early childhood education and adult education for their parents into a unified program.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 85, and 86; and (b) the regulations for this program in 34 CFR part 212.

Project Period: Up to 48 months.

For Applications or Information contact: Doris Shakin, U.S. Department of Education, 400 Maryland Avenue, SW., room 2145, Washington, DC 20202-6134. Telephone: (202) 401-0803.

Program Authority: 20 U.S.C. 2741-2749.

CHART 5.—OFFICE OF POSTSECONDARY EDUCATION

CFDA No. and name	Applications available	Application deadline date	Deadline for intergovernmental review	Estimated range of awards	Estimated avg. size of awards	Estimated No. of awards
84.031G Endowment Challenge Grant Program	4/15/91	6/11/91	8/12/91	$50,000-1,000,000+	$525,000	31.
84.055A Cooperative Education Program—Administration Projects	10/22/90	12/21/90	2/22/91	$26,000-300,000.	$76,000	10.
84.055B Cooperative Education Program—Demonstration Projects	10/22/90	12/21/90	2/22/91	$67,000-105,000.	$96,000	2.
84.055C Cooperative Education Program—Research Projects	10/22/90	12/21/90	2/22/91	$20,000-150,000.	$100,000	2.
84.055D Cooperative Education Program—Training and Resource Center Projects.	10/22/90	12/21/90	2/22/91	$20,000-150,000.	$100,000	2.
84.066A Educational Opportunity Centers	10/12/90	11/27/90	1/31/91	$123,500-631,000.	$320,281	40.
84.097A Law School Clinical Experience Program	11/05/90	1/18/91	3/22/91	$24,000-100,000.	$43,000	30.
84.170A Jacob K. Javits Fellows Program	10/17/90	2/1/91	N/A	$6,000-16,000 (per indiv. fellow).	$15,000 (per indiv. fellow).	120 (individual fellowships).

CHART 5.—OFFICE OF POSTSECONDARY EDUCATION—Continued

CFDA No. and name	Applications available	Application deadline date	Deadline for intergovernmental review	Estimated range of awards	Estimated avg. size of awards	Estimated No. of awards
84.204A School, College and University Partnerships Program [1]						
Fund for the Improvement of Postsecondary Education						
84.116G Fund for the Improvement of Postsecondary Education—Practitioner Scholars (Invitational Priority: Lecture Series).	12/6/90	3/1/91	5/3/91	$5,000	$5,000	6.
84.183A Drug Prevention Programs in Higher Education—Institution-Wide Program.	10/19/90	1/22/91	N/A	$10,000-250,000.	$100,000	100.
84.183B Drug Prevention Programs in Higher Education—Special Focus Program Competition: National College Student Organizational Network Program.	10/26/90	2/27/91	N/A	$100,000-250,000.	$200,000	4.
84.183D Drug Prevention Programs in Higher Education—Special Focus Program Competition: Specific Approaches to Prevention Projects (Invitational Priority: Higher Education Consortia for Drug Prevention).	11/20/90	2/21/91	N/A	$5,000-40,000.	$34,000	40.
84.183E Drug Prevention Programs in Higher Education—Analysis and Dissemination Program Competitions: Dissemination of Successful Institution-Wide Projects.	11/1/90	1/14/91	N/A	$35,000-150,000.	No Estimate (New Program).	8.
84.183F Drug Prevention Programs in Higher Education—Analysis and Dissemination Program Competitions: Analysis of Institution-Wide Projects.	11/1/90	1/14/91	N/A	Up to $150,000.	No Estimate (New Program).	5-10.

[1] The announcement for this program appears in a separate notice in this issue of the FEDERAL REGISTER.

84.031G Endowment Challenge Grant Program.

Purpose of Program: To provide matching grants to eligible institutions of higher education to establish or increase their endowment funds.

Eligibility: Potential applicants, including current grantees under the Strengthening Institutions Program authorized by Title III of the Higher Education Act, are advised that a notice was published in the **Federal Register** (55 FR 26249) on June 27, 1990, informing interested parties how to be designated as eligible to apply for Endowment Challenge Grant funds.

Applicable Regulations:

(a) The following regulations in the Education Department General Administrative Regulations (EDGAR):

(i) The regulations in 34 CFR 74.61(h) or 74.62, as applicable.

(ii) The regulations in 34 CFR 74.80 through 74.85.

(iii) The regulations in 34 CFR 75.100 through 75.102, and 75.217 (d) and (e).

(iv) The regulations in 34 CFR parts 82, 85 and 86; and

(b) The regulations for this program in 34 CFR part 628.

Project Period: 240 months (20 years).

Fundraising Period: 18 months (September, 1991–March, 1992).

For Applications or Information Contact: Ms. Anne Price-Collins, U.S. Department of Education, 400 Maryland Avenue, SW., room 3042, ROB-3, Washington, DC 20202-5337. Telephone: (202) 708-8866. Applications will be sent to those institutions designed as eligible under the Title III Programs.

Program Authority: 20 U.S.C. 1065a.

84.055A Cooperative Education Program—Administration Projects

Purpose of Program: To provide Federal financial assistance to help institutions of higher education, or combinations of those institutions, plan, establish, operate and expand cooperative education programs, including institution-wide projects.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 85, and 86; and (b) the regulations for this program in 34 CFR parts 631 and 632.

Project Period: Up to 60 months.

For Applications or Information Contact: Dr. John E. Bonas, U.S. Department of Education, 400 Maryland Avenue, SW., room 3022, ROB-3, Washington, DC 20202-5251. Telephone: (202) 708-9407.

Program Authority: 20 U.S.C. 1133–1133a.

84.055B Cooperative Education Program—Demonstration Projects

Purpose of Program: To provide grants to institutions of higher education, or combinations of those institutions, and public and private nonprofit agencies or organizations to demonstrate or determine the feasibility or value of innovative methods of cooperative education.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 85, and 86; and (b) The regulations for this program in 34 CFR parts 631 and 633.

Project Period: Up to 36 months.

For Applications or Information Contact: Dr. John E. Bonas, U.S. Department of Education, 400 Maryland Avenue, SW., room 3002, ROB-3, Washington, DC 20202-5251. Telephone: (202) 708-9407.

Program Authority: 20 U.S.C. 1133, 1133b.

84.055C Cooperative Education Program—Research Projects

Purpose of Program: To provide grants to institutions of higher education, or combinations of those institutions, and public and private nonprofit agencies or organizations to conduct studies to improve, develop, or evaluate methods of cooperative education for the benefit of the cooperative education community.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 85, and 86; and (b) The regulations for this program in 34 CFR parts 631 and 634.

Project Period: Up to 36 months.

Priorities: Under 34 CFR 75.105(c)(3) and 34 CFR 634.21(d) the Secretary gives absolute preference to applications that meet one or both of the following priorities:

(a) Longitudinal studies on former cooperative education students and non-cooperative education students to determine the relationship between the students' cooperative education work experiences and one or more of the following:

(1) Initial job placement.
(2) Job advancement.
(3) Long-term earnings.
(b) Assessment of the impact of cooperative education on college retention rates and academic achievement of students participating in cooperative education, compared to nonparticipants.

Under 34 CFR 75.105(c)(3) the Secretary funds under this competition only applications that meet one or both of these absolute priorities.

For Applications or Information Contact: Dr. John E. Bonas, U.S. Department of Education, 400 Maryland Avenue, SW., room 3022, ROB-3, Washington, DC 20202-5251. Telephone: (202) 708-9407.

Program Authority: 20 U.S.C. 1133, 1133b.

84.055D Cooperative Education Program—Training and Resource Center Projects

Purpose of Program: To provide grants to institutions of higher education, or combinations of those institutions, and public and private nonprofit agencies or organizations to train and assist individuals who participate in or are planning to participate in the planning, establishment, and administration of cooperative education projects.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 85, and 86; and (b) The regulations for this program in 34 CFR parts 631 and 635.

Project Period: Up to 36 months.

For Applications or Information Contact: Dr. John E. Bonas, U.S. Department of Education, 400 Maryland Avenue, SW., room 3022, ROB-3, Washington, DC 20202-5251. Telephone: (202) 708-9407.

Program Authority: 20 U.S.C. 1133, 1133b.

84.066A Educational Opportunity Centers

Purpose of Program: To provide assistance and information to adults (age 19 and above) who seek to enter or continue in a program of postsecondary education.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 85, and 86; and (b) the regulations for this program in 34 CFR part 644.

Project Period: Up to 36 months.

For Applications or Information Contact: Goldia D. Hodgdon, U.S. Department of Education, 400 Maryland Avenue, SW., room 3060, ROB-3, Washington, DC 20202-5249. Telephone: (202) 708-4804.

Program Authority: 20 U.S.C. 1070d, 1070d-1c.

84.097A Law School Clinical Experience Program

Purpose of Program: To provide grants to accredited law schools to establish or expand programs of clinical experience for students in the practice of law.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 639.

Priorities: Under 34 CFR 75.105(c)(3) and 34 CFR 639.11 the Secretary gives an absolute preference to applications that meet both of the following priorities:

(a) Provide legal experience in the preparation and trial of actual cases, including administrative cases and the settlement of controversies outside the courtroom; and

(b) Provide service to persons who have difficulty in gaining access to legal representation.

Under 34 CFR 75.105(c)(3), the Secretary funds under this competition only applications that meet both of these absolute priorities.

Supplementary Information: The authorizing statute for the program permits the Secretary to pay up to 90 percent of the cost of projects at law schools (20 U.S.C. 1134s(a)). The program regulations permit the Secretary to establish annually a lower maximum Federal share (34 CFR 639.40(a)(2)). The Secretary sets the maximum Federal share at 50 percent for fiscal year 1991.

Project Period: Up to 36 months.

For Application or Information Contact: Mrs. Barbara J. Harvey, U.S. Department of Education, 400 Maryland Avenue, SW., room 3022, ROB-3, Washington, DC 20202-5251. Telephone: (202) 708-7863.

Program Authority: 20 U.S.C. 1134s-1134t.

84.170A Jacob K. Javits Fellows Program

Purpose of Program: To provide awards to eligible postsecondary students, who have 20 or fewer graduate semester hours, for graduate fellowships in the arts, humanities, and social sciences.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75 (except as provided in 34 CFR 650.3(b)), 77, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 650.

Project Period: Up to 48 months.

For Applications or Information Contact: Dr. Allen P. Cissell, U.S. Department of Education, 400 Maryland Avenue, SW., room 3022, ROB-3, Washington, DC 20202-5251. Telephone: (202) 708-9415.

Program Authority: 20 U.S.C. 1134h-k.

84.116G Fund for the Improvement of Postsecondary Education—Practitioner Scholars (Invitational Priority: Lecture Series)

Purpose of Program: To provide grants to institutions of postsecondary education and other public and private institutions and agencies to improve postsecondary education and educational opportunities.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 85, and 86, with the exceptions noted in 34 CFR 630.4(b); and (b) The regulations for this program in 34 CFR part 630.

Priorities:

Absolute Priority: Under 34 CFR 75.105(c)(3) and 34 CFR 630.11(b)(5) the Secretary gives an absolute preference to applications that meet the following priority:

Projects that would support efforts by postsecondary educational practitioners to contribute to knowledge about postsecondary education by producing a document or other product or by engaging in an activity designed to share the practitioner's knowledge with others.

Under 34 CFR 75.105(c)(3) the Secretary funds under this competition only applications that meet this absolute priority.

Invitational Priority: Within the absolute priority specified in this notice, the Secretary is particularly interested in applications that meet the following invitational priority:

Projects that would develop and present lectures on key issues in postsecondary education at conferences and educational institutions.

However, under 34 CFR 75.105(c)(1) an application that meets this invitational priority does not receive competitive or absolute preference over other applications.

Selection Criteria: In evaluating applications for grants under this program competition, the Secretary uses the following selection criteria chosen from those listed in 34 CFR 630.32:

(a) *Significance for Postsecondary Education.* The Secretary reviews each proposed project for its significance in improving postsecondary education by

determining the extent to which it would—

(1) Achieve the purposes of the Practitioner Scholars competition, as explained in the absolute priority section of this notice; and

(2) Address an important problem or need.

(b) *Feasibility.* The Secretary reviews each proposed project for its feasibility by determining the extent to which the applicant is capable of carrying out the proposed project, as evidenced by—

(1) The adequacy of resources, including money, personnel, facilities, equipment, and supplies; and

(2) The qualifications of key personnel who would conduct the project.

The Secretary gives equal weight to the selection criteria on significance and feasibility. Within each of these criteria, the Secretary gives equal weight to each of the subcriteria. In applying the criteria, the Secretary first analyzes an application in terms of each individual criterion. The Secretary then bases the final judgment of an application on an overall assessment of the degree to which the applicant addresses all selection criteria.

Project Period: Up to 12 months.

For Applications or Information Contact: FIPSE, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202–5175. Telephone: (202) 708–5750.

Program Authority: 20 U.S.C. 1135–1135a–3.

84.183A Drug Prevention Programs in Higher Education—Institution-Wide Program

Purpose of Program: To provide grants to institutions of higher education (IHEs) and consortia of IHEs to develop, implement, operate, and improve drug abuse education and prevention programs for students enrolled in IHEs. Grants under the Institution-Wide Program competitions support comprehensive, institution-wide programs designed to prevent or eliminate students' use of illegal drugs and abuse of other drugs and alcohol, including activities whose direct or indirect purpose is to train students, faculty, and staff in drug abuse education and prevention.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts, 74, 75, 77, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 612.

Selection Criteria: In evaluating applications for grants under this program competition, the Secretary uses the selection criteria in 34 CFR 612.23(c)(1).

The program regulations in 34 CFR 612.22(b) provide that the Secretary may award up to 100 points for the selection criteria, including a reserved 15 points. For this competition the Secretary distributes the 15 points as follows:

Methods and management plan (34 CFR 612.23 (c)(1)(iii)). Five points are added to this criterion for a possible total of 20 points.

Cost effectiveness and budget clarity (34 CFR 612.23(c)(1)(vi)). Five points are added to this criterion for a possible total of 15 points.

Organizational commitment (34 CFR 612.23(c)(1)(vii)). Five points are added to this criterion for a possible total of 20 points.

Project Period: 24 months.

For Applications or Information Contact: Dr. Ronald B. Bucknam, FY 1991–A Competition, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202–5175. Telephone: (202) 708–5757 or (202) 708–5750.

Program Authority: 20 U.S.C. 3211.

84.183B Drug Prevention Programs in Higher Education—Special Focus Program Competition: National College Student Organizational Network Program

Purpose of Program: To provide grants to institutions of higher education (IHEs) and consortia of IHEs to develop, implement, operate, and improve drug abuse education and prevention programs for students enrolled in IHEs.

Note: Because only IHEs and consortia of IHEs are eligible to receive awards under this competition, an interested national college student network or organization must be sponsored by an IHE. The IHE will serve as both the applicant and grantee.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 612.

Priority: Under 34 CFR 75.105(c)(3), 34 CFR 612.21(c)(1), and 34 CFR 612.21(c)(2)(ii) the Secretary gives an absolute preference to applications that meet the following priority:

Applications proposing the development and implementation of projects (a) conducted in conjunction with national college student networks or organizations *and* (b) addressing one or more specific approaches or problem areas related to drug abuse education and prevention for students enrolled in IHEs.

Under 34 CFR 75.105(c)(3) the Secretary funds under this competition only applications that meet this absolute priority.

Selection Criteria: In evaluating applications for grants under this program competition, the Secretary uses the selection criteria in 34 CFR 612.23(c)(2)(ii).

The program regulations in 34 CFR 612.22(b) provide that the Secretary may award up to 100 points for the selection criteria, including a reserved 15 points. For this competition the Secretary distributes the 15 points as follows:

Design (34 CFR 612.23(c)(2)(ii)(A)). Five points are added to this criterion for a possible total of 25 points.

Organizational commitment (34 CFR 612.23(c)(2)(ii)(F)). Ten points are added to this criterion for a possible total of 20 points.

Project Period: 24 months.

For Applications or Information Contact: Lavona M. Grow, FY 1991–B Competition, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202–5175. Telephone: (202) 708–4850 or (202) 708–5750.

Program Authority: 20 U.S.C. 3211.

84.183D Drug Prevention Programs in Higher Education—Special Focus Program Competition: Specific Approaches to Prevention Projects (Invitational Priority: Higher Education Consortia for Drug Prevention)

Purpose of Program: To provide grants to institutions of higher education (IHEs) and consortia of IHEs to develop, implement, operate, and improve drug abuse education and prevention programs for students enrolled in IHEs.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 612.

Priorities:

Absolute Priority: Under 34 CFR 75.105(c)(3) and 34 CFR 612.21(c)(2)(iii)(B) the Secretary gives an absolute preference to applications that meet the following priority:

Projects designed to develop, implement, operate, or improve programs that concentrate on specific approaches to the prevention of drug use or alcohol abuse.

Under 34 CFR 75.105(c)(3) the Secretary funds under this competition only applications that meet this absolute priority.

Invitational Priority: Within the absolute priority in this notice, the Secretary is particularly interested in applications that meet the following invitational priority:

Applications proposing to develop, implement, operate, or improve higher education consortia for drug prevention.

Applicants are invited to propose consortia arrangements to assist local and nearby prevention professionals—representing institutions of higher education—to meet on a monthly basis to discuss, investigate, and act on efforts to develop and improve their own comprehensive, institution-wide programs of drug education and prevention.

However, under 34 CFR 75.105(c)(1) an application that meets this invitational priority does not receive competitive or absolute preference over other applications.

Selection Criteria: In evaluating applications for Specific Approaches to Prevention grants, the Secretary uses the selection criteria in 34 CFR 612.23(c)(2)(iii).

The program regulations in 34 CFR 612.22(b) provide that the Secretary may award up to 100 points for the selection criteria, including a reserved 15 points. For this competition the Secretary distributes the 15 points as follows:

Need (34 CFR 612.23(c)(2)(iii)(A)). Five points are added to this criterion for a possible total of 20 points.

Methods and management plan (34 CFR 612.23(c)(2)(iii)(C)). Five points are added to this criterion for a possible total of 20 points.

Cost effectiveness and budget clarity (34 CFR 612.23(c)(2)(iii)(F)). Five points are added to this criterion for a possible total of 15 points.

Project Period: 24 months.

For Applications or Information Contact: William M. Burns, FY 1991–D Competition, U.S. Department of Education, 400 Maryland Avenue SW., Washington, DC 20202–5175. Telephone: (202) 708–5768 or (202) 708–5750.

Program Authority: 20 U.S.C. 3211

84.183E Drug Prevention Programs in Higher Education—Analysis and Dissemination Program Competitions: Dissemination of Successful Institution-Wide Projects

Purpose of Program: To provide grants to institutions of higher education (IHEs) and consortia of IHEs to develop, implement, operate, and improve drug abuse education and prevention programs for students enrolled in IHEs. Grants under Analysis and Dissemination Program competitions support projects to analyze and disseminate successful project designs, policies, and results of projects supported under Institution-Wide Program competitions and Special Focus Program competitions.

Note: Under 34 CFR 612.2(d) eligibility under this Analysis and Dissemination Program competition is limited to current or former recipients of an award under an Institution-Wide Program competition or a Special Focus Program competition.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 81, 82, 85, and 86; and (b) the regulations for this program in 34 CFR Part 612.

Priorities:

Absolute Priority: Under 34 CFR 75.105(c)(3) and 34 CFR 612.21(d) the Secretary gives an absolute preference to applications that meet the following priority:

Projects designed to disseminate successful project designs, policies, and results of projects supported under Institution-Wide Program competitions.

Under 34 CFR 75.105(c)(3) the Secretary funds under this competition only applications that meet this absolute priority.

Invitational Priority: Within the absolute priority in this notice, the Secretary is particularly interested in applications that meet the following invitational priority:

Applications by former recipients of grants under Institution-Wide Program competitions proposing to disseminate their own successful projects that were funded in FY 1988 and for which departmental assistance has ended.

However, under 34 CFR 75.105(c)(1) an application that meets this invitational priority does not receive competitive or absolute preference over other applications.

Selection Criteria: In evaluating applications for grants under the Analysis and Dissemination Program, the Secretary uses the selection criteria in 34 CFR 612.23(c)(3).

The program regulations in 34 CFR 612.22(b) provide that the Secretary may award up to 100 points for the selection criteria, including a reserved 15 points. For this competition the Secretary distributes the 15 points as follows:

Design (34 CFR 612.23(c)(3)(i)). Five points are added to this criterion for a possible total of 35 points.

Key personnel (34 CFR 612.23(c)(3)(iii)). Five points are added to this criterion for a possible total of 20 points.

Cost effectiveness and budget clarity (34 CFR 612.23(c)(3)(v)). Five points are added to this criterion for a possible total of 15 points.

Project Period: 24 months.

For Applications or Information Contact: Donald R. Fischer, FY 1991–E Competition, U.S. Department of Education, 400 Maryland Avenue SW., Washington, DC 20202–5175. Telephone: (202) 708–5757 or (202) 708–5771.

Program Authority: 20 U.S.C. 3211.

84.183F Drug Prevention Programs in Higher Education—Analysis and Dissemination Program Competitions: Analysis of Institution-Wide Projects

Purpose of Program: To provide grants to institutions of higher education (IHEs) and consortia of IHEs to develop, implement, operate, and improve drug abuse education and prevention programs for students enrolled in IHEs. Grants under Analysis and Dissemination Program competitions support projects to analyze and disseminate successful project designs, policies, and results of projects supported under Institution-Wide Program competitions and Special Focus Program competitions.

Note: Under 34 CFR 612.2(d) eligibility under this Analysis and Dissemination Program competition is limited to current or former recipients of an award under an Institution-Wide Program competition or a Special Focus Program competition.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 612.

Priorities:

Absolute Priority: Under 34 CFR 75.105(c)(3) and 34 CFR 612.21(d) the Secretary gives an absolute preference to applications that meet the following priority:

Projects designed to analyze successful project designs, policies, and results of projects supported under Institution-Wide Program competitions.

Under 34 CFR 75.105(c)(3) the Secretary funds under this competition only applications that meet this absolute priority.

Invitational Priority: Within the absolute priority in this notice, the Secretary is particularly interested in applications that meet the following invitational priority:

Applications by recipients of grants under Institution-Wide Program competitions proposing to analyze the direct and indirect impacts of the FY 1988 Institution-Wide projects for which departmental assistance has ended.

However, under 34 CFR 75.105(c)(1) an application that meets this invitational priority does not receive competitive or absolute preference over other applications.

Selection Criteria: In evaluating applications for grants under the

Analysis and Dissemination Program, the Secretary uses the selection criteria in 34 CFR 612.23(c)(3).

The program regulations in 34 CFR 612.22(b) provide that the Secretary may award up to 100 points for the selection criteria, including a reserved 15 points. For this competition the Secretary distributes the 15 points as follows:

Methods and management plan (34 CFR 612.23(c)(3)(ii)). Five points are added to this criterion for a possible total of 25 points.

Key personnel (34 CFR 612.23(c)(3)(iii)). Ten points are added to this criterion for a possible total of 25 points.

Project Period: Up to 24 months.

For Applications or Information Contact: Dr. Ronald B. Bucknam, FY 1991-F Competition, U.S. Department of Education, 400 Maryland Avenue SW., Washington, DC 20202-5175. Telephone: (202) 708-5757 or (202) 708-5750.

Program Authority: 20 U.S.C. 3211.

CHART 6—OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

CFDA No. and name	Applications available	Application deadline date	Deadline for intergovernmental review	Estimated range of awards	Estimated avg. size of awards	Estimated number of awards
Office of Special Education Programs						
All programs have been announced or are to be announced at a later date. (See Chart 1.)						
National Institute on Disability and Rehabilitation Research						
All programs have been announced or are to be announced at a later date. (See Chart 1.)						
Rehabilitation Services Administration						
84.129 Rehabilitation Long-Term Training [1]						
84.129B Rehabilitation Long-Term Training—Rehabilitation Counseling [1]						
84.129T Experimental and Innovative Training [1]						
84.129V State Vocational Rehabilitation In-Service Training [1]						
84.132 Centers for Independent Living [1]						
84.177A Independent Living Services for Older Blind Individuals	9/28/90	11/30/90	1/30/91	$180,000-225,000	$200,000	26.

[1] The announcement for this program appears in a separate notice in this issue of the FEDERAL REGISTER.

84.177A Independent Living Services for Older Blind Individuals

Purpose of Program: To provide to State vocational rehabilitation agencies grants supporting independent living services that help older blind individuals adjust to blindness and live more independently in the home and community.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, and 85; and (b) The regulations for this program in 34 CFR part 367.

Project Period: Up to 36 months.

For Applications or Information Contact: Sherrita Gary, U.S. Department of Education, 400 Maryland Avenue, SW., room 3332, Switzer Building, Washington, DC 20202-2649. Telephone: (202) 732-1351.

Program Authority: 29 U.S.C. 796f.

CHART 7—OFFICE OF VOCATIONAL EDUCATION

CFDA No. and name	Applications available	Application deadline date	Deadline for intergovernmental review	Estimated range of awards	Estimated average size of awards	Estimated number of awards
84.101C Vocational Education Program for Hawaiian Natives	1/2/91	5/3/91	7/1/91	N/A	$2,201,990	1

84.101C Vocational Education Program for Hawaiian Natives

Purpose of Program: To provide assistance to any organization, recognized by the Governor of Hawaii and primarily serving and representing Hawaiian natives, to plan, conduct, and administer vocational education projects or portions of projects benefiting Hawaiian natives.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, and 85; and (b) The regulations for this program in 34 CFR part 410.

Selection Criteria: In evaluating applications for grants under this program, the Secretary uses the selection criteria in 34 CFR 410.31.

The program regulations in 34 CFR 410.30(b) provide that the Secretary may award up to 100 points for the selection criteria, including a reserved 15 points. For this competition the Secretary distributes the 15 points as follows:

Plan of operation (34 CFR 410.31 (b)). Fifteen points are added to this criterion for a possible total of 35 points.

Project Period: Up to 12 months.

For Applications or Information Contact: Kate M. Holmberg, U.S. Department of Education, 400 Maryland Avenue, SW., room 4512, Switzer Building, Washington, DC 20202-7242. Telephone: (202) 732-2363.

Program Authority: 20 U.S.C. 2313.

Invitation to Comment:

The Secretary welcomes additional comments and suggestions for improving the combined application notice.

Please direct any comments and suggestions to Steven N. Schatken, Assistant General Counsel for Regulations, U.S. Department of

Education, 400 Maryland Avenue, SW. (room 4091, FOB-6), Washington, DC 20202-2110.

Dated: September 10, 1990.

Lauro F. Cavazos,

Secretary of Education.

Appendix

Intergovernmental Review of Federal Programs

This appendix applies to each program that is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR part 79.

The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each of those States under the Executive order. A listing containing the Single Point of Contact for each State is included in this appendix.

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, EO 12372—CFDA# [commenter must insert number—including suffix letter, if any], U.S. Department of Education, room 4161, 400 Maryland Avenue, SW., Washington, DC 20202-0125.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, DC time) on the date indicated in this notice.

PLEASE NOTE THAT THE ABOVE ADDRESS IS NOT THE SAME ADDRESS AS THE ONE TO WHICH THE APPLICANT SUBMITS ITS COMPLETED APPLICATION. *DO NOT SEND APPLICATIONS TO THE ABOVE ADDRESS.*

State Single Points of Contact

Alabama

Mrs. Moncell Thornell, State Single Point of Contact, Alabama Department of Economic & Community Affairs, 3465 Norman Bridge Road, Post Office Box 250347, Montgomery, Alabama 36125-0347, Telephone (205) 284-8905.

Arizona

Ms. Janice Dunn, Arizona State Clearinghouse, 3800 North Central Avenue, Fourteenth Floor, Phoenix, Arizona 85012, Telephone (602) 280-1315.

Arkansas

Mr. Joseph Gillesbie, Manager, State Clearinghouse, Office of Intergovernmental Service, Department of Finance and Administration, P.O. Box 3278, Little Rock, Arkansas 72203, Telephone (501) 371-1074.

California

Glenn Stober, Grants Coordinator, Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814, Telephone (916) 323-7480.

Colorado

State Single Point of Contact, State Clearinghouse, Division of Local Government, 1313 Sherman Street, Room 520, Denver, Colorado 80203, Telephone (303) 866-2156.

Connecticut

Under Secretary, Attn: Intergovernmental Review Coordinator, Comprehensive Planning Division, Office of Policy and Management, 80 Washington Street, Hartford, Connecticut 06106-4459, Telephone (203) 566-3410.

Delaware

Francine Booth, State Single Point of Contact, Executive Department, Thomas Collins Building, Dover, Delaware 19903, Telephone (302) 736-3326.

District of Columbia

Lovetta Davis, State Single Point of Contact, Executive Office of the Mayor, Office of Intergovernmental Relations, Room 416, District Building, 1350 Pennsylvania Avenue, NW., Washington, DC 20004, Telephone (202) 727-9111.

Florida

Karen McFarland, Director, Florida State Clearinghouse, Executive Office of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, Florida 32399-0001, Telephone (904) 488-8114.

Georgia

Charles H. Badger, Administrator, Georgia State Clearinghouse, 270 Washington Street, SW., Atlanta, Georgia 30334, Telephone (404) 656-3855.

Hawaii

Mr. Harold S. Masumoto, Acting Director, Office of State Planning, Department of Planning and Economic Development, Office of the Governor, State Capitol, Honolulu, Hawaii 96813, Telephone (808) 548-3016 or 548-3085.

Illinois

Tom Berkshire, State Single Point of Contact, Office of the Governor, State of Illinois, Springfield, Illinois 62706, Telephone (217) 782-6639.

Indiana

Frank Sullivan, Budget Director, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Telephone (317) 232-5610.

Iowa

Steven R. McCann, Division for Community Progress, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone (515) 281-3725.

Kentucky

Robert Leonard, State Single Point of Contact, Kentucky State Clearinghouse, 2nd Floor Capital Plaza Tower, Frankfort, Kentucky 40601, Telephone (502) 564-2382.

Maine

State Single Point of Contact, Attn: Joyce Benson, State Planning Office, State House Station #38, Augusta, Maine 04333, Telephone (207) 289-3261.

Maryland

Mary Abrams, Chief, Maryland State Clearinghouse, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201-2365, Telephone (301) 225-4490.

Massachusetts

State Single Point of Contact, Attn: Beverly Boyle, Executive Office of Communities & Development, 100 Cambridge Street, Room 1803, Boston, Massachusetts 02202, Telephone (617) 727-7001.

Michigan

Milton O. Waters, Director of Operations, Michigan Neighborhood Builders, Alliance, Michigan Department of Commerce, Telephone (517) 373-7111.

Please direct correspondence to: Manager, Federal Project Review, Michigan Department of Commerce, Michigan Neighborhood Builder, Alliance, P.O. Box 30242, Lansing, Michigan 48909, Telephone (517) 373-6223.

Mississippi

Ms. Cathey Mallette, Clearinghouse Officer, Department of Finance and Administration, Office of Policy Development, Federal State Programs, Department of Planning and Policy, 421 West Pascagoula Street, Jackson, Mississippi 39203, Telephone (601) 960-4280.

Missouri

Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, Division of General Services, P.O. Box 809, Room 430, Truman Building, Jefferson City, Missouri 65102, Telephone (314) 751-4834.

Montana

Deborah Stanton, State Single Point of Contact, Intergovernmental Review Clearinghouse, c/o Office of Budget and Program Planning, Capitol Station, Room 202—State Capitol, Helena, Montana 59620, Telephone (406) 444-5522.

Nevada

Department of Administration, State Clearinghouse, Capitol Complex, Carson City, Nevada 89710, Telephone (702) 885-4420, Attention: John B. Walker, Clearinghouse Coordinator.

New Hampshire

Jeffrey H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review Process/James E. Bieber, 2½ Beacon Street, Concord, New Hampshire 03301, Telephone (603) 271-2155.

New Jersey

Barry Skokowski, Director, Division of Local Government Services, Department of Community Affairs, CN 803, Trenton, New Jersey 08625-0803, Telephone (609) 292-6613.

Please direct correspondence and questions to: Nelson S. Silver, State Review Process, Division of Local Government Services, CN 803, Trenton, New Jersey 08625-0803, Telephone (609) 292-9025.

New Mexico

Dorthy E. (Duffy) Rodriquez, Deputy Director, State Budget Division, Department of Finance & Administration, Room 190, Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone (505) 827-3640.

New York

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Telephone (518) 474-1605.

North Carolina

Mrs. Chrys Baggett, Director, Intergovernmental Relations, N.C. Department of Administration, 116 W. Jones Street, Raleigh, North Carolina 27611, Telephone (919) 733-0499.

North Dakota

William Robinson, State Single Point of Contact, Office of Intergovernmental Affairs, Office of Management and Budget, 14th Floor, State Capitol, Bismarck, North Dakota 58505, Telephone (701) 224-2094.

Ohio

Larry Weaver, State Single Point of Contact, State/Federal Funds Coordinator, State Clearinghouse, Office of Budget and Management, 30 East Broad Street, 34th Floor, Columbus, Ohio 43266-0411, Telephone (614) 466-0698.

Oklahoma

Don Strain, State Single Point of Contact, Oklahoma Department of Commerce, Office of Federal Assistance Management, 6601 Broadway Extension, Oklahoma City, Oklahoma 73116, Telephone (405) 843-9770.

Oregon

Attn: Delores Streeter, State Single Point of Contact, Intergovernmental Relations Division, State Clearinghouse, 155 Cottage Street, NE., Salem, Oregon 97310, Telephone (503) 373-1998.

Pennsylvania

Sandy Kline, Project Coordinator, Pennsylvania Intergovernmental Council, P.O. Box 11880, Harrisburg, Pennsylvania 17108, Telephone (717) 783-3700.

Rhode Island

Daniel W. Varin, Associate Director, Statewide Planning Program, Department of Administration, Division of Planning, 265 Melrose Street, Providence, Rhode Island 02907, Telephone (401) 277-2656.

Please direct correspondence and questions to: Review Coordinator, Office of Strategic Planning.

South Carolina

Danny L. Cromer, State Single Point of Contact, Grant Services, Office of the Governor, 1205 Pendleton Street, Room 477, Columbia, South Carolina 29201, Telephone (803) 734-0435.

South Dakota

Susan Comer, State Clearinghouse Coordinator, Office of the Governor, 500 East Capitol, Pierre, South Dakota 57501, Telephone (605) 773-3212.

Tennessee

Charles Brown, State Single Point of Contact, State Planning Office, 500 Charlotte Avenue, 309 John Sevier Building, Nashville, Tennessee 37219, Telephone (615) 741-1676.

Texas

Tom Adams, Office of Budget and Planning, Office of the Governor, P.O. Box 12428, Austin, Texas 78711, Telephone (512) 463-1778.

Utah

Utah State Clearinghouse, Attn.: Carolyn Wright, Office of Planning and Budget, State of Utah, 116 State Capitol Building, Salt Lake City, Utah 84114, Telephone (801) 538-1547.

Vermont

Bernard D. Johnson, Assistant Director, Office of Policy Research & Coordination, Pavilion Office Building, 109 State Street, Montpelier, Vermont 05602, Telephone (802) 828-3326.

Washington

Marilyn Dawson, Washington, Intergovernmental Review Process, Department of Community Development, 9th and Columbia Building, Mail Stop GH-51 Olympia, Washington 98504-4151, Telephone (206) 753-4978.

West Virginia

Fred Cutlip, Director, Community Development Division, Governor's Office of Community and Industrial Development, Building #6, Room 553, Charleston, West Virginia 25305, Telephone (304) 348-4010.

Wisconsin

James R. Klauser, Secretary, Wisconsin Department of Administration, 101 South Webster Street, GEF 2, P.O. Box 7864, Madison, Wisconsin 53707-7864, Telephone (608) 266-1741.

Please direct correspondence and questions to: William C. Carey, Section Chief, Federal-State Relations Office, Wisconsin Department of Administration, Telephone (608) 266-0267.

Wyoming

Ann Redman, State Single Point of Contact, Wyoming State Clearinghouse, State Planning Coordinator's Office, Capitol Building, Cheyenne, Wyoming 82002, Telephone (307) 777-7574.

Territories

Guam

Michael J. Reidy, Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agana, Guam 96910, Telephone (671) 472-2285.

Northern Mariana Islands

State Single Point Contact, Planning and Budget Office, Office of the Governor, Saipan, CM, Northern Mariana Islands 96950.

Puerto Rico

Patria Custodio/Isreal Soto Marrero, Chairman/Director, Puerto Rico Planning Board, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940-9985, Telephone (809) 727-4444.

Virgin Islands

Jose L. George, Director, Office of Management and Budget, No. 32 & 33 Kongens Gade, Charlotte Amalie, V.I. 00802, Telephone (809) 774-0750.

[FR Doc. 90-19726 Filed 9-14-90; 9:45 am]

BILLING CODE 4000-01-M

federal register

Monday
September 17, 1990

Part III

Department of Education

Rehabilitation Services Administration; Grants; Notice

DEPARTMENT OF EDUCATION

Rehabilitation Services Administration; Grants

In the matter of special projects and demonstrations for providing vocational rehabilitation services to individuals with severe handicaps; Vocational Rehabilitation Service Projects Program for Migratory Agricultural and Seasonal Farmworkers with Handicaps; Vocational Rehabilitation Service Program for American Indians with Handicaps.

AGENCY: Department of Education.

ACTION: Combined notice of proposed funding priorities for fiscal year 1991.

SUMMARY: The Secretary proposes funding priorities for fiscal year 1991 for service activities to be supported under the following programs of the Rehabilitation Services Administration (RSA):

—Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Individuals with Severe handicaps.
—Vocational Rehabilitation Service Projects Program for Migratory Agricultural and Seasonal Farmworkers with Handicaps.
—Vocational Rehabilitation Service Program for American Indians with Handicaps.

DATES: Comments must be received on or before October 17, 1990.

ADDRESSES: Comments should be addressed to Thomas E. Finch, Ph.D., Office of Developmental Programs, Rehabilitation Services Administration, Department of Education, 400 Maryland Avenue, SW., (room 3038 Switzer Building), Washington, DC 20202-2575.

FOR FURTHER INFORMATION CONTACT: The contact person listed after the proposed priorities for each of the programs.

Proposed Priorities:

In accordance with the Education Department General Administrative Regulations (EDGAR), 34 CFR 75.105(c)(3), the Secretary proposes to set aside funds and give an absolute preference to applications that respond to one of the proposed priorities described in this notice for fiscal year 1991. An absolute priority is one that permits the Secretary to select for funding only those applications proposing projects that meet one of these priorities. RSA invites public comment on the merits of the proposed priorities, including suggested modifications to the proposed priorities.

The final priorities will be announced in the **Federal Register**. The final priorities will be determined by responses to this notice, available funds, and other departmental considerations. The publication of these proposed priorities does not bind the United States Department of Education to fund projects in any or all of these services areas, unless otherwise specified by statute. Funding of particular projects depends on the availability of funds, the nature of the final priorities, and the quality of the applications received.

The following proposed priorities represent areas in which RSA proposes to support service activities through grants in three programs. Brief descriptions of these three programs follow.

The program of Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Individuals with Severe Handicaps is authorized by title III, section 311(a)(1) of the Rehabilitation Act of 1973, as amended. Under this discretionary grant program, Federal support may be provided to States and public and other nonprofit agencies and organizations to expand or otherwise improve vocational rehabilitation services to individuals with severe handicaps.

The Vocational Rehabilitation Service Projects Program for Migratory Agricultural and Seasonal Farmworkers with Handicaps, authorized by title III, section 312 of the Rehabilitation Act of 1973, as amended, provides grants to State and local vocational rehabilitation agencies for vocational rehabilitation services to migratory agricultural workers with handicaps or seasonal farmworkers with handicaps.

The Vocational Rehabilitation Service Program for American Indians with Handicaps, authorized by title I, section 130 of the Rehabilitation Act of 1973, as amended, provides grants to Indian tribes and tribal consortia for vocational rehabilitation services to American Indians with handicaps who reside on Federal or State reservations.

Proposed Priorities for the Program of Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Individuals With Severe Handicaps

Priority 1—Specific Learning Disabilities

In 1987, the Rehabilitation Services Administration awarded an evaluation contract to Berkeley Planning Associates to assess the rehabilitation efforts made by State vocational rehabilitation agencies, and identify changes needed to expand and improve the nature, scope, and quality of services, to persons with severe learning disabilities. Berkeley Planning Associates published a report in 1989 that identified a number of program areas in the vocational rehabilitation service delivery system that needed improvement. After release of the report, the Rehabilitation Services Administration established an internal workgroup to identify issues of concern pertaining to the provision of services to persons with specific learning disabilities. The recommendations of both the Berkeley Planning Associates report and the Specific Learning Disabilities Workgroup indicated that the work of State vocational rehabilitation providers could be improved by providing services in the areas of peer support groups, self-advocacy skills, social skills training, and specialized support for students with specific learning disabilities enrolled in vocational training or education programs.

In order to improve services to persons with specific learning disabilities, priority will be given to projects that propose to implement models using peer support groups to assist in providing services to individuals with specific learning disabilities. The project must use peer support groups to provide a range of services to individuals with specific learning disabilities that include self advocacy and consumer advocacy skills training, disability awareness, interpersonal and social skills development training, and specialized support for students with learning disabilities enrolled in vocational training or education programs. These services must be provided during the transition process from school to work, beginning with the application for vocational rehabilitation services and continuing through the post-employment phase. The project must develop, after the award, strategies to promote the use of collaborative activities between facilities and other community-based resources in serving this disability population.

The project must demonstrate an appropriate approach to service delivery, the specific outcomes to be pursued and measured, and the methods to be used to evaluate the effectiveness of that approach.

Priority 2—Long-term Mental Illness

The Rehabilitation Services Administration supported a study titled a *Best Practice Study of Vocational Rehabilitation Services to Severely Mentally Ill Persons* that identified the lack of support services for persons with long-term mental illness as a significant barrier to improving their employment outcomes. The study recommended that the Rehabilitation Services

Administration encourage State vocational rehabilitation agencies to use psychosocial rehabilitation facilities in an effort to reduce this barrier. State vocational rehabilitation agencies report that many psychosocial rehabilitation facilities provide effective support services, such as housing and monitoring of medication, but do not provide appropriate vocational rehabilitation services. On the other hand, while traditional rehabilitation facilities currently serve a growing segment of individuals with long-term mental illness, they lack the resources necessary to address the psychological needs of these individuals. Therefore, this priority addresses issues surrounding the collaboration between vocational rehabilitation providers and psychosocial facilities.

In order to improve outcomes for individuals with long-term mental illness, priority will be given to projects that demonstrate a local, community-based approach to providing services to individuals with long-term mental illness. The project must develop, evaluate, and implement, after the award, strategies that provide for—(1) increased collaboration between traditional rehabilitation facilities and psychosocial and other programs that effectively serve individuals with long-term mental illness; (2) improvement in the knowledge and skills of staff in accessing and collaborating with available community resources and facilities; and (3) a variety of support services, including vocationally focused follow-up services after job placement.

The project must demonstrate an appropriate approach to service delivery, the specific outcomes to be pursued and measured, and the methods to be used to evaluate the effectiveness of that approach.

FOR FURTHER INFORMATION CONTACT: Thomas E. Finch, Ph.D., Office of Developmental Programs, Rehabilitation Services Administration, Department of Education, 400 Maryland Avenue, SW., room 3038 Switzer, Washington, DC 20202-2649. Telephone: (202) 732-1347.

Proposed Priority for the Vocational Rehabilitation Service Projects Program for Migratory Agricultural and Seasonal Farmworkers With Handicaps

RSA data do not provide an adequate or accurate measure of the impact of vocational rehabilitation services for migratory and seasonal farmworkers (MSFWs). However, from the latest report to MSFWs completed in September 1987, RSA learned that from the clients' perspective, the most important benefit of the vocational rehabilitation program is the receipt of medical services, including both physical restoration and diagnostic services. Few clients felt that increased employability was one of the major benefits of the vocational rehabilitation services they had received. Although the MSFWs who were rehabilitated expected their jobs to last longer, the evidence suggests that the long-term benefits are difficult to measure. Although rehabilitation may involve movement into a non-agricultural occupation, these jobs are usually low-skilled ones in service industries.

Field work, irrigating, cultivating, and harvesting require strenuous physical labor, repetitive motion, the use of power equipment, working in poor weather conditions, and exposure to agricultural chemicals. The very nature of these jobs puts the MSFWs with handicaps at greater risk of becoming ill or sustaining injuries.

The traditional model of vocational rehabilitation services does not focus on two important issues faced in the rehabilitation of MSFWs. These issues are: (1) The role of prevention in addressing the health aspects of farmworker disability and (2) the rehabilitation of MSFWs in non-agricultural jobs that are fixed in location. Increased program attention is needed to develop effective strategies to expand employement options for MSFWs with handicaps.

Priority will be given to those projects that develop and implement effective methods to expand MSFWs' employment options to jobs other than migratory and seasonal farmwork. Projects must develop and implement a vocational rehabilitation training model that focuses on providing skills training in high demand occupations in a fixed location. The project must develop strategies that provide a full range of services, including guidance and counseling; preventive education in addressing the health aspects of farmworker disability; vocational retraining that includes assistance in improving English language skills, as needed, as part of an integrated program; work evaluation; and individual skill or competencies development leading to alternative job placements outside of migratory and seasonal farmwork.

FOR FURTHER INFORMATION CONTACT: Edward Hofler, Office of Developemental Programs, Rehabilitation Services Administration, Department of Education, 400 Maryland Avenue, SW., room 3318, Switzer, Washington, DC 20202-2649. Telephone: (202) 732-1332.

Proposed Priority for the Vocational Rehabilitation Service Program for American Indians With Handicaps

A 1987 study of the problems and needs of American Indians with handicaps indicates that certain types of health and educationally related disabilities are disproportionately represented in the American Indian population, accounting for much of the disparity in the disability status between American Indians and other individuals. Alcoholism is a major contributor to death and disability among American Indians. American Indians are three times more likely to be hospitalized for alcohol dependency than individuals from the general population. Between the ages of 15 through 34 years, American Indians are over 11 times more likely to die due to alcoholism when compared to the death rate for all races.

Priority will be given to projects that develop a component of their overall vocational rehabilitation service program to etablish appropriate linkages with alcohol treatment centers and counseling services for American Indians with alcohol dependency. Projects must include strategies that create or augment a vocational rehabilitation component that assists American Indians with alcohol dependency to obtain competitive employment. The project must develop and implement appropriate strategies that will increase cooperation with support resources and treatment centers such as those provided through the Indian Health Service, the Bureau of Indian Affairs, other government detoxification centers, and other acute care facilities utilized in the rehabilitation process. The project must also include strategies that support improvements in the professional skills of vocational rehabilitation staff, including counselors, to enhance the overall services available to alcohol-dependent American Indians. The project must also coordinate activities among respective State agencies, Rehabilitation Continuing Education Programs, Rehabilitation Research and Training Centers, and other established rehabilitation resources that enhance the provision of vocational rehabilitation services and increase opportunities for gainful employment.

FOR FURTHER INFORMATION CONTACT: Edward Hofler, Office of Developmental Programs, Rehabilitation Services Administration, Department of Education, 400 Maryland Avenue, SW., room 3318, Switzer Building,

Washington, DC 20202-2649. Telephone (202) 732-1332.

INTERGOVERNMENTAL REVIEW: The program of Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Individuals with Severe Handicaps and the Vocational Rehabilitation Service Projects Program for Migratory Agricultural and Seasonal Farmworkers are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for these programs.

INVITATION TO COMMENT: Interested persons are invited to submit comments and recommendations regarding these priorities.

All comments submitted in response to these proposed priorities will be available for public inspection, during and after the comment period, in room 3038, Mary E. Switzer Building, 330 C Street, SW., Washington, DC between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

Authority: (29 U.S.C. 777(a)(a)(1), 777(b), and 750).

(Catalog of Federal Domestic Assistance Numbers: 84.128A, Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Individuals with Severe Handicaps; 84.128G, Vocational Rehabilitation Service Projects Program for Migratory Agricultural and Seasonal Farmworkers with Handicaps; and 84.128H, Vocational Rehabilitation Service Program for American Indians with Handicaps.)

Dated: September 11, 1990.

Lauro F. Cavazos,

Secretary of Education.

[FR Doc. 90-21792 Filed 9-14-90; 8:45 am]

BILLING CODE 4000-01-M

federal register

Monday,
September 17, 1990

Part IV

Department of Education

School, College, and University Partnerships Program; Invitations for Applications for New Awards for Fiscal Year 1991; Notice

DEPARTMENT OF EDUCATION

[CFDA No: 84.204]

School, College, and University Partnerships Program; Invitations for Applications for New Awards for Fiscal Year 1991

Note to applicants: This notice is a complete application package. Together with the statute authorizing the program and the Education Department General Administrative Regulations (EDGAR), the notice contains all of the information, application forms, and instructions needed to apply for a grant under this competition.

Purpose of program: To encourage partnerships between institutions of higher education and secondary schools serving low-income students, and to support programs that improve the academic skills of public and private nonprofit secondary school students, increase their opportunity to continue a program of education after secondary school, and improve their prospects for employment after secondary school.

Deadline for transmittal of applications: 5/17/91.

Deadline for intergovernmental review: 7/19/91.

Available funds: $3,000,000.

Estimated range of awards: $250,000–$400,000 per year.

Note: The Department will not consider a request for less than $250,000 per year.

Estimated average size of awards: $275,000.

Estimated number of awards: 11.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations

The Education Department General Administrative Regulations (EDGAR) in 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations), part 75 (Direct Grant Programs), part 77 (Definitions that Apply to Department Regulations), part 79 (Intergovernmental Review of Department of Education Programs and Activities), part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), part 82 (New Restrictions on Lobbying) and part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

Eligibility

To be eligible to apply for a grant under this program, an institution of higher education and a local educational agency must enter into a written partnership agreement. The partnership may also include businesses, labor organizations, professional associations, community-based organizations, or other private or public agencies or associations. All partners must sign the agreement which shall include—

(1) A listing of all participants in the partnership;

(2) A description of the responsibilities of each participant in the partnership; and

(3) A listing of the resources to be contributed by each participant in the partnership. In addition, the partnership must establish a governing body that includes one representative of each participant in the partnership.

The legal applicant may be one member of the partnership designated by the group to apply for the grant. However, the legal applicant must be a local educational agency, an institution of higher education, or, provided that the partnership has been established as a separate legal entity, the partnership.

In order for the partnership to be the legal applicant, the partnership must be incorporated as a non-profit 501(c)(3) organization and must include an institution of higher education and a local educational agency.

Note: The Department will not consider applications that are not from eligible applicants; do not contain the required written partnership agreement between an institution of higher education and a local educational agency; or are not signed by authorized representatives of the institution of higher education and the local educational agency. Generally, the authorized representatives are the president of the institution and the superintendent of schools respectively. Applicants should refer to 34 CFR Part 77.1 for the definition of a local educational agency and section 1201(a) of the Higher Education Act of 1965 as amended (20 U.S.C. 1141(a)) for the definition of an institution of higher education.

Activities

Grant funds may be used by the partnership to support programs that—

(a) Use college students to tutor secondary school students and improve their basic academic skills;

(b) Are designed to improve the basic academic skills of secondary school students;

(c) Are designed to increase the understanding of specific subjects of secondary school students;

(d) Are designed to improve the opportunity to continue a program of education after graduation for secondary school students; and

(e) Are designed to increase the prospects for employment after graduation of secondary school students.

Funding Requirements

(a) The Secretary will reserve 65 percent of program funds for programs operating during the regular school year and 35 percent to carry out programs during the summer. An applicant may request funds to operate programs during the regular school year, the summer, or both. The budget must clearly separate the amount requested for the regular school year programs and the summer programs.

(b) The partnership must provide at least 30 percent of the cost of the project in the first year, 40 percent in the second year and 50 percent in the third and any subsequent years. (Regulations governing the Federal matching requirements can be found in 34 CFR part 74, subpart G and 34 CFR 80.24.)

(c) A local educational agency receiving funds under this program shall use these funds so as to supplement and not supplant non-Federal funds, and, to the extent practical, increase the resources that would, in the absence of Federal funds received under this program, be made available from non-Federal sources for the education of students participating in a project under this program. A local educational agency receiving funds under this program shall not reduce its combined fiscal effort per student or its aggregate expenditure on education.

Priorities

In accordance with the Education Department General Administrative Regulations (EDGAR), 34 CFR 75.105(c)(3), the Secretary has established the following absolute priorities. Applications submitted under the School, College, and University Partnerships program for fiscal year 1991 must meet two or more of the following priorities in order to be considered under this competition:

(1) Programs which will serve predominantly low-income communities;

(2) Partnerships which will run programs during the regular school year and the summer; and

(3) Programs which will serve educationally disadvantaged students; potential dropouts; pregnant, adolescent, and teen parents; or children of migratory agricultural workers or of migratory fishermen.

Selection Criteria

(a)(1) The Secretary uses the following selection criteria to evalute applications for new grants under this competition.

(2) The maximum score for all of these criteria is 100 points.

(3) The maximum score for each criterion is indicated in parentheses.

(b) *The criteria*—(1) *Meeting the purposes of the authorizing statute.* (30 points) The Secretary reviews each application to determine how well the project will meet the purpose of School, College, and University Partnerships program, including consideration of—

(i) The objectives of the project; and

(ii) How the objectives of the project further the purposes of the School, College, and University Partnerships program.

(2) *Extent of need for the project.* (20 points) The Secretary reviews each application to determine the extent to which the project meets specific needs recognized in the School, College and University Partnerships, including consideration of—

(i) The needs addressed by the project;

(ii) How the applicant identified those needs;

(iii) How those needs will be met by the project; and

(iv) The benefits to be gained by meeting those needs.

(3) *Plan of operation.* (20 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(i) The quality of the design of the project;

(ii) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(iii) How well the objectives of the project relate to the purpose of the program;

(iv) The quality of the applicant's plan to use its resources and personnel to achieve each objective;

(v) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition; and

(vi) For grants under a program that requires the applicant to provide an opportunity for participation of students enrolled in private schools, the quality of the applicant's plan to provide that opportunity.

(4) *Quality of key personnel.* (7 points)

(i) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraph (b)(4)(i) (A) and (B) will commit to the project; and

(D) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(ii) To determine personnel qualifications under paragraphs (b)(4)(i) (A) and (B), the Secretary considers—

(A) Experience and training in fields related to the objectives of the project; and

(B) Any other qualifications that pertain to the quality of the project.

(5) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(i) The budget is adequate to support the project; and

(ii) Costs are reasonable in relation to the objectives of the project.

(6) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(i) Are appropriate to the project; and

(ii) To the extent possible, are objective and produce data that are quantifiable.

(Cross-reference: See 34 CFR 75.590 Evaluation by the grantee.)

(7) *Adequacy of resources.* (3 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

Intergovernmental Review of Federal Programs

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR part 79.

The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive order. If you want to know the name and address of any State Single Point of Contact, see the list published in the **Federal Register** on September 15, 1989, pages 38342–38343.

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA #84.204, U.S. Department of Education, Room 4161, 400 Maryland Avenue, SW., Washington, DC 20202–0125.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, DC time) on the date indicated in this notice.

Please note that this address is not the same address as the one to which the applicant submits its completed application. Do not send application to the above address.

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA #84.204), Washington, DC 20202–4725.

or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA #84.204), Room #3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgement to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708-9493.

(3) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and letter, if any—of the competition under which the application is being submitted.

Application Instructions and Forms

The appendix to this application is divided into three parts plus a statement regarding estimated public reporting burden and various assurances and certifications. These parts and additional materials are organized in the same manner that the submitted application should be organized. The parts and additional materials are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4-88)) and instructions.

Part II: Budget Information—Non-Construction Programs (Standard Form 424A) and instructions.

Part III: Application Narrative.

Additional materials: Estimated Public Reporting Burden.

Assurances—Non-Construction Programs (Standard Form 424B).

Certifications regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug Free Workplace Requirements (ED 80-0013).

Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form GCS-009, Rev. 12/88) and instructions. (NOTE: ED Form GCS-009 is intended for the use of grantees and should not be transmitted to the Department.)

Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions; and Disclosure of Lobbying Activities Continuation Sheet (Standard Form LLL-A).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an *original signature.* No grant may be awarded unless a completed application form has been received.

FOR FURTHER INFORMATION CONTACT: May J. Weaver, Chief, Special Services Branch, Division of Student Services Office of Postsecondary Education, Department of Education, Room 3066, ROB-3, 400 Maryland Avenue, SW., Washington, DC 20202-5249. Telephone (202) 708-4808.

Authority: 20 U.S.C. 1105a-1105c.

Dated: September 6, 1990.

Leonard L. Haynes III,

Assistant Secretary for Postsecondary Education.

BILLING CODE 4000-01-M

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED	Applicant Identifier
3. DATE RECEIVED BY STATE	State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

1. TYPE OF SUBMISSION:

Application	Preapplication
☐ Construction	☐ Construction
☒ Non-Construction	☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name:

Organizational Unit:

Address (give city, county, state, and zip code):

Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

9. NAME OF FEDERAL AGENCY:

U.S. Department of Education

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 8 4 . 2 0 4

TITLE: School, College, and University Partnerships Program

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT:

Start Date	Ending Date

14. CONGRESSIONAL DISTRICTS OF:

a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Typed Name of Authorized Representative	b. Title	c. Telephone number

d. Signature of Authorized Representative	e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

BILLING CODE 4000-01-C

Instructions for the SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

1. Self-explanatory.

2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).

3. State use only (if applicable).

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:

—"New" means a new assistance award.

—"Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.

—"Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.

11. Enter a brief descriptive title of the project, if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

12. List only the largest political entities affected (e.g., State, counties, cities).

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

Supplemental Instructions for Standard Form 424

Item #2: If the applicant organization has been assigned an ED entity number consisting of the IRS employer identification number prefixed by "1" and suffixed by a two-digit number, enter the full ED entity number in the space entitled "Applicant Identifier."

Item #16: Applicants are required to contact the State Single Point of Contact for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process. Applicants must complete either Item 16a or 16b to indicate whether or not the application is subject to State review.

BILLING CODE 4000-01-M

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:

23 Remarks

SF 424A (4-88) Page 2
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BILLING CODE 4000-01-C

Instructions for the SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary; Lines 1-4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g)

For *new applications*, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

Lines 1-4, Columns (c) through (g)

(continued)

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5—Show the total for all columns used.

Section B. Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i—Show the totals of Lines 6a to 6h in each column.

Lines 6j—Show the amount of indirect cost.

Line 6k—Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8-11—Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter totals of Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16-19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21—Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

Supplemental Budget Instructions

Clearly separate the amounts requested for the regular school year activities and the summer activities in Sections A and B of Standard Form 424A, Budget Information—Non-Construction Programs.

In addition, attach a descriptive budget narrative for both the regular school year activities and the summer activities. The budget narrative should explain the amounts for each individual object class category for both the Federal dollars and for the non-Federal commitments. For the in-kind contributions, the budget narrative should provide the following information: (1) source(s) of the contribution, (2) the dollar value of the donated services, supplies, equipment, etc., and (3) an explanation as to how the value of these contributions was

determined. (Refer to EDGAR, 34 CFR part 74, subpart G and 34 CFR 80.24)

The following details should also be provided.

Personnel: Provide a breakdown of project personnel that includes position, percent of time committed to the project, total salary to be charged to the grant, and the dollar value of any in-kind contributions under personnel.

Fringe Benefits: Include an explanation and appropriate justification if the fringe benefit contribution exceeds 20 percent.

Travel: Indicate the amounts requested for out-of-state travel of project staff only. All travel expenditures should be detailed as to purpose and must be justified in relation to the project objectives. For each trip the following information should be provided: number of travelers, mode of transportation and estimated cost, mileage allowances for privately owned vehicles, and per diem costs.

Equipment: List items of equipment in the following format: Item, Number of Units, Cost per Unit, Total Cost, and Estimated Use Time. Equipment requests must be fully justified and necessary to carry out the project objectives and activities.

Supplies: Provide a breakdown of costs for office supplies and instructional supplies.

Other: Provide a breakdown of all direct costs not clearly covered by other budget categories. Examples are computer use charges, equipment rental, communication costs, printing, student stipends, student transportation, in-state travel, and consultant services. Identify the consultants that will work on the project and the scope of work to be performed by each consultant. Provide a detailed breakdown of the costs, i.e., daily fees to be paid, estimated number of days of service, and all travel expenses, including per diem. Cost allowances for consultant fees, honorarium, per diem and travel should not exceed amounts permitted by comparable institutional policies.

Indirect Charges: Indirect costs to be charged to the program may not exceed 8 percent of the Total Direct Charges. (Refer to EDGAR, 34 CFR 75.562)

Instructions for Part III—Application Narrative

Before preparing the Application Narrative, an applicant should read carefully all the information included in this application package, especially the program purpose, the information regarding priorities, and the selection criteria the Secretary uses to evaluate applications. The narrative should encompass each function or activity for which funds are being requested and should—

1. Begin with an Abstract; that is, a summary of the proposed project;
2. Describe the programs to be developed and operated by the partnership and provide information on how the purposes of the program are to be met;
3. Describe the proposed project in light of each of the selection criteria in the order the criteria are listed in this application package; and
4. Include any other pertinent information that might assist the Secretary in reviewing the application.

Please limit the Application Narrative to no more than 50 double-spaced, typed pages (on one side only).

Part IV—Partnership Agreement

Instructions: Applicants are required to submit a written partnership agreement with the application for funding under the School, College, and University Partnerships program. The partnership agreement must be signed by all partners and must detail the responsibilities of each participant in the partnership and the resources to be contributed by each participant. Applicants may develop their own partnership agreement form or may use the form provided below and attach to it a description of the responsibilities of each partner and the resources to be contributed by each partner.

Partnership Agreement

As authorized representatives of our institutions and organizations, we agree to the following terms with respect to our application submitted by _____

As a condition of receiving a grant under the School, College, and University Partnerships program, we:

—will perform the activities outlined in the application;
—will provide the resources as indicated in the application narrative and budget;
—will provide a representative to the project's governing body; and
—will be bound by all other statements and commitments contained in the application.

Signature, Title, and Date

Organization

Signature, Title, and Date

Organization

Signature, Title, and Date

Organization

(Note: Add or delete signature spaces as necessary)

Part V—Listing of Secondary Schools

Instructions: Applicants are required to submit with the application for funding a listing of the public and private nonprofit secondary school or schools to be involved in the project.

Part VI—SCUP Program Assurances

Instructions: Applicants are required to provide the following assurances. This assurance form must be signed by an authorized representative of the legal applicant.

Assurances

The applicant hereby assures and certifies that:

—The partnership will establish a governing body that includes one representative of each participant in the partnership.
—Federal funds will provide no more than 70 percent of the cost of the project in the first year, 60 percent of such costs in the second year, and 50 percent of such costs in the third and any subsequent year.
—A local educational agency receiving funds under this program will not reduce its combined fiscal effort per student or its aggregate expenditure on education.
—A local educational agency receiving funds under this program will use the Federal funds so as to supplement and, to the extent practical, increase the resources that would, in the absence of such Federal funds, be made available from non-Federal sources for the education of students participating in the project, and in no case will the Federal funds be used to supplant such non-Federal funds.

Date

Name & Title of Authorized Official

Name of Applicant/Recipient

City, State, Zip Code

Estimated Public Reporting Burden

Under terms of the Paperwork Reduction Act of 1980, as amended, and the regulations implementing that Act, the Department of Education invites comment on the public reporting burden in this collection of information. Public reporting burden for this collection of information is estimated to average 20 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. You may send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202–4651; and to the Office of Management and Budget, Paperwork Reduction Project 1840–0602, Washington, D.C. 20503.

(Information collection approved under OMB control number 1840–0602. Expiration date: March 31, 1992.)

OMB Approval No. 0348–0040

Assurances—Non-Construction Programs

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will

establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88–352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101–6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd–3 and 290 ee–3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a–7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. § 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327–333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. § 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93–523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93–205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a–1 et seq.).

14. Will comply with P.L. 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89–544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

Signature of Authorized Certifying Official

Title

Applicant Organization

Date Submitted

Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. Lobbying

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form—LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. Debarment, Suspension, and Other Responsibility Matters

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for

prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110—

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. Drug-Free Workplace (Grantees Other Than Individuals)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610—

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about—

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202–4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

Drug-Free Workplace (Grantees Who Are Individuals)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR part 85, subpart F, for grantees, as defined at 34 CFR part 85, sections 85.605 and 85.610—

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202–4571. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

_____

Name of Applicant and PR/Award Number and/or Project Name

_____

Printed Name and Title of Authorized Representative

_____

Signature and Date

_____

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR part 85, section 85.510, Participants' responsibilities. The regulations were published as part VII of the May 26, 1988 *Federal Register* (pages 19160–19211). Copies of the regulations may be obtained by contacting the person to which this proposal is submitted.

(Before Completing Certification, Read Instructions On Reverse)

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

_____

Organization Name

_____

PR/Award Number or Project Name

_____

Name and Title of Authorized Representative

_____

Signature

_____

Date

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

BILLING CODE 4000-01-M

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0346-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:
☐ a. contract
b. grant
c. cooperative agreement
d. loan
e. loan guarantee
f. loan insurance

2. Status of Federal Action:
☐ a. bid/offer/application
b. initial award
c. post-award

3. Report Type:
☐ a. initial filing
b. material change
For Material Change Only:
year _____ quarter _____
date of last report _____

4. Name and Address of Reporting Entity:
☐ Prime ☐ Subawardee
Tier _____, *if known:*

Congressional District, *if known:*

5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:

Congressional District, *if known:*

6. Federal Department/Agency:

7. Federal Program Name/Description:

CFDA Number, *if applicable:* _____

8. Federal Action Number, *if known:*

9. Award Amount, *if known:*
$

10. a. Name and Address of Lobbying Entity *(if individual, last name, first name, MI):*

b. Individuals Performing Services *(including address if different from No. 10a) (last name, first name, MI):*

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply):*
$ _____ ☐ actual ☐ planned

12. Form of Payment *(check all that apply):*
☐ a. cash
☐ b. in-kind; specify: nature _____
value _____

13. Type of Payment *(check all that apply):*
☐ a. retainer
☐ b. one-time fee
☐ c. commission
☐ d. contingent fee
☐ e. deferred
☐ f. other; specify: _____

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____
Print Name: _____
Title: _____
Telephone No.: _____ **Date:** _____

Federal Use Only:

Authorized for Local Reproduction
Standard Form - LLL

BILLING CODE 4000-01-C

Instructions for Completion of SF-LLL, Disclosure of Lobbying Activities

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonbly expected to be paid by the reporting entity (item 4) to the lobbying entity (Item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

BILLING CODE 4000-01-M

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by OMB
0348-0046

Reporting Entity: _____ Page _____ of _____

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Standard Form - LLL-A

[FR Doc. 90-21791 Filed 9-14-90; 8:45 am]
BILLING CODE 4000-01-C

federal register

Monday
September 17, 1990

Part V

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 7 and 52
Federal Acquisition Regulation (FAR); Right of First Refusal of Employment; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 7 and 52

RIN 9000-AE11

Federal Acquisition Regulation (FAR); Right of First Refusal of Employment

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are proposing a change to the clause at FAR 52.207-3, Right of First Refusal of Employment. The change requires the Government to provide a list of employees, displaced as a result of conversion to contract performance, to the successful contractor within 10 days after contract award. The contractor must report to the Government the names of those displaced employees hired within 90 days of the contract start date, not later than 120 days after contract start date.

DATES: Comments should be submitted to the FAR secretariat at the address shown below on or before November 16, 1990 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW, Room 4041, Washington, DC 20405. Please cite FAR Case 90-39 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 501-4755. Please cite FAR Case 90-39.

SUPPLEMENTARY INFORMATION:

A. Background

The current provision requires the contractor to give Government employees the rights of first refusal to employment openings, under a contract awarded as a result of conversion to contract under OMB Circular A-76 procedures, for which the employees are otherwise qualified; however, there is no mechanism to ensure contractor compliance. Further, the Government has certain obligations to displaced employees that are imposed by statute and Office of Personnel Management regulations, but often has no way to collect the information. This revision will satisfy both of these requirements.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility act, 5 U.S.C. 601, et seq., because the revision to the clause at FAR 52.207-3 merely requires a one-time report of the names of displaced Government employees hired by the contractor in the first 90 days after beginning contract performance. The information would be readily available in existing personnel files.

Comments from small entities concerning the affected FAR subpart will also be considered in accordance with section 610 of the Act. Such comments must be submitted separatedly and cite section 89-610 (FAR Case 90-39) in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96-511) is deemed to apply because the proposed rule contains information collection requirements. Accordingly, a request for approval of a new information collection requirement concerning Inspection for Commercial, Off-the -Shelf Supplies is being submitted to the Office of Management and Budget under 44 U.S.C. 3501, et seq. Public comments concerning this request will be invited through a subsequent **Federal Register** notice.

List of Subjects in 48 CFR Parts 7 and 52

Government procurement.

Dated: September 7, 1990.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, it is proposed that 48 CFR parts 7 and 52 be amended as set forth below:

1. The authority citation for 48 CFR parts 7 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 7—ACQUISITION PLANNING

2. Section 7.305 is amended by adding a sentence at the end of paragraph (c) to read as follows:

7.305 Solicitation provisions and contract clauses.

* * * * *

(c) * * * The 10-day period in the clause may be varied by the contracting officer up to a period of 90 days.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 52.207-3 is revised to read as follows:

52.207-3 Right of first refusal of employment.

Right of First Refusal of Employment (Aug 1990)

(a) The Contractor shall give Government employees displaced as a result of the conversion to contract performance the right of first refusal for employment openings under the contract in positions for which they are qualified, if that employment is consistent with post-Government employment conflict of interest standards.

(b) Within 10 days after contract award, the Contracting Officer will provide to the Contractor a list of all Government employees who have been or will be displaced from Government employment as a result of award of this contract.

(c) The Contractor shall report to the Contracting Officer the number of individuals identified on the list who are hired within 90 days of the contract start date. This report shall be forwarded within 120 days after the contract start date.

(End of clause)

[FR Doc. 90-21813 Filed 9-14-90; 8:45 am]

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federal register

Monday
September 17, 1990

Part VI

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Five Plants From the Wahiawa Drainage Basin and Six Plants From the Island of Lanai, Hawaii; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB42

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Six Plants From the Island of Lanai, HI

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes endangered status pursuant to the Endangered Species Act of 1973, as amended (Act), for six plants: *Abutilon eremitopetalum* (no common name (NCN)), *Cyanea macrostegia* var. *gibsonii* (NCN), *Gahnia lanaiensis* (NCN), *Phyllostegia glabra* var. *lanaiensis* (NCN), *Tetramolopium remyi* (NCN), and *Viola lanaiensis* (NCN). These taxa are known only from the Lanaihale area of Lanai Island, Hawaii. The six plants have been variously affected and are threatened by one or more of the following: Habitat degradation and competition by naturalized, exotic vegetation; predation or habitat destruction by feral animals; and an increased potential for extinction resulting from stochastic events because of the small numbers of extant individuals and their restricted distribution. Potential threats include fire and destruction or damage to the taxa and their habitat as a secondary result of urbanization and development of the island. A determination that these six taxa are endangered would implement the Federal protection and recovery provisions provided by the Act. Comments and materials related to this proposal are solicited.

DATES: Comments from all interested parties must be received by November 16, 1990. Public hearing requests must be received by November 1, 1990.

ADDRESSES: Comments and materials concerning this proposal should be sent to Ernest F. Kosaka, Field Office Supervisor, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, room 6307, P.O. Box 50167, Honolulu, Hawaii 96850. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Derral R. Herbst, at the above address (808/541-2749 or FTS 551-2749).

SUPPLEMENTARY INFORMATION:

Background

Abutilon eremitopetalum, Cyanea macrostegia var. *gibsonii, Gahnia lanaiensis, Phyllostegia glabra* var. *lanaiensis, Tetramolopium remyi* and *Viola lanaiensis* are endemic to the island of Lanai; *Tetramolopium remyi* at one time also grew on west Maui, but presently is believed to be extinct on that island (Lowrey 1990). The island of Lanai is a small island totaling about 139 square miles (361 square kilometers) in area. Lanai is a shield volcano built by eruptions at its summit and along three rift zones; the principal rift zone runs in a northwesterly direction and forms a broad ridge whose highest point, Lanaihale, has an elevation of 3370 feet (ft) (1027 meters (m)). The entire ridge is commonly called Lanaihale, after its highest point. The only known extant populations of the six taxa in this proposed rule are found on the summit, slopes, or valleys of Lanaihale on private land. A Lowland Wet Forest community covers the summit and narrow valleys of Lanaihale. Lowland Wet Forest communities occur on the six largest Hawaiian Islands at about 300 to 4,000 ft (100 to 1,200 m) in elevation (Gagne and Cuddihy 1990). Although annual rainfall averages about 37 inches (in) (94 centimeters (cm)) considerable cloud cover during most of the afternoons and nights and fog drip nearly triples the annual precipitation (Ekern 1964). The substrate is primarily silty clay and clay (Foote *et al.* 1972). The vegetation is a mixture of native and exotic species with native 'ohi'a and uluhe fern (*Metrosideros polymorpha* and *Dicranopteris linearis*), respectively, being the dominant species. The known existing populations of *Cyanea macrostegia* var. *gibsonii, Gahnia lanaiensis, Phyllostegia glabra* var. *lanaiensis,* and *Viola lanaiensis* are members of this community.

Abutilon eremitopetalum and *Tetramolopium remyi* grow on the dry leeward slopes and valleys of Lanaihale. These species are members of the Lowland Dry Shrubland vegetation community that occurs in leeward situations on all of the main islands except Niihau and Kahoolawe, at about 330 to 1,970 ft (100 to 600 m) elevation (Gagne and Cuddihy 1990). The land type is "Rock land;" "Very stony land, eroded;" and "Rock outcrop." The annual rainfall is about 10 to 25 in (25 to 64 cm), mostly falling between November and April (Foote *et al.* 1972). The vegetation comprises typical dry lowland plants such as lama (*Diospyros sandwicensis*), wiliwili (*Erythrina sandwicensis*), 'a'ali'i (*Dodonaea viscosa*) and nehe (*Lipochaeta* spp.).

Discussion of the Six Species Proposed for Listing

The description of *Abutilon eremitopetalum* is based on a specimen collected by George C. Munro in Maunalei Valley, Lanai, in 1930 (Caum 1933; Munro *in litt.* 1951). Edward L. Caum described it as a new species, naming it *A. cryptopetalum* because its petals were small and completely enclosed by the calyx (Caum 1933). *Abutilon cryptopetalum* Caum is a later homonym, as the name had previously been given to an Australian species of the genus, so Caum renamed his plant *A. eremitopetalum,* maintaining the meaning of his original specific epithet (Christophersen 1934). In 1932, Otto Degener discovered a shrub in the Waianae Mountains of Oahu, which looked like an *Abutilon* except that it had reduced or "aborted" petals completely enclosed by the calyx. He established a new genus, *Abortopetalum,* for his discovery, basing the genus upon its short, enclosed petals which he believed to be a unique feature (Degener 1932). Degener later transferred Caum's species to his new genus, giving rise to the epithet *Abortopetalum eremitopetalum* (Degener 1936). Erling Christophersen (1934) noted that all characters of the genus *Abortopetalum* are encompassed within the morphological range of *Abutilon,* and reduced Degener's genus to synonymy, a course accepted by all botanists except Degener.

Abutilon eremitopetalum is a shrub in the mallow family (Malvaceae) with grayish-green, densely hairy, heart-shaped leaves; the leaves are 2.5 to 5 in (7 to 12 cm) long. One or two flowers on stems up to 1.5 in (4 cm) long are in the leaf axils. The calyx of the flowers is green, cup-shaped, and about 0.5 in (1.5 cm) long. The petals are shorter than the calyx and are bright green on the upper surface and reddish on the lower surface. The staminal column extends beyond the calyx and is white to yellow, with red style branches tipped with green stigmas. The fruit is a hairy, brown, dry, cylindrical capsule and about 0.3 in (1 cm) long. It is the only *Abutilon* on Lanai whose flowers have green petals hidden within the calyx (Bates 1990).

Historically, *Abutilon eremitopetalum* was found in small, widely scattered colonies at elevations of between 700 to 1,000 ft (215 to 305 m) in the lands (geographical areas) of Kalulu, Mahana, Maunalei, Mamaki, and Paawili on the northern, northeastern, and eastern parts of Lanai Island (Caum 1933; Hawaii Heritage Program (HHP) 1990b; HHP 1990c; Munro, *in litt.* 1951). Today,

about 30 (Perlman 1990a; Robert Hobdy, Forester, State Dept. of Land and Natural Resources, pers. comm., 1990) to 70 (HHP 1990a) individuals are known from a single population in Kahea Gulch on the northeastern part of the island. Habitat degradation and competition by encroaching exotic plant species such as lantana (*Lantana camara*), koa haole (*Leucaena leucocephala*), and sourbush (*Pluchea carolinensis*), probably are the main threats of this species (HHP 1990a, Perlman 1990a). Axis deer (*Axis axis*) browsing is another threat (HHP 1990a; Hobdy, pers comm., 1990; Perlman 1990a). Although *Abutilon eremitopetalum* does not appear to be a preferred food of the deer, they will browse the species if other food sources become scarce. Through ground disturbance, deer grazing on grasses and forbs have the potential to promote soil erosion that is usually limited to sheet erosion as the shrubs in the area prevent mass movement of the soil (Hobdy, pers. comm., 1990). Fire is another potential threat because the area is dry much of the year. The small number of extant individuals is in itself a considerable threat, as the limited gene pool may depress reproductive vigor, or a single natural or man-caused environmental disturbance could destroy the only known existing population. Cattle (*Bos taurus*) are known to have destroyed the plants in the past (Munro, *in litt.*, 1951), but today are not a problem as the island is no longer a cattle ranch.

Cyanea macrostegia subsp. *gibsonii* was first collected by William Hillebrand in July 1870, "on the highest wooded ridge" (Lanaihale) of the island of Lanai (Rock 1919). Hillebrand, a medical doctor and author of "Flora of the Hawaiian Islands," named his new species *Cyanea gibsonii* in honor of Walter Murray Gibson (Hillebrand 1888), a Mormon missionary who had established a settlement on the island and later became a notorious figure in Hawaiian politics. The type specimen was deposited in the Berlin Herbarium, which was destroyed in 1943; in 1988 an isotype in the National Herbarium of Victoria, Melbourne, Australia, was designated as the lectotype (Lammers 1988). In 1987, Harold St. John, questioning the validity of the characters used to delineate the genus *Cyanea*, transferred all species of *Cyanea* to the closely related genus *Delissea* (St John 1987, St. John and Takeuchi 1987). Few botanists have accepted St. John's taxonomy for this group; the majority continue to recognize the genus *Cyanea* (Lammers 1990). Several botanists have remarked on the similarity between *C. gibsonii* and a Maui species of *Cyanea*, *C. macrostegia* (Rock 1919, Wimmer 1943); the Lanai plant differing only in that it has an curved (rather than suberect) corolla. Thomas Lammers, the latest monographer of the Hawaiian members of this family, believed that it would be more appropriate to treat the two as conspecific subspecies and published the new combination and status in 1988 (Lammers 1988).

Cyanea macrostegia var. *gibsonii*, a member of the bellflower family (Campanulaceae), is a palm-like tree 3.2 to 23 ft (1 to 7 m) tall. The leaves are elliptic or oblong, about 8 to 31 in (20 to 80 cm) long and 2.5 to 8 in (6.5 to 20 cm) wide; the upper surface usually is smooth, while the lower is covered with fine hairs. The leaf stem often is covered with small prickles throughout its length. The inflorescences are horizontal and clustered among the leaves, each bearing 5 to 15 curved flowers which are blackish-purple externally and white or pale lilac within. The fruit is a yellowish-orange berry about 0.6 to 1.2 in (1.5 to 3 cm) long. The following combination of characters separates this taxon from the other members of the genus on Lanai: calyx lobes oblong, narrowly oblong, or ovate in shape; and the calyx and corolla both more than 0.2 in (0.5 cm) wide (Lammers 1990, Rock 1919, Wimmer 1943).

Cyanea macrostegia var. *gibsonii* historically is documented from the summit of Lanaihale and the upper parts of Mahana, Kaiholena, and Maunalei Valleys of Lanai Island (Lammers 1990, Rock 1919). It presently is known from two gulches in upper Kaiholena Valley and in one of the feeder gulches into Maunalei Valley. The Maunalei population was last seen in the late 1980s and, although its habitat showed signs of disturbance, was the healthiest of the three populations (Hobdy, pers comm., 1990). In 1989, only a single plant could be found at one of the Kaiholena sites, and it was being overgrown by kahili ginger (*Hedychium gardnerianum*) (Hobdy, pers. comm., 1990). Deer browsing and encroaching exotic species of plants are the main threats (Hobdy, pers. comm., 1990). The small number of extant individuals also is a threat, as the limited gene pool may depress reproductive vigor, or any natural or man-caused environmental disturbance could destroy the only known existing population.

Gahnia lanaiensis was first collected by Otto and Isa Degener on "Lanai, east of Munro Trail and north of Lanai-hale, in shrubby rainforest at 3,000 ft., Sept. 4, 1964 . . ." (Degener and Degener 1965). The following year, the Degeners and J.H. Kern published the new taxon, naming it for the island on which it grows (Degener *et al.*, 1964). The species is endemic to the island of Lanai, but is very closely related to *G. melanocarpa* of eastern Australia (Koyama 1990).

Gahnia lanaiensis, a sedge (Cyperaceae), is a tall (5 to 10 ft (1.5 to 3 m)), tufted, perennial, grass-like plant. This sedge may be distinguished from grasses and other genera of sedges on Lanai by its spirally arranged flowers; its solid stems; and its numerous, three-ranked leaves. *Gahnia lanaiensis* differs from the other members of the genus on the island by its achenes (seed-like fruits) which are 0.14 to 0.18 in (0.35 to 0.45 cm) long, and purplish-black when mature (Koyama 1990).

Gahnia lanaiensis is known from 15 to 16 large clumped plants growing along the summit of Lanaihale (HHP 1990d, 1990e, 1990f). The population extends for a distance of about 0.8 mi between 3,000 and 3,360 ft (915 and 1,025 m) in elevation (HHP 1990d, 1990e, 1990f). This distribution encompasses the entire known historic range of the species. The primary threat to this species is the small number of plants and their restricted distribution, which increases the potential for extinction from stochastic events. Potentially, a long term threat to the species is posed by the planned development of the island. Presently, hotels are being build and a tourist industry is planned. The Munro Trail, which traverses Lanaihale, affords a beautiful view of the island and is sure to be popular with tourists. Approximately 30 percent of the known plants of *Gahnia lanaiensis* grow along this trail system. Increased human use of the trail could lead to the destruction of individuals of the species. Disturbance of the soil or destruction of groundcover plants would increase the potential for erosion and open the area to invading exotic plants (Joel Lau, botanist, Hawaii Heritage Program, pers. comm., 1990). Manuka (*Leptospermum scoparium*), a weedy tree introduced from New Zealand, is spreading along Lanaihale, but has not yet reached the *Gahnia* area. However, the manuka may expand its distribution into the remaining *Gahnia* habitat and may compete with *Gahnia* for space.

Phyllostegia glabra var. *lanaiensis* was first collected by Horace Mann, Jr. and William Tufts Brigham during the year they spent collecting botanical specimens in Hawaii (May 1864 to May 1865). It is presumed that all collections of this taxon were made in the "mountains of Lanai," but the plant definitely is known only from Kaiholena Gulch. Earl E. Sherff described this

variety in 1934, naming it for the island on which it grows (Sherff 1934).

Phyllostegia glabra var. *lanaiensis* is a robust, erect to decumbent, glabrous, perennial herb in the mint family (Lamiaceae). Its leaves are thin, narrow, lance-shape, 3 to 9.5 in (8 to 24 cm) long and 0.6 to 1 in (1.6 to 2.5 cm) wide, often red-tinged or with red veins, and toothed at their edges. The flowers are in clusters of 6 to 10 per leaf axil, mostly only at the ends of branches. The flowers are white, occasionally tinged with purple, and are variable in size, about 0.4 to 1 in (1 to 2.5 cm). The fruit consists of four small, fleshy nutlets. Two varieties of *Phyllostegia glabra* occur on Lanai. The variety *lanaiensis* can be distinguished from the variety *glabra* by its shorter calyx and narrower leaves. *Phyllostegia imminuta*, the only other member of the genus on Lanai, is a hairy plant with a calyx about 0.1 in (0.3 cm) long, while *Phyllostegia glabra* lacks hair and has a calyx about 0.2 to 0.4 in (0.4 to 1.1 cm) long (Degener and Degener 1960, Fosberg 1936a, Sheff 1935b, Wagner *et al.*, 1990).

Phyllostegia glabra var. *lanaiensis* has not been seen for several years. The last sighting was that of a single plant made in the 1980s by Robert Hobdy in a gulch feeding into the back of Maunalei Valley (Hobdy, pers. comm., 1990). The gulches and valleys of Lanaihale are very rugged and with steep walls; consequently they are not explored with any frequency or regularity. Because no thorough recent surveys for this species have been conducted in this rugged terrain, the chances that this plant is still extant are very good. Browsing by deer and competition from invading, exotic plants are the two main threats to all the native vegetation within the historic range of this species (Hobdy, pers. comm., 1990).

Tetramolopium remyi was first collected on Maui, most likely in the foothills of western Maui, by Ezechiel Jules Remy, between 1851 and 1855. In 1861, Asa Gray described the species as *Vittadinia remyi*, reducing the genus *Tetramolopium* to a section of *Vittadinia* in the same publication (Gray 1861). William Hillebrand was the first to collect the species on Lanai. After reviewing previous work, he decided to maintain the genus *Tetramolopium* and transferred all Hawaiian *Vittadinia* to that genus (Hillebrand 1888). Drake del Castillo (1888) placed this species in the closely related genus *Erigeron;* he gave no explanation for his action, and this course has not been followed by other botanists.

Tetramolopium remyi, a member of the sunflower family (Asteraceae), is a much branced, decumbent or occasionally erect shrub up to about 15 in (40 cm) tall. Its leaves are firm, very narrow, 0.6 to 1.4 in (1.5 to 3.5 cm) long, and with the edges rolled inward when the leaf is mature. There is a single flower head per branch. The heads are 0.4 to 0.6 in (0.9 to 1.5 cm) in diameter and on stalks 1.6 to 4.7 in (4 to 12 cm) tall; each comprises 70 to 100 yellow disk and 150 to 250 white ray florets. The stems, leaves, flower bracts, and fruit are covered with sticky hairs. *Tetramolopium remyi* has the largest flower heads in the genus. Two other species of the genus are known historically from Lanai, but both have purplish instead of yellow disk florets and from 4 to 60 instead of a single flower head per branch (Lowrey 1986, 1990; Sherff 1935a).

A single population of *Tetramolopium remyi*, comprising about 35 plants growing in an area of about 50 feet square (15 m square), is known to be extant; the population is found on Aualua Ridge at an elevation of about 750 ft (228 m). From the time the population was first observed about 11 years ago, it has decreased slightly. However, fluctuations in population size are normal, depending on season and rainfall (Hobdy, pers. comm., 1990). Historically, the species also was known from the Lahaina area of West Maui. As it has not been documented from Maui since 1944, it is believed to be extinct on that island. Browsing by deer and mouflon sheep (*Ovis musimon*) and competition from invading weedy species, primarily broomsedge (*Andropogon viginicus*) and Guinea grass (*Panicum maximum*), are the main threats to the species (Hobdy, pers. comm., 1990; Perlman 1990b). The plants are tiny and can easily be displaced and eliminated by invading exotic species. Because the population grows on a dry part of the island, fires also are a potential threat (Perlman 1990b).

Viola lanaiensis was first collected by Remy on Lanai sometime between 1851 and 1855. Hillebrand (1888) mentioned in passing that Remy's specimen probably was *V. robusta*, but it was not until 1911 that it was critically studied. In that year, Joseph Rock described the Lanai plant as a variety of *Viola helenae*, a species restricted to the Wahiawa drainage basin of Kauai (Rock 1911). Independently, and without knowledge of Rock's publication, Wilhelm Becker described the taxon, named it *V. lanaiensis*, and selected a specimen collected by Rock as the type (Becker 1916). The similarity between the two taxa is superficial, and most botanists today regard the Lanai plant as a distinct species (Becker 1916; St. John 1979, 1989; Wagner *et al.* 1990).

Viola lanaiensis, in the violet family (Violaceae), is a small, erect, unbranched or few-branched subshrub, 4 to 16 in (10 to 40 cm) tall. The leaves, which are clustered toward the upper part of the stem, are lance-shaped, about 2.4 to 4.3 in (6 to 11 cm) long and 0.5 to 1.0 in (1.3 to 2.5 cm) wide. Below each leaf is a pair of narrow, membranous stipules, about 0.4 in (0.9 cm) long. The flowers are small, 0.4 to 0.6 in (1.0 to 1.5 cm) long, white tinged with purple or with purple veins, occurring singly or up to four per upper leaf axil. The fruit are capsules, about 0.4 to 0.50 in (1.0 to 1.3 cm) long. It is the only member of the genus on Lanai (Becker 1916, MacCaughey 1918, St. John 1989, Skottsberg 1940, Wagner *et al.* 1990).

Viola lanaiensis historically was known from the summit and upper slopes of Lanaihale from near the head of Hookio Gulch to Haalelepaakai, a distance of about 2.5 mi (4 km). Presently, two small populations exist. Although their size currently is unknown, it is estimated that the two populations total less than 500 plants (HHP 1990g). This estimate undoubtedly is very high (Herbst, pers. obs.). Threats include browsing by deer and competition from invading exotic plants (HHP 1990g, St. John 1981), and the potential of extinction from stochastic events due to the small population size and restricted distribution. As most of the plants grow along the Lanaihale trails, the threat of destruction or damage to the plants will increase as the tourist industry continues to develop on the island.

Previous Federal Action

Federal government action on these plants began as a result of section 12 of the Act, which directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. In that document, *Gahnia lanaiensis* and *Viola lanaiensis* (as *V. helenae* var. *lanaiensis*) were considered to be endangered; and *Abutilon eremitopetalum*, *Cyanea macrostegia* var. *gibsonii* (as *C. gibsonii*), *Phyllostegia glabra* var. *lanaiensis*, and *Tetramolopium remyi*, were considered to be extinct. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of 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 its intention to review the status of the plant taxa

named therein. As a result of that review, on June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant species, including *Abutilon eremitopetalum, Cyanea macrostegia* var. *gibsonii, Gahnia lanaiensis, Phyllostegia glabra* var. *lanaiensis, Tetramolopium remyi,* and *Viola lanaiensis* to be endangered species pursuant to section 4 of the Act. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication.

General comments received in relation to the 1976 proposal are summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909). In 1978, amendments to the Act required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. On December 10, 1979, the Service published a notice in the **Federal Register** (44 FR 70796) withdrawing the portion of the June 16, 1976 proposal that had not been made final, along with four other proposals that had expired.

The Service published an updated notice of review for plants on December 15, 1980 (45 FR 82479), and September 27, 1985 (50 FR 39525). *Abutilon eremitopetalum, Cyanea macrostegia* var. *gibsonii, Gahnia lanaiensis, Phyllostegia glabra* var. *lanaiensis, Tetramolopium remyi,* and *Viola lanaiensis* (as *V. helenae*) were included as Category 1 candidates on both lists, indicating that the Service had substantial information warranting their proposal for listing as endangered or threatened. In the last notice of review published on February 21, 1990 (55 FR 6183), all six of the species included in this proposed rule were considered Category 1 species.

Section 4(b)(3)(B) of the Act requires the Secretary to make findings on certain pending petitions with 12 months 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. The latter was the case for *Gahnia lanaiensis* and *Viola lanaiensis* because the Service had accepted the 1975 Smithsonian report as a petition. On October 13, 1983, the Service found that the petitioned listing of these species was warranted, but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act; notification of this finding was published on January 20, 1984 (49 FR 2485). Such a finding requires the petition to be recycled, pursuant to section 4(b)(3)(C)(i) of the Act. The finding was reviewed in October of 1984, 1985, 1986, 1987, 1988, and 1989. Publication of the present proposal constitutes the final 1-year finding for these species.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act (16 U.S.C. 1533) and regulations (50 CFR part 424) promulgated to implement the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Abutilon eremitopetalum* Caum (NCN), *Cyanea macrostegia* var. *gibsonii* (Hillebr.) Lammers (NCN), *Gahnia lanaiensis* Degener, I. Degener, and J. Kern (NCN), *Phyllostegia glabra* var. *lanaiensis* Sherff (NCN), *Tetramolopium remyi* (A. Gray) Hillebr. (NCN), and *Viola lanaiensis* W. Becker (NCN) are as follows:

A. The present or threatened destruction, modification, or curtailment of its habitat or range. As evidenced by remnants of native vegetation on the island, Lanai probably was covered throughout by forests and shrublands before the early Polynesians discovered the islands. Much of the island's vegetation was destroyed by early land use practices, which included cattle and sheep (*Ovis aries*) ranching; the clearing of land for pineapple cultivation; and the introduction of feral animals such as goats (*Capra hircus*), deer, and mouflon sheep, and domestic animals such as cattle and pigs (*Sus scrofa*) which later became feral (Cuddihy and Stone 1990, Fosberg 1936b, Tomich 1986). Over the ensuing years the cattle, sheep, goats, and pigs were destroyed or removed from the island. It is estimated that only about ten percent of the island presently remains in native forest or shrubland (Alan Holt, Director of Science and Stewardship, The Nature Conservancy of Hawaii, pers. comm., 1990). Today, habitat degradation due to axis deer, and, to a lesser extent, mouflon, and the invasion of and competition by exotic species of plants probably are the two greatest threats to the six species herein proposed for listing as endangered. The axis deer is now considered to be a major threat to the forests of Lanai (Culliney 1988). Deer and mouflon browse on native vegetation (see Factor C), destroying or damaging the habitat. Also, their trampling removes vegetation and litter important to soil-water relations, compacts the soil, promotes erosion, and opens areas allowing exotic plants to invade. Deer are common throughout the summit; very few patches of forest are untouched by them. Ridge tops in particular, and even gulches are being invaded (Hobdy, pers. comm., 1990).

Lanai is in the process of converting from an agricultural (pineapple) to a tourist based economy. Hotels are being built in conjunction with an anticipated increase in the tourist industry. Although at present no development plans exist which would result in direct impacts to Lanaihale, it is inevitable that an increase in the number of people on the island would have that effect. The Munro Trail, which traverses Lanaihale, affords a beautiful view of the island and is sure to be popular with tourists. Approximately 30 percent of the known plants of *Gahnia lanaiensis* and most of the known *Viola* plants grow along this trail or one of its branches. Increased hiking and jeep-riding along the trail could lead to the destruction of individuals of these species. Disturbance of the soil or destruction of groundcover plants due to these activities would increase the potential for erosion and open the area to invading exotic plants.

B. Overutilization for commercial, recreational, scientific, or educational purposes. Illegal collecting for scientific or horticultural purposes or excessive visits by individuals interested in seeing rare plants could result from increased publicity, and would seriously impact the species. Disturbance to the area by trampling during recreational use (hiking, for example), would promote erosion and greater ingress by competing exotic species. This threat will increase as the tourist industry becomes a more prominent force on the island.

C. Disease or predation. Axis deer and mouflon sheep are managed by the State for recreational hunting on the island. The deer are primarily on the summit and in the gulches of Lanaihale, whereas the mouflon are more common on the drier slopes—precisely the habitat of the six species included in this proposal. In addition to habitat degradation resulting from their activities, which was discussed in Factor A above, their browsing also destroys or damages plants.

D. The inadequacy of existing regulatory mechanisms. There are no State laws or existing regulatory mechanisms at the present time to protect these species or to prevent their further decline. However, Hawaii's Endangered Species Act (HRS, Sect.

195D–4(a)) states that "Any species of wildlife or wild plant that has been determined to be an endangered species pursuant to the Endangered Species Act (of 1973) shall be deemed to be an endangered species under the provisions of this chapter . . . ." Further, the State may enter into agreements with Federal agencies to administer and manage any area required for the conservation, management, enhancement, or protection of endangered species (Sect. 195D–5(c)). Funds for these activities could be made available under section 6 of the Act (State Cooperative Agreements). The Act also would offer additional protection to these species because if they were listed as endangered it would be a violation of the Act for any person to remove, cut, dig up, damage, or destroy any such plant in an area not under Federal jurisdiction in knowing violation of State law or regulation or in the course of any violation of a State criminal trespass law.

E. Other natural or manmade factors affecting its continued existence. The small number of populations and of individual plants of these species increases the potential for extinction from stochastic events. The limited gene pool may depress reproductive vigor, or a single man-caused or natural environmental disturbance could destroy a significant percentage of the individuals of these species.

Several species of exotic plants have become common on the summit and in the gulches and valleys of Lanaihale. Strawberry guava (*Psidium cattleianum*) is most common on the northern end of Lanaihale, firebush (*Myrica faya*) is most common on the south end, and manuka has spread through the range (Hobdy, pers. comm., 1990). Kahili ginger is common on some of the valley floors, as in Kaiholena Gulch, for instance, while koa haole, lantana, and sourbush also are aggressive invaders. These weedy plants are more aggressive than the native species and more successfully compete for water, minerals, space, and light. In the drier areas, broomsedge and Guinea grass are the dominant exotic species (Hobdy, pers. comm., 1990). Not only do these species replace native plants such as *Tetramolopium remyi*, but they are a source of fuel, increasing the potential threat of fire in the area (Perlman (1990b).

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Abutilon eremitopetalum, Cyanea macrostegia* var. *gibsonii, Gahnia lanaiensis, Phyllostegia glabra* var. *lanaiensis, Tetramolopium remyi, and Viola lanaiensis* as endangered. These species are threatened by predation and habitat degradation by feral animals, by encroachment and competition from exotic species of plants, and/or by the potential of stochastic events to extirpate these small populations with restricted distributions. They also face the potential threat of damage to their habitat by increased human traffic stemming from recreational use and development-related activities. In addition, unintended wildfires can eliminate plants and habitat. Given these circumstances, the determination of endangered status seems warranted.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time a species is proposed to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for these species. The publication of descriptions and maps required in a proposal for critical habitat would increase the degree of threat to these plants form possible take or vandalism and, therefore, could contribute to their decline and increase enforcement problems. A listing of these species as either endangered or threatened would publicize the rarity of the plants and, thus, could make these plants attractive to researchers, curiosity seekers, or collectors of rare plants. All involved parties and the major landowners have been notified of the location and importance of protecting habitat of these species. Protection of the species' habitat will be addressed through the recovery process. Therefore, the Service finds that designation of critical habitat for these species is not prudent at this time because designation would increase the degree of threat from vandalism, collecting, or other human activities.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the State and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. As none of these species are on Federal land and no Federal activities are anticipated in the area, no section 7 consultations or impact on activities of Federal agencies are anticipated as the result of this proposal.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 for endangered plant species set forth a series of general trade prohibitions and exceptions that apply to all endangered plants. With respect to the six plants from the island of Lanai, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, make it illegal with respect to any endangered plant for any person subject to the jurisdiction of the United States to import or export; transport in interstate or foreign commerce in the course of a commercial activity; sell or offer for sale these species in interstate or foreign commerce, or to remove and reduce to possession any such species from areas under Federal jurisdiction; or to maliciously damage or destroy any such plants on any area under Federal jurisdiction; or remove, cut, dig up, damage or destroy any such species on any other area in knowing violation of any state law or regulation or in the course of any violation of a State criminal trespass law Certain exceptions apply to agents of the Service and State conservation

agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plant species under certain circumstances.

It is anticipated that few trade permits would ever be sought or issued because the species are not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, room 432, 4401 N. Fairfax Drive, Arlington, Virginia 22203 (703/358-2093, FTS 921-2093, FAX 703-358-2281).

Public Comments Solicited

The Service intends that any final action resulting form this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to these species;

(2) The location of any additional populations of these species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of these species; and

(4) Current or planned activities in the subject area and their possible impacts on these species.

Any final decision on this proposal concerning these six taxa of plants will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Field Office Supervisor (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined pursuant to the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Author

The primary author of this proposed rule is Dr. Derral R. Herbst, Fish and Wildlife Enhancement, Pacific Islands Office, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, room 6307, P.O. Box 50167, Honolulu, Hawaii 96850 (808/541–2749 or FTS 551–2749).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements and Transportation.

Proposed Regulation Promulgation

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under the families indicated, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
*	*	*	*	*	*	
Asteraceae—Aster family:						
*	*	*	*	*	*	
Tetramolopium remyi	None	U.S.A. (HI)	E		NA	NA
*	*	*	*	*	*	
Campanulaceae—Bellflower family:						
*	*	*	*	*	*	
Cyanea macrostegia var. *gibsonii*	None	U.S.A. (HI)	E		NA	NA
*	*	*	*	*	*	
Cyperaceae—Sedge family:						
*	*	*	*	*	*	
Gahnia lanaiensis	None	U.S.A. (HI)	E		NA	NA
*	*	*	*	*	*	
Lamiaceae—Mint family:						
*	*	*	*	*	*	
Phyllostegia glabra var. *lanaiensis*	None	U.S.A. (HI)	E		NA	NA
*	*	*	*	*	*	
Malvaceae—Mallow family:						
*	*	*	*	*	*	
Abutilon eremitopetalum	None	U.S.A. (HI)	E		NA	NA
*	*	*	*	*	*	
Violaceae—Violet family:						
*	*	*	*	*	*	
Viola lanaiensis	None	U.S.A. (HI)	E		NA	NA
*	*	*	*	*	*	

Dated: August 23, 1990.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 90–21852 Filed 9–14–90; 8:45 am]

BILLING CODE 4310–55–M

50 CFR Part 17

RIN 1018—AB42

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Five Plants from the Wahiawa Drainage Basin

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes endangered status pursuant to the Endangered Species Act of 1973, as amended (Act), for five plants: *Cyanea undulata, Dubautia pauciflorula, Hesperomannia lydgatei, Labordia lydgatei* (kamakahala), and *Viola helenae*. These species are known only from the Wahiawa drainage basin located on the island of Kauai, Hawaii. The five plants have been variously affected and are

threatened by one or more of the following: Habitat degradation and competition by naturalized, exotic vegetation; predation by rats which eat fruit, seeds, or vegetative parts of the plants; habitat destruction and potential seed transport of exotic plants by feral pigs; a typhoon which opened some small areas and allowed exotic species to invade; and the potential for extinction because of the depauperate number of extant individuals and their severely restricted distribution. A determination that these five species are endangered would implement the Federal protection and recovery provisions provided by the Act. Comments and materials related to this proposal are solicited.

DATES: Comments from all interested parties must be received by November 16, 1990. Public hearing requests must be received by November 1, 1990.

ADDRESSES: Comments and materials concerning this proposal should be sent to Ernest F. Kosaka, Field Supervisor, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, room 6307, P.O. Box 50167, Honolulu, Hawaii 96850. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Derral R. Herbst, at the above address (808/541-2749 or FTS 551-2749).

SUPPLEMENTARY INFORMATION:

Background

Cyanea undulata, Dubautia pauciflorula, Hesperomannia lydgatei, Labordia lydgatei, and *Viola helenae* are endemic to the Wahiawa drainage basin in the Koloa District of southern Kauai. Kauai is the oldest of the eight major Hawaiian Islands. Because of its age and relative isolation, the levels of floristic diversity and endemism are higher on Kauai than on any other island in the archipelago. The Wahiawa Mountains area has one of the oldest and most diverse montane wet forests in Hawaii. In addition to the forest ecosystem, permanent streams, bogs, and ridge summit habitats also comprise the Wahiawa Mountain area. The majority of the plant communities are primary in nature with high floristic endemism. There has been relatively little disturbance to the area in the past, but alien plants are encroaching and pigs are present. Listing these five endemic species as endangered would aid in protecting and improving this habitat which is also home to an additional eighteen or more taxa of extremely rare plants.

The area is roughly triangular in shape with Kapalaoa, Mt. Kahili, and Puuauuka forming the three corners; it is about 1200 acres (485 hectares) in size. The elevation ranges from about 2,000 to 3,300 feet (ft) (610–1,000 meters (m)). The land is owned primarily by a single corporate landowner, with a small parcel of State-owned land forming one corner of the triangle. The Wahiawa drainage basin is an important source of water for the agricultural industry on this part of the island and is managed by the landowner to preserve water quality.

Discussion of the Five Species Proposed for Listing

Until its rediscovery on June 10, 1988, *Cyanea udulata* was known only from the type collection made by Charles Forbes in 1909 in the "damp woods surrounding the Wahiawa swamp," and an earlier collection, now lost, by the Reverend J.M. Lydgate in 1908, probably from the same area (Rock 1919). Forbes described the plant as a new species in 1912, naming it for the wavy appearance of its leaf margins (Forbes 1912). In 1987, Harold St. John, questioning the validity of the characters used to delineate the genus *Cyanea*, transferred all species of *Cyanea* to the closely related genus *Delissea* (St. John 1987a, St. John & Takeuchi 1987). The prior existence of the combination *Delissea undulata* necessitated a new name for *Cyanea undulata* when treated as a *Delissea*. For this reason, St. John published *Delissea forbesii* as a new name for *Cyanea undulata* (St. John 1987a), and four months later published *Delissea lydgatei* as the new name (St. John 1987b). The second name is superfluous and thus illegitimate. Few botanists accept St. John's taxonomy for this group, and continue to recognize the genus *Cyanea* (Lammers 1990).

Cyanea undulata is an unbranched shrub in the bellflower family (Campanulaceae), and is about 6 to 12 feet (1.8 to 3.6 meters) tall. The leaves are narrowly elliptic, about 12 to 16 inches (in) (30 to 40 centimeters (cm)) long and 1 to 2 in (3 to 5 cm) wide, with wavy margins; the upper surface is smooth, and the lower is covered with fine, rust-colored hairs. The leaf stem is winged throughout its length. The inflorescence is about 17 in (45 cm) long and bears 5 or 6 yellowish, slightly curved, hairy flowers. The fruit is an orange berry about 0.7 in (1.7 cm) long (Lammers 1990, Rock 1919, Wimmer 1943). The size, shape, and the wavy margins of the leaves distinguish this species from the rest of the genus.

Cyanea undulata is presently known from a single small population of about three or four individuals growing along the bank of a tributary of the Wahiawa Stream (Steven Perlman, botanist, National Tropical Botanical Garden, pers. comm., 1990). Several exotic plant species such as *Psidium cattleianum* (strawberry guava) and *Melastoma candidum* (melastoma) have invaded the drainage basin and are moving up along the stream (Timothy Flynn, David Lorence, and S. Perlman, botanists, National Tropical Botanical Garden, pers. comms., 1990). Habitat degradation and competition by exotic species are major threats to the native plants growing along the stream banks. The small number of extant individuals is in itself a considerable threat, because the limited gene pool may result in depressed reproductive vigor, or a single natural or man-caused environmental disturbance could destroy the only known existing population.

The earliest collections of *Dubautia pauciflorula* were made in 1909 by C.N. Forbes and in 1911 by J.M. Lydgate, both from the "Wahiawa Mountains [on a] ridge just above tributary of the Wahiawa Stream." There is no further record of the species until it was rediscovered by S. Perlman in 1979 in the "Wahiawa Mts., on E facing ridge of 10° slope 30 m from an unnamed left (Hanapepe) fork of Wahiawa Stream. . . ." This is the same general area from which the Forbes and Lydgate collections were made, and consists of a population of about 30 plants. Two additional populations have been found since 1979. A population of about three plants is on the Mt.Kahili ridge that forms the eastern boundary of the Wahiawa drainage basin. The other small population is along the east fork of the Wahiawa Stream (T. Flynn, D. Lorence, and S. Perlman, pers. comms., 1990). In 1981, H. St. John and G.D. Carr (1981) described the taxon as a new species, based on a specimen that Carr collected from the population discovered by Perlman. The specific name denotes the fact that this species has the smallest number of florets (flowers) per head of any of the Hawaiian members of its tribe.

Dubautia pauciflorula, a member of the sunflower family (Asteraceae), is a somewhat sprawling to erect shrub up to

about 10 ft (3 m) tall. The leaves are clustered toward the ends of the branches, oppositely arranged, narrow, widening toward the tip, 3 to 8 in (8 to 21 cm) long, and up to 1.3 in (3.2 cm) wide. There are 50 to 500 heads in an open inflorescence 3 to 12 in (8 to 30 cm) long and 2 to 30 in (6 to 30 cm) wide; each head is comprised of 2 to 4 florets. The florets are yellow, while the stems and bracts of the heads are often purple. The fruits are small dry seeds, about 0.1 in (0.3 cm) long (Carr 1985, 1990; St. John & Carr 1981).

In addition to the threat posed due to the small number of remaining individuals, two other potential threats to *Dubautia pauciflorula* exist: One is habitat degradation and competition by invading exotic plants, which are now beginning to be observed in the area; the other is feral pigs. A few pigs have been seen and some rooting and disturbance has been observed in the area, but at present, it is not extensive. Feral pigs damage and destroy plants, their rooting opens areas allowing competing exotic plants to invade, and they transport seeds of alien plants (T. Flynn, D. Lorence, and S. Perlman, pers. comms., 1990).

Hesperomannia lydgatei was first collected by J.M. Lydgate in the Wahiawa Mountains in 1908, and was named in his honor by C.N. Forbes the following year (Forbes 1909). The only other collection documenting the species' existence before its rediscovery by C.H. Lamoureux in 1955 was one made by Forbes in 1909. Today four populations of the species are known, all along or near the Wahiawa Stream or its tributaries. The first population is of four or five trees above Wahiawa Stream just behind Kanaele Bog. This population was estimated at 30 to 36 trees and seedlings in 1972. Another population of about 10 to 12 trees is farther upstream. A third population of 40 to 50 trees and a fourth population both grow along tributaries of the stream; about 10 years ago the fourth population was estimated to be between 100 to 125 plants. While the present size of the population is unknown, it is probably less than the original estimate (Hawaii Heritage Program Collection Log Sheet dated April 4, 1989; T. Flynn, D. Lorence, S. Perlman, pers. comms., 1990).

Hesperomannia lydgatei, in the sunflower family, resembles a spineless tree thistle with nodding flowers. It is a small tree, rarely over 10 ft (3 m) tall. The leaves are paler beneath, alternately arranged, elliptic or lance-shaped, but wider above the middle, 4 to 12 in (10 to 30 cm) long, and 1.4 to 3.5 in (3.5 to 9 cm) wide. The flower heads are 1.5 to 2 in (4 to 5 cm) high, with usually 4 or 5 heads on slender stems clustered at the ends of branches, nodding when mature. The flower heads are enclosed by four to eight circles of overlapping bracts, the outer ones brown or purplish, the inner ones silver. The florets are yellow and are split about to the middle into narrow lobes. Mature fruits are unknown (Carlquist 1957, Degener 1932, Fedde 1911, Forbes 1909, St. John 1981, Wagner *et al.* 1990). It is the only member of the genus on Kauai, and the only one with nodding flowers.

The threats to this species are similar to those of the preceding species: Competition from invading exotic plants, small numbers and sizes of populations, and habitat degradation by feral pigs (T. Flynn, D. Lorence, and S. Perlman, pers. comms., 1990).

Labordia lydgatei is known only from five collections: one by J.M. Lydgate in 1908 or 1909, two by C.N. Forbes in 1909, one by S. Perlman in 1987, and one by W.L. Wagner and C.T. Imada in 1988. The species presently is known from a single population of about three individuals located at the end of the valley above one of the tributaries of Wahiawa Stream (S. Perlman, pers. comm., 1990). C.N. Forbes described this species in 1916, naming it in honor of its discoverer, the Reverend Lydgate (Forbes 1916).

Labordia lydgatei, in the strychnine family (Loganiaceae), is a many-branched shrub or small tree with sparsely hairy, square stems. The leaves are elliptic, often widening toward the tip, smooth above but with fine hairs on the lower surface; the are 2 to 4 in (5 to 10 cm) long, and 0.8 to 2.8 in (2 to 7 cm) wide. The inflorescence comprises 6 to 21 small, slender, funnel-shaped, pale yellow flowers, each about 0.3 in (0.7 cm) long. The fruit is a small, two-parted, ovoid, woody capsule with a short, blunt beak at its tip (Forbes 1916, Sherff 1939, Wagner *et al.* 1990). The small, restricted population and the likelihood of invasion by competing exotic species are the main threats to the species. This species can be separated from *L. tinifolia*, the only other member of the genus on this part of Kauai, by its sessile cymes.

Viola helenae was collected by J.M. Lydgate in the Wahiawa Mountains in May 1908. Using this specimen as the type, he and C.N. Forbes described the species the following year and named it for Lydgate's wife, Helen (Forbes 1909). Two years later, J.F. Rock (1911) described a similar plant from the island of Lanai as a variety of *Viola helenae*. Since the similarity between the two taxa is superficial, most botanists today regard the Lanai plant as a distinct species (Becker 1916, St. John 1979, Wagner *et al.* 1990).

Viola helenae, a violet (Violaceae), is a small, erect, unbranched subshrub, 1 to 2.5 ft (30 to 80 cm) tall. The leaves, which are clustered toward the upper part of the stem, are lance-shaped, about 3 to 5 in (7.5 to 13 cm) long and 0.8 to 1 in (2 to 2.5 cm) wide. Below each leaf is a pair of narrow, membranous stipules, about 0.5 in (1.3 cm) long. The flowers are small, less than 0.4 in (1 cm) long, on stems about 1.8 in (4.5 cm) long, pale lavender or white, occurring singly or in pairs in the upper leaf axils. The fruit are capsules, about 0.5 in (1.1 cm) long (Fedde 1911, St. John 1989, Skottsberg 1940, Wagner *et al.* 1990). The lance-shaped leaves distinguish this species from all the other violets on this island.

Viola helenae is known from two populations, one along each branch of the Wahiawa Stream. The total number of individuals in the 2 populations is estimated at about 13 (T. Flynn, D. Lorence, S. Perlman, pers. comms., 1990). The small number and restricted distribution of the species and resultant susceptibility to stochastic events threatens the plant with extinction. Some pig trails and rooting have been observed near this species, but the evidence of pig activity was localized and little was seen. However, destruction by feral pigs is a potential threat (T. Flynn, D. Lorence, and S. Perlman, pers. comms., 1990). In addition, competing alien plants are moving up along the stream banks, where the species grows along Wahiawa Stream. A small population of three or four individuals of *V. helenae* disappeared soon after strawberry guava invaded the habitat where the tree canopy had been opened by Typhoon Iwa in 1982.

Federal Action

Federal Government action on these plants began as a result of section 12 of the Act, which directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. *Hesperomannia lydgatei* and *Viola helenae* were considered endangered and *Labordia lydgatei* as threatened in that document. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of 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 its intention to review the status of the plant taxa named therein: As a result of that review, on June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant species, including *Hesperomannia lydgatei* and *Viola helenae*, to be endangered species pursuant to section 4 of the Act. *Labordia lydgatei* not included in the proposed rule. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No 94-51 and the July 1, 1975, **Federal Register** publication.

General comments received in relation to the 1976 proposal are summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909). In 1978, amendments to the Act required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. On December 10, 1979, the Service published a notice in the **Federal Register** (44 FR 70796) withdrawing the portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired.

The Service published an updated notice of review for plants on December 15, 1980 (45 FR 82479), September 17, 1985 (50 FR 39525), and January 21, 1990 (55 FR 6183). *Hesperomannia lydgatei* and *Viola helenae* were included as Category 1 candidates on all three lists, indicating that the Service had substantial information warranting their proposed listing as endangered or threatened. *Labordia lydgatei* was included as a Category 2 candidate on the 1980 and 1985 lists (meaning that the Service had information indicating that a proposal to list the species was possibly appropriate but for which the Service did not have sufficient information on which to base a proposed rule), but was upgraded to Category 1 on the 1990 list as a result of the Service receiving additional information. *Dubautia pauciflorula* was included as a Category 1 candidate on the 1990 list, which was the first notice of review published after this plant was described as a new species. *Cyanea undulata* is included as a Category 3A species in the 1990 list (meaning that the Service had reason to believe that the species may be extinct). The updated information for the Hawaiian species on the 1990 list was submitted for publication prior to the rediscovery of *Cyanea undulata*.

Section 4(b)(3)(B) of the Act requires the Secretary to make findings on certain pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. The latter was the case for *Hesperomannia lydgatei*, *Labordia lydgatei*, and *Viola helenae* because the Service had accepted the 1975 Smithsonian report as a petition. On October 13, 1983, the Service found that the petitioned listing of these species was warranted, but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act; notification of this finding was published on January 20, 1984 (49 FR 2485). Such a finding requires the petition to be recycled, pursuant to section 4(b)(3)(C)(i) of the Act. The finding was reviewed in October of 1984, 1985, 1986, 1987, 1988, and 1989. Publication of the present proposal constitutes the final 1-year finding for these species.

Summary of Factors Affecting the Species

Section 4 of the Act and regulations (50 CFR part 424) promulgated to implement the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Cyanea undulata* C. Forbes, *Dubautia pauciflorula* St. John & G. Carr, *Hesperomannia lydgatei* C. Forbes, *Labordia lydgatei* C. Forbes (kamakahala), and *Viola helenae* C. Forbes & Lydgate are as follows:

A. The present or threatened destruction, modification, or curtailment of its habitat or range. Habitat degradation and competition by exotic species of plants appear to be the main threats to these five species. There has been relatively little disturbance to the Wahiawa drainage basin in the past, but several aggressive exotic species of plants, such as strawberry guava and melastoma, have invaded the area and are moving up along the stream beds. All five species included in this proposal are presently known primarily from along the banks of the streams or near the stream beds. In 1982 Typhoon Iwa opened some small areas in the basin, allowing the exotic species to invade. At least one population of *Viola* succumbed as a result. Some feral pig trails and rooting have been seen in the area, but the rooting was localized and not much damage was noted. This situation could very quickly change, however, if the pig population increases. While foraging, pigs turn up several inches of the soil surface, and in so doing, damage and destroy plants, and open areas allowing alien plants to invade. Pigs establish trails among feeding areas and transport seeds, both internally and externally, further aiding in the spread of exotic species.

B. Overutilization for commercial, recreational, scientific, or educational purposes. Not known to be a factor. However, unrestricted collecting for scientific or horticultural purposes or excessive visits by individuals interested in seeing rare plants could result from increased publicity, and would seriously impact the species. Disturbance to the area by trampling would promote greater ingress by competing exotic species.

C. Disease or predation. Not known to be applicable. However, rats are known from the area and damage to fruits, seeds, and plants from their foraging on other species has been observed. For example, most species of the genus *Cyanea* have thick, succulent bark. Some of the more common species of the genus have been girdled by rats, the bark perhaps providing a source of food. Also, rats have completely stripped the bark from a *Clermontia* shrub, a similar, closely related plant, growing at the edge of Kanaele Bog.

D. The inadequacy of existing regulatory mechanisms. There are no State laws or existing regulatory mechanisms at the present time to protect these species or prevent their future decline. However, Federal listing would automatically invoke listing under Hawaii State law, which prohibits taking and encourages conservation by State government agencies. Funds for activities required for the conservation, management, enhancement, or protection of the species could be made available under section 6 of the Federal Act (State Cooperative Agreements) if the species were listed as threatened or endangered. The Act also would offer additional protection to the five plant species because if they were listed as endangered it would be a violation for any person to remove, cut, dig up, damage, or destroy any such plant in an area not under Federal jurisdiction in knowing violation of State law or regulation or in the course of any violation of a State criminal trespass law.

E. Other natural or manmade factors affecting its continued existence. The small number of populations and of individual plants of the five species included in this proposed rule is in itself a considerable threat. The limited gene pool may result in depressed reproductive vigor, or a single human-

caused or natural environmental disturbance could destroy a significant percentage of the individuals of these species. One population of *Hesperomannia lydgatei* may contain more than 100 individuals, and therefore may not have a substantially limited gene pool; however, the small number of individuals remaining in the other populations and the small number of populations indicate that the species is vulnerable to threats associated with reduced reproductive vigor and unpredicted environmental disturbances.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Cyanea undulata, Dubautia pauciflorula, Hesperomannia lydgatei, Labordia lydgatei,* and *Viola helenae* as endangered. These species are imperiled by the small size and restricted distribution of their populations and by encroachment and competition from exotic species of plants. They also face the potential threat of predation and damage to their habitat by rodents and feral pigs. Given these circumstances, the determination of endangered status seems warranted. Critical habitat is not being proposed for the reasons listed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time a species is proposed to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for these species. Such a determination would result in no known benefit to the species. The few known populations are primarily on private land which is zoned as conservation land. State government agencies can be alerted to the presence of the plants without the publication of critical habitat descriptions and maps. The publication of such descriptions and maps would make these plants more vulnerable to incidents of take or vandalism and, therefore, could contribute to their decline. The listing of species as endangered publicizes the rarity of the plants and, thus, can make these plants attractive to researchers, curiosity seekers, or collectors of rare plants. Publication of critical habitat descriptions and maps would make *Cyanea undulata, Dubautia pauciflorula, Hesperomannia Lydgatei, Labordia lydgatei,* and *Viola helenae* more vulnerable to taking and vandalism and would increase enforcement problems. All involved parties and the landowners have been notified of the location and importance of protecting these species' habitat. Protection of the species' habitat will be addressed through the recovery process. Therefore, it would not now be prudent to determine critical habitat for the five species covered in this proposed rule.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the State and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. As none of these species are on Federal land and no Federal activities are anticipated in the area, no section 7 consultations are anticipated.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plants. With respect to the five plants from the Wahiawa Drainage basin, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export; transport in interstate or foreign commerce in the course of a commercial activity; sell or offer for sale these species in interstate or foreign commerce; or to remove and reduce to possession the species from areas under Federal jurisdiction; or maliciously damage or destroy any such species on any such area; or remove, cut, dig up, damage or destroy any such species on an area not under Federal jurisdiction in knowing violation of any State law or regulation or in the course of any violation of a State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plant species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued because the species are not common in cultivation or in the wild.

Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 432, Arlington, Virginia 22203-3507 (703/358-2104 or FTS 921-2232).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to these species;

(2) The location of any additional populations of these species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of these species; and

(4) Current or planned activities in the subject area and their possible impacts on these species.

The final decision on this proposal will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Field Office Supervisor in Honolulu, Hawaii (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Author

The primary author of this proposed rule is Dr. Derral R. Herbst, Honolulu Field Office (see **ADDRESSES** section); telephone 808/541–2749 or FTSD 551–2749.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and record-keeping requirements, and Transportation.

Proposed Regulations Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. It is proposed to amend § 17.12(h) by adding 4 species in alphabetical order under the families indicated, and by adding, in alphabetical order, a new family and species to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species						
Scientific name	Common name	Historic range	Status	When listed	Critical habitat	Special rules
* * * * *						
Asteraceae—Aster family:						
* * * * *						
Dubautia pauciflorula	None	U.S.A. (HI)	E		NA	NA
* * * * *						
Hesperomannia lydgatei	None	U.S.A. (HI)	E		NA	NA
* * * * *						
Campanulaceae—Bellflower family:						
* * * * *						
Cyanea undulata	None	U.S.A. (HI)	E		NA	NA
* * * * *						
Loganiacae—Strychnine family:						
Labordia lydgatei	kamakahala	U.S.A. (HI)	E		NA	NA
* * * * *						
Violaceae—Violet family:						
* * * * *						
Viola helenae	None	U.S.A. (HI)	E		NA	NA
* * * * *						

Dated: August 24, 1990.

Richard N. Smith,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 90-21853 Filed 9-14-90; 8:45 am]

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federal register

Monday
September 17, 1990

Part VII

Environmental Protection Agency

40 CFR Part 86

Control of Air Pollution from New Motor Vehicles and New Motor Vehicle Engines; Interim Regulations for Cold Temperature Carbon Monoxide Emissions From Light-Duty Vehicles and Light-Duty Trucks; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[AMS-FRL-3701-3]

RIN 2060-AC59

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Interim Regulations for Cold Temperature Carbon Monoxide Emissions From Light-Duty Vehicles and Light-Duty Trucks

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: Today's action proposes cold temperature carbon monoxide (CO) exhaust emission standards for light-duty vehicles and light-duty trucks. The proposed emission standards at 20 °F are: 10.0 g/mi for light-duty vehicles (LDVs); 12 g/mi for light-duty trucks (LTDs) up to 3,750 lbs loaded vehicle weight; and 15 g/mi for LDTs with loaded vehicle weight of greater than 3,750 lbs. These standards apply to 40 percent of each manufacturer's production in model year 1993, increasing to 100 percent in 1995. Vehicles produced by small-volume manufacturers (less than 10,000 units/year and LDTs with gross vehicle weight ratings over 6,000 lbs are exempt until 1995 when 100 percent of these vehicles must comply.

The benefits of this proposal are estimated to be a 20–29 percent reduction in mobile source CO emissions at 20 °F. Averaging overall temperatures, the proposed rule is estimated to be able to reduce annual CO emissions by 2.6–3.1 million tons by the year 2000 and 5.8–7.7 million tons after complete fleet turnover.

DATES: EPA will conduct a public hearing on this notice of proposed rulemaking on November 1, 1990, in Ann Arbor, Michigan. The hearing will convene at 9 a.m. and will adjourn at such time as is necessary to complete the testimony. Written comments on this notice will be accepted for 30 days following the hearing, until December 3, 1990. Further information on the public hearing can be found in section VI, Public Participation.

ADDRESSES: The public hearing will be held in the conference room of the U.S. Environmental Protection Agency, Motor Vehicle Emission Laboratory, 2565 Plymouth Road, Ann Arbor, Michigan 48105. Written comments should be submitted (in duplicate if possible) to: The Air Docket, room M-1500 (LE-131), Waterside Mall, Attention: Docket No. A-89-01, 401 M Street SW., Washington, DC 20460.

Materials relevant to this proposed rulemaking are contained in Docket No. A-89-01. The docket is located at the above address and may be inspected from 8 a.m. until noon and from 1:30 p.m. until 3:30 p.m. Monday through Friday. A reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT: John M. German, Certification Policy and Support Branch, Certification Division, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, Michigan 48105, Telephone (313) 668-4214.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 202(a) of the Clean Air Act (CAA) gives the Agency the authority to regulate emissions from new motor vehicles which in the Administrator's judgment cause or contribute to air pollution which may reasonably be anticipated to endanger public health. Under this authority, the Agency has promulgated regulations (40 CFR part 86) requiring that motor vehicles meet CO emissions standards for the full useful life of the vehicles as defined in section 202(d). The standards currently apply at temperatures of 68 °F (20 °C) to 86 °F (30 °C). The action being taken today will extend the regulation of CO emissions from new vehicles to temperatures lower than 68 °F. This action is being taken because motor vehicle carbon monoxide (CO) emissions continue to contribute excessively to unacceptable CO air quality, with many urban areas exceeding the 8-hour CO national ambient air quality standard. While CO air quality should improve in the near term, that trend is expected to reverse by the late 1990's due to growth in vehicle miles traveled (VMT) unless further action is taken to reduce CO emissions. Most CO exceedances occur at temperatures below 68 °F, and 20 percent occur below 20 °F. Federal motor vehicle CO emission standards currently apply at temperatures no lower than 68 °F. At colder temperatures, vehicle CO emissions increase greatly. Therefore, improved control of CO emissions from vehicles when operating at colder temperatures, as proposed today, should significantly help local areas attain acceptable air quality for CO.

II. The Proposed Regulation

A. Intent

EPA's air quality analysis reveals an immediate need for reductions in cold temperature CO emissions. EPA believes that technology exists and is reasonably available to lower cold temperature CO emissions from LDVs and LDTs. Therefore, the Agency is proposing, as an interim step which can be implemented quickly, initial standards for the light-duty classes which will require improvement in calibrations and, in some cases, adoption of better existing technology.

Today's proposed rule has not been determined to be sufficient to bring all areas into compliance with the NAAQS for CO or to maintain compliance over the longer term. The standards being proposed have been developed based upon the levels of control that EPA believes are technologically feasible in the very near term. While EPA is confident that the measures being proposed today are cost-effective and necessary in the near term, a great deal of uncertainty exists as to the causes of CO nonattainment and the amount and kind of mobile source controls needed to bring all areas into compliance. EPA is undertaking a long-term study to identify areas where further regulation may be needed. This long-term study will be used as the basis to establish long-term motor vehicle CO standards, as may be deemed necessary, and to identify other measures that may be necessary to bring all areas into compliance and assure air quality is maintained. However, information already available indicates that the improved cold temperature vehicle emission performance, as would be achieved by today's proposal, will provide low cost and relatively near-term benefit to supplement local area efforts to attain the NAAQS for CO.

B. Proposed Regulations

1. Vehicle Standards

The agency is proposing standards of 10.0 g/mi for LDVs; 12.0 g/mi for trucks with a loaded vehicle weight less than or equal to 3,750 lbs (i.e., LDT1s); and 15.0 g/mi for trucks of greater than 3,750 lbs loaded vehicle weight but less than or equal to 8,500 lbs gross vehicle weight rating (GVWR) (i.e., LDT2s). These standards would apply when the vehicle is tested at 20 °F according to a revised Federal Test Procedure (FTP) also being proposed today, and would apply for the useful life of the vehicles; i.e., 50,000 miles for LDVs and 120,000 miles for all LDTs.

The proposed standards are expected to require recalibration or other changes in virtually every vehicle. As discussed in section IV.E. of this preamble and analyzed in detail in the draft regulatory support document, chapter VI, required changes will range from perhaps only recalibration for some vehicles equipped with the most technically advanced designs expected to be available to more substantive changes in hardware, especially for the larger engines and applications. The proposed standards were selected considering the maximum reductions achievable given the very near term implementation proposed. Even so, it seems necessary to phase in the applicability of these standards over the 1993 through 1995 model years to provide adequate lead time.

Legislative revisions to the CAA are still under consideration by the Congress at the time of this proposed rulemaking. It would be undesirable to delay this proposal until the legislative process is complete in order to conform the proposal to any amendments that are adopted. The final rule will include any relevant requirements, including any useful life requirements, that have been legislatively adopted and for which a notice of proposed rulemaking is not required. Commenters should note the legislative developments and the possibility of changes in making their comments.

2. High-Altitude Applicability.

High-altitude standards would be patterned after current FTP high-altitude provisions for LDVs. All LDVs would be required to comply with the cold CO standard at all altitudes. For LDTs, it is also proposed that all LDTs would be required to meet the cold CO standard at all altitudes.

3. Effective Dates

The standards are proposed to be phased in over the 1993 through 1995 model years for LDVs and most LDTs, as follows:

Model year	LDVs and LDTs with 0–6,000 lb GVWR	LDTs with 6,000–8,500 lb GVWR *
1993	40% **	0
1994	80%**	0
1995	100%	100%

* The current CAA requires 4 years of lead time for trucks over 6,000 GVWR.

** Small-volume manufacturers may exempt up to 10,000 vehicles until the 1995 model year.

4. Compliance Procedures

To satisfy the proposed requirement to certify 40 percent of the 1993 model year eligible production volume and 80 percent of the 1994 model year production volume to the cold temperature CO standards, manufacturers would be allowed to select any combination of LDV or LDT (except LDTs over 6,000 lb GVWR) families.[1] Only entire engine families could be included when determining the production volumes subject to cold CO standards. Compliance with the requirement that a certain percent of production volume meet the standard would be based upon the actual production of each engine family. If the manufacturer's year-end production report indicated noncompliance, the certificate(s) of conformity would be rendered void *ab initio* at the conclusion of the model year for any family in exceedance of the applicable standard.

To determine compliance, the manufacturers would be required to submit test data on one emission data vehicle within each engine family subject to the standard. To help ease the cost burden and facility lead time constraints on manufacturers, EPA is proposing to allow manufacturers to test a single data vehicle from the set of emission data vehicles within each engine family. The vehicle selected must be the one expected to emit the highest levels of CO at 20 °F in that engine family. At EPA's option, the Administrator may designate the test vehicle. This vehicle would be tested using the test procedure proposed today, or an alternate procedure approved in advance by the Administrator. However, even if alternative test procedures are approved by the Administrator for manufacturer testing, EPA would reserve the right to conduct confirmatory testing using the test procedure proposed today. As always, EPA would reserve the right to require, prior to granting certification, confirmatory testing of any data vehicle at low or high-altitude. Testing would occur at 20 °F at a facility of the Agency's choosing. The emission data vehicles tested would be those selected for testing according to the current regulations.[2] EPA would not require additional certification vehicles uniquely selected for evaluation of compliance with the cold temperature CO standard. Failure of a certification vehicle, including running change data vehicles, to meet the cold CO standard with deterioration factors (DFs) applied would be treated in the same manner as a failure under the current FTP.

EPA also expects that all vehicles would achieve proportional emission reductions for temperature conditions between a 20 °F test and the current FTP. The Agency has identified two options to assure this objective is met; these options are discussed later in this proposed rule.

EPA may also elect to test any fuel economy data vehicle for compliance with the cold temperature CO standard. Just as in the case of certification program emission data vehicles, the vehicle would be judged to be in compliance with the cold temperature CO standard if its 20 °F test result, with deterioration factor applied, was less than or equal to the standard applicable to that test vehicle. Failure of a fuel economy data vehicle to comply with the cold CO standard would be reason to reject the vehicle for fuel economy purposes and could be used by EPA to investigate the calibration of similar vehicles for noncompliance.

Due to the similarity between observed in-use DFs at 20 °F and typical certification DFs at 68 °F–86 °F,[3] EPA proposes to allow manufacturers to use the same DF for cold temperature CO compliance as used for certifying that vehicle to the 68 °F–86 °F CO standard. At the manufacturer's option, the manufacturer may use a higher DF for cold temperature CO compliance demonstration. Also at the manufacturer's option, a durability data vehicle may be tested at 20 °F to generate a cold temperature CO deterioration factor. Only in this latter case may a manufacturer use a cold temperature CO deterioration factor which is lower than the DF used to demonstrate compliance with the 68 °F–86 °F CO standard.

The standards will be subject to the enforcement provisions of sections 206 and 207 of the Clean Air Act. All LDV

[1] Trucks over 6,000 lbs GVWR may not be included in the calculation of a manufacturer's eligible production volume. Manufacturers may group trucks under 6,000 lbs GVWR with LDVs and determine an overall percent of production volume to satisfy the phase-in requirements.

[2] Manufacturers should note that this would include confirmatory testing of vehicles at high-altitude at a facility such as the Colorado Test Laboratory currently being used for high-altitude in-use compliance testing. Of course, the high-altitude facility would have to be capable of meeting the cold temperature test conditions. High-altitude compliance is discussed more throughly in section IV.I., Enforcement.

[3] Reference section on deterioration rates in chapter II of the regulatory support document. In general, it was found that, even though total gram per mile deterioration was higher at 20 °F, the in-use multiplicative DFs were lower at 20 °F than at 68 °F–86 °F due to the higher zero mile levels found at 20 °F.

and LDT production would be subject to potential 20 °F selective enforcement audits (SEAs). However, the proposed cold temperature CO SEA program would not begin until the 1995 model year to ensure that manufacturers have sufficient cold temperature testing capabilities.

All LDVs and LDTs would be subject to a 20 °F in-use compliance program for CO, similar to existing programs at 68 °F–86 °F for HC, CO, NOx and particulates. In-use enforcement would also apply at high-altitude.

III. Background

A. CO Air Quality

Today, an estimated 78 million people in the United States live and work in areas which do not meet the national ambient air quality standards (NAAQS) for CO. Forty-one metropolitan areas exceeded the NAAQS for CO in 1988–89. Since vehicle emissions account for approximately 90 percent of the CO emissions in most urban areas, efforts which reduce total motor vehicle CO emissions will help improve ambient CO levels. The CO nonattainment problem will improve in the near term as (1) new cars and trucks replace older emission control technology vehicles, (2) inspection and maintenance (I/M) programs are adopted or improved, and (3) other control strategies are adopted, such as widespread use of oxygenated fuels. Even with these planned motor vehicle program improvements, a number of areas are still expected to continue to fail to meet the CO air quality standards unless additional reductions in motor vehicle CO emissions are achieved. Furthermore, the benefits of these other programs are expected to level off by the mid to late 1990s. In the longer term, CO nonattainment could increase as total CO emissions from motor vehicles increase due to continued growth in vehicle miles traveled (VMT), and lower vehicle speeds from increased traffic congestion. (CO emissions per mile increase with a decrease in vehicle speed.)

Exceedances of the CO NAAQS typically occur during cool or cold ambient conditions. (The notable exception to this is New York City which has an average temperature of 62 °F during CO violations.) Approximately 20 percent are at temperatures of 20 °F and colder. The exceedances occur predominantly from November through February, most often during periods of low winds and atmospheric temperature inversions that often accompany low temperatures.

Because cold temperatures increase CO emissions and because local and state governments (except California) are prohibited from regulating motor vehicle emissions, EPA has been urged to adopt some sort of cold temperature CO standard by state and local governments with environmental problems. To gather more information on the cold CO issue from the state and local governments, vehicle manufacturers and other knowledgeable parties, EPA held a public workshop on March 8 and 9, 1988. Among the topics discussed at the workshop were the nature of the cold CO problem, short and long-term projected attainment status, recent technology developments, and test procedure issues.

Manufacturers stated that, while there is currently a CO problem, cold temperature emission standards would not solve the problem. Manufacturers suggested that the CO problem was due to congested traffic during atmospheric temperature inversions. Vehicles operating in congested traffic, they argued, would typically have been operating for some time and would therefore have warm engines. Thus, a cold temperature emission standard which resulted primarily in reductions in emissions during cold starts and engine warm-ups would not provide significant improvement in the CO problem. Manufacturers also stated their belief that local area transportation control measures could provide greater short-term benefits and that fleet turnover to the latest emission control designs would bring most local areas into compliance in the long term.

Representatives of state and local areas stated that, while fleet turnover might significantly improve attainment in the 1990s, gains due to vehicle emission control would then be overcome by growth in vehicle miles traveled and greater congestion. They believe that local area control measures are very expensive and yield limited results. They also maintain that cold CO standards would be very effective for most local areas and are necessary for attaining and maintaining the NAAQS, especially in the long term.

During the workshop, EPA personnel presented cold temperature vehicle test data, recent air quality monitoring data, and air quality projections. These presentations showed that CO concentrations are highly sensitive to meteorological conditions, such as wind speed and inversion height. In addition, EPA showed that growth in vehicle travel is a very important factor in the long-term attainment status for an area.

B. Motor Vehicle Emission Characteristics

Recent model vehicles have substantially improved emission performance compared to vehicles produced twenty years ago. The existing Federal CO standard of 3.4 g/mi represents a more than 90 percent reduction from CO levels produced by vehicles in the late 1960s. However, the existing standard applies only under the standardized test conditions of the Federal Test Procedure (FTP). Significantly for CO, the FTP has a controlled test temperature which can only range from 68 °F to 86 °F, which is generally above the ambient temperatures that are typical during most exceedances of the CO NAAQS. Therefore, proportional improvements in emission performance due to the 3.4 g/mi standard have not necessarily occurred under colder temperature vehicle CO emission performance has not improved as much and further improvements are necessary.

CO emissions from motor vehicles result from the incomplete combustion of fuel. In general, CO emissions are lower when the engine is operated with excess air which helps promote the complete combustion of the fuel. This excess air operating mode is referred to as "lean" operation. In contrast, "rich" operation occurs when excess fuel is added to the combustion process. During rich operation, insufficient oxygen is available to complete the combustion process and CO emissions are higher.

CO emissions from gasoline fueled motor vehicles are strongly influenced by both ambient and engine temperatures. Although gasoline is stored as a liquid fuel, it must be at least partially vaporized prior to combustion. When an engine is "cold" (i.e., has not been run in several hours), there is no engine heat to help promote vaporization. To assure that enough fuel is vaporized to allow the engine to operate properly, extra fuel is introduced during cold start.[4] While some "extra" fuel is necessary for cold starting and initial cold operation, the resulting rich fuel/air ratio has the undesirable effect of increased emissions from the engine. To compound the problem, during the first few minutes of operation the vehicle's catalyst is not up to operating temperature and, thus, its conversion efficiency is quite low. The high engine-out emission levels coupled with the low efficiency catalyst

[4] For purposes of this rulemaking, cold start can be defined as the portion of vehicle operation prior to the engine reaching normal operating temperature.

operation result in markedly higher tailpipe emissions. A sample of recent model year properly operating vehicles tested by EPA indicated that 90 percent of the increase in CO emissions at 20 °F compared to CO emissions at 75 °F occurs during the cold start.

While the existing Federal Motor Vehicle Emission Control Program (FMVCP) has achieved significant reductions in CO emissions at cold temperatures, the reduction does not compare with that obtained at warm temperatures. EPA also found in tests of recent model year vehicles that their CO levels were 75 percent lower than those of a group of 1969-1974 model year vehicles when measured at around 75 °F but only 51 percent lower when measured at around 20 °F.[5] EPA has also found that cold temperature emission performance varies widely, with some vehicles exhibiting very good cold temperature CO temperature while others are very poor. For example, EPA has tested recent model year vehicles with 75 °F CO emission levels below the 3.4 g/mi standard but with 20 °F emissions ranging from 2.7 g/mi to 35.9 g/mi.

Some of the differences in cold temperature emission performance are directly linked to the level of technology used by the manufacturers. For example, vehicles equipped with multipoint fuel injection systems benefit from their precise fuel control capabilities, helping explain their often low CO emission levels when tested at cold temperatures. In contrast, vehicles equipped with carburetors or throttle body injection suffer from the less precise manifold fuel distribution system. Cold manifolds tend to reduce fuel vaporization, resulting in fuel collecting on the walls of the manifold, poorer distribution of the fuel and the likely need for richer air/fuel ratios to assure adequate vaporized fuel delivery to all cylinders during cold start and engine warmup. Predictably, carbureted and throttle body injection vehicles tend to have higher cold temperature CO emission levels than multipoint fuel injection vehicles. EPA tested 102 recent model year vehicles in properly operating condition. Although average emissions were about the same at 75 °F, 20 °F emissions of the multipoint fuel injected vehicles averaged 12.4 g/mi, while comparable carbureted and throttle body injection vehicles averaged 15.3 g/mi.

Other reasons for the observed wide variance in cold temperature CO emission control are less well understood. For example, manufacturers often use timers which delay air injection to the catalyst. Air injection helps promote oxidation of CO in the catalyst, but with high levels of unburned or incompletely burned fuel entering the catalyst (as typically occurs during cold engine warmup), air injection can also cause catalyst temperatures to rise to the extent that catalyst damage could become a concern. For this reason, most manufacturers delay air injection to the catalyst during the initial stages of vehicle operation at cold temperatures. However, controlling catalyst temperatures unfortunately results in increased CO emissions. While the principle behind delaying air injection to protect catalysts is clear, it is not clear why some of the vehicles examined by EPA Delay air injection for up to 15 minutes after a 20 °F cold start (well beyond the time needed for stabilization of vehicle operation) while others delay air injection as little as 5 minutes. Excessive delay in introducing air injection can reduce catalyst efficiency and increase tailpipe CO emissions. Indeed, as discussed further in the section on feasibility of improved emission control, EPA has reduced the time delay for air injection on several vehicles, resulting in substantial reductions in CO emissions while still maintaining acceptable catalyst temperatures. In these cases EPA sees no reason for the long delays in introducing air injection. EPA believes that timely introduction of extra air can substantially improve CO emissions without a change in technology or increased hardware costs.

C. CO Nonattainment Problem

1. Contribution of Cold Start Emissions to the CO Problem

In the past, exceedances of the CO NAAQS were thought to be largely due to very localized conditions within an urban area, such as a particularly congested traffic situation. Correcting these "hot spot" problems then relied on local transportation control measures such as one-way streets and parking restrictions to improve traffic flow. However, evidence is accumulating which indicates that there is an areawide component to CO nonattainment, not just a hot spot problem. To a large degree the CO problem seems to result from elevated levels of CO subsequent to the morning rush hour which are sustained throughout the day and culminate in peak concentrations as cold start emissions are added by the evening rush hour.[6]

Cold start vehicle operation occurs prior to the vehicle's reaching normal operating conditions. An EPA study on the percentage of vehicles operating in the cold start mode concluded that a relatively large fraction of arterial traffic may be in the cold start mode during late morning, afternoon and early evening hours.[7] During the evening rush hours, high numbers of vehicles in cold start operation are concentrated together in the downtown areas, resulting in levels of ambient CO that violate NAAQS.[8]

2. Effects of Local Meteorology

Certain meteorological conditions exacerbate the CO problem. Under conditions of calm winds and temperature inversion, cold start as well as hot stabilized emissions contribute to both the day-to-day background levels of CO and the peak CO concentrations.[9] Inversion conditions occur when the ground level air cools more rapidly than the air immediately above a city. The warmer layer of upper air forms a "lid" above the urban area, trapping the cold air. This inhibits the degree of natural mixing and vertical dispersion of pollutants that would occur under noninversion conditions when warmer surface air rises and displaces cooler upper air. As a result of the decrease in vertical mixing, pollutants can accumulate beneath the lid of warm air and levels of CO will tend to increase with time across a broader geographic area. There is some indication that pollutants migrate during inversion conditions so that mixing occurs horizontally, contributing to the areawide nature of the CO problem.

The intensity of the inversion and its duration can influence the levels of CO in the air shed. The strongest inversions tend to occur during the months of October through March, when temperatures tend to be colder (and vehicle CO emissions are higher). Examination of hourly CO monitoring and weather data for Washington, DC, Phoenix, AZ, and Detroit, MI show that, in general, CO levels increase as mixing height and wind speeds drop to low

[5] Robert E. Larson, "Vehicle Emission Characteristics Under Cold Ambient Conditions," SAE Paper 890021, January 9-11, 1989.

[6] EPA memo from Mark Wolcott to Bob Larson, "Timing of CO Exceedances," January 20, 1987, included in Chapter I, Section B of the regulatory support document.

[7] EPA 450/3-77-023 "Determining the Percentage of Vehicle Operation in the Cold Start Mode," August 1987.

[8] Mark Wolcott, "Nature of the CO Problem," presented to the Public Workshop on Cold CO, March, 1988.

[9] Regulatory support document, Chapter I.

levels.[10] In cases where the inversion was sustained over multiple days, background CO levels tended to build and remain high so that the additional emissions from rush hour traffic cause peak CO concentrations which were higher than the previous days. The build-up of background CO levels over a multiple day period makes it more likely that emissions from peak traffic will cause a violation of the NAAQS.

3. Extent of the Nonattainment Problem

The 41 CO nonattainment areas comprise a diverse group ranging in size, geographic location and climatic conditions. Modeling done by the Agency estimating the future attainment status of 34 of the 41 nonattainment areas indicates that 13–24 areas may be out of attainment in 2010 unless further CO controls are implemented.[11] An in-depth case study of attainment prospects for 12 nonattainment cities suggests that without the proposed cold temperature standards, as many as 9 of the 12 case study cities could be in nonattainment with the NAAQS for CO in the year 2010.[12] The number of nonattainment areas should reach a low in the 1995–2000 timeframe due to effects of the FMVCP and current control strategies. However, projections indicate that the benefits from the current FMVCP and other control strategies already in place will be overtaken by increasing emissions due to anticipated growth in VMT, and the number of nonattainment areas will begin to grow after 2000. Projections show that application of the proposed cold CO standards will help mitigate the effect of travel growth beyond the year 2000, bringing areas into attainment and reducing CO inventories by 10–18 percent.

D. Industry Proposals

During the March 1988 public workshop, both Ford Motor Company and General Motors Corporation proposed what they termed "voluntary" standards for cold temperature passenger car CO emissions. GM offered to meet an average standard of 12 g/mi at 40 °F, and Ford offered to meet a standard of 14 g/mi at 20 °F on all new passenger cars. Both proposals would have based demonstration of compliance on low mileage development vehicles, with no deterioration factors or in-use enforcement (recall). Of the two proposals, Ford's was the more stringent. At the time, neither Ford nor GM offered a proposal for light-duty trucks.

On March 15, 1989, the major domestic manufacturers and a number of foreign manufacturers, under the auspices of their trade organizations, the Motor Vehicle Manufacturers Association (MVMA) and the Automobile Importers of America (AIA), offered a new proposal for a voluntary cold CO program. The program contained emission targets more stringent, overall, than the original Ford proposal. The actual numerical level was significantly lower (11 g/mi CO at 20 °F compared to the 14 g/mi level of the original Ford proposal), but up to 10 percent of each manufacturer's production would be exempted from the program. The proposal also recommended a phase-in of the target level over a three-year time frame beginning with the 1992 model year. Target levels were also proposed for light-duty trucks.

As with the earlier industry recommendations, no EPA enforcement was included, either during the preproduction certification program or in-use (i.e., no recall liability). Also, as previously noted, the proposed program would apply only to low mileage emission performance, not through the vehicle's useful life (50,000 miles for LDVs vs. 120,000 miles for light trucks) as with the current standards.

IV. Discussion of Issues and Options

A. Long-Term Air Quality

The Agency considered the option of promulgating technology-forcing cold temperature CO standards to meet all long-term air quality needs. However, this option was rejected due to the additional lead time required to establish and implement such standards. As discussed previously, many areas of uncertainty exist in forecasting the amount of future mobile source CO reductions needed to bring all areas into attainment. Accurately quantifying the amount of reductions needed would significantly delay promulgation of a cold temperature rule. In addition, such technology-forcing long-term standards, if needed, would entail additional lead time after promulgation of the standard for manufacturers to develop needed technology. Given the substantial evidence that cold temperature CO emissions significantly contribute to CO nonattainment in most nonattainment areas, the Agency has concluded that accurately assessing the long-term air quality needs should not delay the implementation of reasonable near term cold CO standards.

B. Test Temperature

CO NAAQS exceedances occur over a wide range of ambient temperatures. Due to their significant role in such exceedances, motor vehicles need to have their CO emission performance effectively controlled over this range of ambient temperatures to assure sufficient emission reduction. Setting the compliance temperature at the lowest level observed when CO air quality problems occur and assuring proportionate CO reduction over the rest of the temperature range would provide the greatest technical assurance of adequate control. As a countervailing consideration, however, the test facility cost tends to increase as the test temperature decreases. Thus, the technical benefits of determining emission performance at low temperature need to be balanced with the cost.

EPA considered two nominal test temperatures −20 °F and 40 °F. Twenty degrees fahrenheit represents a practical lower limit for violations of the CO ambient air quality standard. While almost 20 percent of the CO air quality violations in 1981 to 1986 occurred below 20 °F, the only location with exceedances of the NAAQS for CO at an average temperature below 20 °F is Fairbanks, Alaska. (Fairbanks experienced CO violations at an average temperature of −2 °F.) A test temperature of 40 °F was proposed by several manufacturers since, in their opinion, a 40 °F facility would be substantially less expensive and require less lead time to bring online than a facility capable of testing at 20 °F. Although manufacturers have not quantified this incremental cost or lead time requirement, EPA has concluded that the facility cost at 20 °F is higher than at 40 °F (lead time should not differ.) The colder test temperature would clearly require greater cooling capacity and controls to maintain a stabilized test temperature. The subfreezing temperatures may also require more costly facility and equipment designs. Further, the colder test temperature may make the test slightly more difficult to conduct, resulting in somewhat higher costs.

EPA's analysis of the costs associated with testing at 20 °F and 40 °F shows that a cost penalty of $0.09 to $0.12 per vehicle produced is incurred at 20 °F compared to the costs of 40 °F testing.[13]

[10] *Ibid.*
[11] *Ibid.*
[12] *Ibid.*

[13] Reference chapter III in the regulatory support document.

EPA has determined that this additional cost does not outweigh the benefits of testing at the colder temperature.

While some manufacturers believe that a demonstration of compliance with a 40 °F standard would indicate satisfactory performance down through 20 °F, EPA is not persuaded. In EPA's evaluation of current technology vehicles, several had significant changes in air pump and fuel control strategy between the current test temperature and 60 °F (for example, long delays in allowing air injection). Such changes can have a significant adverse impact on CO performance. With a 40 °F standard, similar changes below the test temperature would adversely impact vehicle emissions at lower temperatures. If this were to occur, this mobile source control program would provide reduced emission benefit to areas with CO air quality problems at colder temperatures.

Some manufacturers currently have the capability to test at 20 °F. Further, the fact that the standard does not require new technology and will be phased in over three model years should enable all manufacturers to obtain appropriate testing facilities. Finally, the added flexibility provided by EPA is not requiring 20 °F testing by the manufacturer except on one certification vehicle per family should ease the facility cost and capacity burdens on the manufacturer.

C. CO Emissions at Other Temperatures

This rule is intended to reduce CO emissions at all temperatures below the standard Federal Test Procedure (FTP), not just at 20 °F, and in cold temperature driving conditions not exactly duplicated by the FTP driving cycles. CO exceedances occur over a range of operating conditions. Many areas, for example, experience CO exceedances at temperatures between 75 °F (the nominal test temperature of the standard FTP) and 20 °F. For such an area, CO control at the intermediate temperature is most important. EPA is concerned that manufacturers may design vehicles which perform well during the specific test conditions of the FTP and the 20 °F test procedure but which have significantly worse emission performance under other operating conditions, including colder temperatures. EPA currently denies certification of vehicles equipped with emission control defeat devices, as such devices are inconsistent with the intent of the Clean Air Act. Defeat devices are devices designed to promote effective emission control of any system during the test procedures but allow ineffective control during other driving conditions. As evidenced by the need to propose cold temperature CO emission standards, the Agency's defeat device policy has had limited success in preventing unnecessary emission increases at colder temperatures.

With the proposed adoption of 20 °F cold temperature CO standards, EPA has an opportunity to revise the procedure by which it determines adequate emission control over the full range of colder operating conditions typically found in urban areas during the winter months. For temperature conditions between 68 °F (the lower temperature bound of the current FTP) and 25 °F (the upper temperature bound of the proposed cold temperature FTP),[14] EPA expects that all vehicles should be capable of achieving proportional emission control. No discontinuous, "step" changes in emission level should be necessary. The factors affecting cold start CO emissions gradually become more severe as ambient temperature decreases. Further, in contrast to the mechanical controls and on/off switches commonly used on vehicles ten years ago, the designs now being produced largely rely on electronic controls, monitored and modulated by computer functions, which can be designed to behave in a smooth, continuous function. With these types of controls, no abrupt change in emission performance is necessary.

EPA has insufficient test data to establish the exact form this proportional control should take, whether responding linearly to a change in ambient temperature or following some other continuous function. However, given the gradual, continuous nature of the factors affecting emission control and the electronic sophistication of today's vehicle designs, EPA believes properly designed vehicles should be able to achieve emission levels which increase in a generally linear relation as ambient temperatures decrease toward the nominal 20 °F test condition proposed above. In recommendation that EPA adopt a 40 °F standard as adequate to predict emission levels at colder temperatures, at least some manufacturers supported this linear relationship between ambient temperatures and CO emission levels of properly designed vehicles. Comments, technical rationale, and any available supporting data are requested on the appropriateness of a linear relationship (or an alternative function) between ambient temperature and CO emission level, given that vehicles are designed to meet the the proposed standard at 20 °F.

Given a linear relationship, a vehicle tested at some in-between temperature would be expected to have CO emissions no higher than a linear interpolation between the engine family emission limit at 25 °F and the FTP CO standard at 68 °F (for example a LDV tested at 40 °F with existing 3.4 g/mi FTP standard and a standard of 10.0 g/mi at 20 °F would work out to be about 7.7 g/mi). Vehicles which achieved such proportional emission reductions would satisfy EPA's concern with the cold temperature performance of the vehicle under FTP-type driving conditions. EPA could choose to conduct tests at these intermediate temperatures and compare the test results with the levels predicted by the line to assure proportional reductions are achieved.

EPA is considering two alternative methods for assuring this proportional control objective is achieved and will consider other options recommend by comment to this notice. The first and most straightforward method would establish a straight line (or some other continuous function) between the cold temperature CO standard plotted at 25 °F and the warm temperature CO standard plotted at 68 °F and use this line as an actual compliance standard which varies over the temperature range. Due to the ability to directly compare emission performance to a precise standard, this method is easily enforceable and thus tends to provide assurance of fully adequate emission control. Under this option, EPA's full enforcement program (including Selective Enforcement Audit program testing and in-use compliance program testing as well as certification program testing) could be applied at any temperature between the lower end of the cold temperature FTP temperature range (15 °F) and the upper end of the current FTP temperature range (86 °F). For any given compliance test, the stabilized temperature of the vehicle at the start of the test (as measured by the oil temperature) would be used to determine the pass/fail level from the line function standard. EPA recognizes that requiring manufacturers to conduct Selective Enforcement Audit (SEA) program testing at various temperatures

[14] As in the case of the current FTP, the cold temperature FTP would have a range of acceptable operating temperatures. While 20 °F would be the nominal test temperature, and, presumably, the normal condition for routine compliance testing, any test conducted within the 15 °F–25 °F temperature range would be considered a valid test under the proposed cold temperature test procedures. The proposed test procedures allow variances of up to +/–5 °F in test cell temperatures due to the difficulty of maintaining a precise test temperature. In addition, there should be no significant difference between the technology required to comply with emission standards at 15 °F as compared to 20 °F. Vehicles tested at any of the temperatures within this range would be expected to comply with their cold CO standard.

might have facility or cost impacts. EPA requests comment on these impacts and on the alternative of restricting SEA testing to only certain temperature conditions.

The second option identified by EPA would explicitly define devices or control strategies as defeat devices if they result in emission levels higher than the line described above. In addition to EPA's current policy on defeat devices, this option would use the line between 68 °F and 25 °F to create a specific performance test guideline describing how EPA will determine if the vehicle contains a cold temperature defeat device. Vehicles failing to meet emission levels set by these special performance tests would not face the same penalties as vehicles not complying with official emission standards. For example, marginally higher emissions on the special performance test would not necessarily prevent certification or, in the case of in-use vehicles, subject the manufacturer to potential recall simply on the basis of noncomplying test results. However, manufacturers would have the burden of proving to EPA's satisfaction why emission levels above the interpolated line on a special performance test are reasonable, do not result in unnecessary excess emissions, and, therefore, should not be considered the result of defeat device use. EPA requests comments as to the advantages this second option might have over the first option described above.

In addition to these two specific options, EPA solicits recommendations for alternative methods to assure appropriate CO emission control between the nominal 75 °F and 20 °F test procedure temperature conditions.

EPA expects this proportional control to continue for temperature conditions below the 20 °F FTP conditions (with 15 °F as the lower bound). EPA could extrapolate the line in some fashion to determine general target levels of acceptable emission performance below 15 °F. However, recognizing the implications of testing at temperatures lower than the 20 °F FTP conditions (in particular, potential facility design impacts), EPA would prefer not to conduct tests below 15 °F. Therefore, comments are solicited as to the best method of assuring continuous control below 15 °F without requiring FTP-type emission testing. For example, one approach could have EPA determine any device or strategy to be a defeat device if it involves a sudden nonproportional change in operating characteristics below 15 °F which could result in a significant increase in emissions and which is not technologically necessary. The performance of the most advanced technology could be considered in determining what emission increases might be technologically necessary.

Regardless of which approach is ultimately selected, EPA will continue to evaluate designs for their performance at colder temperatures under driving conditions other than an FTP-type driving schedule. This is consistent with the practice currently in place wherein EPA evaluates vehicles for defeat devices over the wide range of ambient temperatures and driving schedules typically found in-use. Today's rulemaking is not intended to change this aspect of EPA's defeat device program.

EPA requests comments on the specific methods described above and alternative recommendations for dealing with CO emissions across the range of temperatures. In particular EPA requests that comments quantify and contrast the environmental, cost, and administrative advantages of any of the options.

D. Industry Voluntary Cold CO Proposal

There were a number of valuable features in the industry proposal for a voluntary cold CO program (outlined in section III.D., Industry Proposals). The suggested implementation schedule was more aggressive, initially, than is possible when promulgating regulations. The proposal also suggested that the standards be phased in over a period of three years, a concept which has been adopted in this NPRM with slight modification. Also considered by EPA, but not incorporated in this NPRM, was the proposal to allow manufacturers to submit to EPA a statement of compliance with cold CO standards without providing vehicle test data. EPA is soliciting comments on the appropriateness of allowing the manufacturers to submit such a statement, if the Agency reserves the right to confirmatory testing of any emission data vehicle at 20 °F at its own facility.

Despite the positive aspects of the industry proposal, EPA has decided not to pursue the industry proposal for a voluntary cold CO program. This is because of concerns in three areas. The first two are general concerns with any voluntary program. The last is specific to the MVMA/AIA proposal.

The first general concern with voluntary programs is the inability to enforce uniform compliance across the industry. If some manufacturers do not comply with a voluntary standard, or make only token efforts to comply, this could have two effects. First, manufacturers which expend their resources to comply may find themselves at a competitive disadvantage compared to manufacturers who have expended their resources elsewhere. Not only would this be unfair to those manufacturers who comply, but it could economically pressure all manufacturers to expend less effort on cold CO compliance. Second, the effectiveness of the program could be seriously undermined if a significant number of vehicles are produced by manufacturers who are not complying with the voluntary standards.

Our second general concern with voluntary programs is the lack of assembly line and post production enforcement. The preproduction certification program is very effective at ensuring that vehicles have been designed to meet the emission standards. However, follow-up enforcement is also important to ensure that production vehicles are actually built as designed and that emission control systems do not deteriorate too quickly under in-use driving conditions. The lack of any SEA or in-use enforcement could reduce much of the potential benefits.

The concern specific to the MVMA/AIA proposal is the exemption of 10 percent of vehicles from the standards. A significant number of current technology vehicles emit 2 to 3 times the proposed standard for CO emissions at 20 °F. Exempting such vehicles could significantly degrade the overall benefits of the program. Also, some local areas may have significantly higher sales of such exempted vehicles than the 10 percent national average, and this could potentially have an adverse impact on local air quality.

EPA has not currently determined any effective method of addressing these concerns with voluntary programs. Therefore, the Agency has decided to proceed with rulemaking. This does not mean that the Agency has dismissed any consideration of additional voluntary cold CO program proposals. Other voluntary program proposals submitted in response to this NPRM will be considered as part of this rulemaking process.

E. Standards

EPA is proposing 20 °F standards of 10.0 g/mi for LDVs, 12.0 g/mi for LDT1s, and 15.0 g/mi for LDT2s. These levels were chosen based upon EPA's analysis of the results of several cold temperature testing programs. To approximate the projected 1993 and later model year vehicle fleets, only current technology vehicles were used in the analysis (i.e., 1983 and later model

year, closed-loop, fuel injected or 4-cylinder carbureted vehicles). To approximate the requirement that the cold CO standards would apply to properly used and maintained vehicles, only vehicles which were projected to meet the 75 °F CO standard at 50,000 miles were used. For this analysis 97 LDVs, 21 LDT1s, and 21 LDT2s met these criteria when tested by EPA at its Motor Vehicle Emission Laboratory in Ann Arbor, Michigan. Also used in the analysis were 11 LDVs tested by the National Institute of Petroleum and Energy Research (NIPER) under contract from EPA and 9 LDVs tested by EPA's office of Research and Development.

An evaluation of the relationship of CO emissions to cold start fuel enrichment and of feasible reductions in cold start fuel enrichment at cold temperatures projects that 70–80 percent of 4-cylinder multiple point injections (MPI), 65–75 percent of 6-cylinder MPI, and 10–15 percent of 4-cylinder throttle body injection (TBI) LDVs could meet a 10.0 g/mi level simply with improved cold start fuel enrichment strategies. The remainder of the 4-cylinder and 6-cylinder LDVs are projected to be able to comply with a 10.0 g/mi level with some combination of improved cold start fuel enrichment strategy, improved closed-loop control strategy, air pumps, aspirators, or adoption of MPI. Each of these technologies is in common use on many current production vehicles.

Eight-cylinder vehicles could have greater difficulty than smaller vehicles in meeting the proposed standards, since the average current 20 °F CO emissions of these vehicles are very high, even for those vehicles already equipped with MPI and air pumps. However, most of these vehicles delay air injection for significant periods of time (i.e., more than 5 minutes) during cold starts at cold temperature. To evaluate the potential CO reductions that could be achieved with additional air injection, reduced fuel enrichment or both, EPA conducted a test program on five large displacement engines. The first part of this program involved injecting supplementary air during 20 °F cold starts. Catalyst temperatures were monitored and the air injection strategy modified to prevent excessive catalyst temperatures. The second part involved reducing the fuel delivered to the engine during the first 3 minutes of the test. The third part consisted of modifying both air and fuel strategies. The results of this program were, typically, 20–30 percent reductions in cold temperature CO emissions for either injecting supplemental air during cold starts or reducing cold start fuel enrichment. These reductions were accomplished without excessive catalyst temperatures or any indication of driveability problems. The results of modifying both fuel and air strategies simultaneously were more variable, but typically resulted in CO reductions greater than the sum of the individual reductions. Several vehicles had emissions below 10 g/mi at 20 °F.

While this test program did not represent the full range of temperature and driving conditions with which manufacturers must be concerned, it served to demonstrate that large reductions in cold temperature CO emissions are reasonably available on large engines using existing technology. The feasibility of large engines complying with the proposed standards is further supported by test data on the Ford 300 CID LDT engine with MPI. Four of these vehicles were tested as part of our test program and generated average 20 °F CO emissions of 8 g/mi at low mileage, without modification. While this Ford engine is a six-cylinder engine, it is virtually the same size as most of the 8-cylinder engines on the market and so provides some indication of the potential performance of similar large block engines. While it may not be reasonable to expect that every engine can be reduced to less than 10.0 g/mi with the simple modifications used by EPA, a level of 10.0 g/mi for even large 8-cylinder engines appears achievable.

The Agency's analysis also indicates that, for a given fuel system type and engine size, light trucks have cold CO emissions comparable to those of passenger cars. However, the LDV standard is only applicable for 50,000 miles, while the useful life of LDTs is set at 120,000 miles. Assuming that cold temperature deterioration is linear to 120,000 miles, EPA has calculated that a 50,000 mile standard of 10.0 g/mi is equivalent to a 120,000 mile level of 12.6 g/mi.

In addition to useful life considerations, the fleet mix also affects the determination of equivalent stringency standards for light trucks. The difficulty in controlling cold temperature CO emission performance appears to be closely related to the size of the engine. As discussed earlier, smaller engines are easier to control than the larger engines.[15] Thus, applying the same technology to each, we expect small displacement engines to exhibit better cold temperature CO performance than larger engines. Trucks less than 3,750 loaded vehicle weight (LDT1) are typically equipped with four-cylinder and small six-cylinder engines. In comparison to the LDV class, which includes vehicles of comparable weight but some large displacement as well as small displacement engines, the LDT1 class of vehicles should be capable of slightly better low mileage emission CO performance than the average LDV. Therefore, EPA believes that the LDT1 vehicles should be able to meet a 120,000 mile standard of 12.0 g/mi at 20 °F.

The LDT2 class, on the whole, is comprised of vehicles designed to handle larger loads than passenger cars and small trucks. To accomplish the handling of these larger loads, LDT2s generally are heavier and have higher ratios of engine speed to vehicle speed, larger frontal areas, worse aerodynamics, and larger engines. These factors result in inherently higher emission levels. Therefore, the Agency believes that a 120,000 standard of 15.0 g/mi is appropriate for LDT2s to avoid compromising the load handling capability of these vehicles or requiring the use of new technology. This approach (i.e., higher standards for LDT2s) is similar to recent rulemaking promulgated by both EPA (e.g., NOx standards for LDTs, March 15, 1985, 50 FR 10606) and the California ARB.

F. Optional Averaging Program

EPA requests comments on whether manufacturers should be permitted to demonstrate compliance with the cold CO standards through emissions averaging, trading and/or banking. Averaging allows some engine families to emit at levels above the standard, as long as other engine families produced by the manufacturer can offset these higher emissions by emitting at levels below the standard. Trading, an extension of the averaging concept, allows different manufacturers to average their emissions with one another. Banking, also an extension of the averaging concept, allows manufacturers to produce emission credits and save them for future use within an averaging or trading program. These programs allow manufacturers to optimize emission control systems and

[15] One manufacturer has pointed out that vehicle weight also affects cold CO emissions. While EPA agrees weight can have some impact on Cold CO emissions, vehicle weight and engine size are closely related for most of the vehicle fleet. This makes it difficult to separate the effects of each parameter on cold CO emissions. Regressions run on the available cold temperature data indicate engine size is a significantly better predictor of cold CO emissions than vehicle weight. Thus, the Agency has used engine size, rather than vehicle weight, in conjunction with fuel system type to conduct its analyses.

reduce costs while maintaining the same degree of emissions reduction.

EPA is aware that its authority to permit mobile source averaging, trading and banking has been an issue in the ongoing Congressional effort to amend the CAA (see S. 1630 as passed by the Senate on April 3, 1990 and by the House on May 23, 1990, and accompanying reports). Provided that EPA retains this authority, EPA will issue a supplemental notice proposing such programs before finalizing this rule.

EPA solicits specific comment on the appropriate structure of any such programs and on what restrictions should be established. (The Agency expects that any program would likely be modeled after the light-duty vehicle particulate averaging program.)

G. Lead Time/Technology

1. Emission Control System Redesign

The amount of lead time needed to comply with the proposed requirements in this NPRM would vary by engine family. One of the most effective methods of reducing CO emissions is to improve the fuel enrichment calibrations during cold starts at cold temperatures. While this requires some development time and cost, it does not require any hardware changes and should have no adverse effect on the durability of the emission control system. Therefore, lead time is necessary only for calibration development, which the Agency estimates to be 6 to 9 months.

Manufacturers generally finalize their engine calibrations for each model year (MY) approximately 6 to 9 months prior to production, or roughly January 1 of the preceding calendar year. For example, calibrations for the 1993 MY will be generally finalized by January 1, 1992, or a little less than one year after the anticipated date of publication of the final rule. Therefore, the 1993 MY provides sufficient lead time only for vehicles which will be able to comply simply with recalibration.

The Agency has estimated that up to 50 percent of the 1993 and later MY LDV fleet will require more extensive modifications, such as conversion to MPI or provision of additional air to the catalyst for oxidation during cold starts.[16] (This percentage may go down as manufacturers adopt more extensive use of these technologies in response to other pressures such as future more stringent hydrocarbon standards or higher fuel economy standards.) These systems are in common use now and by the mid 1990s all major manufacturers should have had experience with such systems and, thus, require minimal lead time to design any modifications. However, there will be some lead time necessary for retooling and/or purchase of system components to expand use of such systems to other parts of a manufacturer's product line. Therefore, vehicles that require conversion to MPI or the addition of air pumps or aspirators may require an additional one to two years of lead time (i.e., 1994 or 1995 MY). Further, vehicles with existing air pumps may need to have their calibration strategies modified to provide additional air at cold temperatures. While this does not involve any hardware changes and should take less than a year for design modification, the addition of supplemental air can cause excessive catalyst temperatures and deterioration if improperly done. To mitigate any such problems, the Agency believes that manufacturers should be allowed an additional year to investigate the effect of the additional air on catalyst durability. EPA estimates that up to 50 percent of the 1993 and later MY LDV fleet may require these more extensive modifications, most of which could be accomplished by the 1994 MY with the remainder reasonably in place by the 1995 MY.

The results of EPA's testing program indicate that large 8-cylinder engines may have additional problems complying with the proposed standards, due, at least in part, to the larger amount of metal which needs to be heated and the higher exhaust mass flow during warmup. These vehicles, which comprise roughly 12 percent of the LDV fleet, may require an additional one to two years of development and evaluation of cold CO control strategies to comply with the standards (i.e., 1994 or 1995 MY).

The proposed LDT1 cold CO standard was chosen to be comparable in stringency to the LDV standard. These vehicles are similar in weight and use similar technology to LDVs. In addition, the LDT1 contains a much smaller number of large, 8-cylinder engines. Therefore, EPA believes that LDT1s should follow the same phase-in schedule as LDVs.

LDT2s are heavier and use larger engines, on average, than LDVs or LDT1s. However, this difference was taken into account for the proposed LDT2 cold CO standards. The numerically higher standard will allow many designs in the LDT2 class to comply with minimal hardware changes, as well as making it feasible for others to comply with less lead time.

2. Facility Lead Time

Based upon comments supplied by manufacturers and estimates supplied by contractors, EPA has estimated that construction of a new 20 °F emission testing cell will take from one to two years. As the final rule on cold CO is expected to be promulgated at least one year prior to finalization of engine calibrations for the 1993 MY, cold temperature facility availability is expected to be a concern only for the 1993 MY.

Some cold temperature testing capacity already exists in the industry. At least three European, five Japanese, and one domestic manufacturer have existing facilities for 20 °F emission testing. In addition, one more domestic manufacturer has the capability of testing down to 35 °F and at least two domestic independent labs offer 20 °F testing on a contract basis. Given that only 40 percent of the manufacturers' fleet must comply in 1993, coupled with the exemption for small-volume manufacturers, EPA does not believe that facility lead time should have any impact on the feasibility of the proposed phase-in schedule. EPA also expects that prudent manufacturers will seek to assure adequate test capacity prior to promulgation of final rules, including initiating additional facility construction or arranging for contracted cold CO testing as the manufacturer deems appropriate.

H. Phase-In

A manufacturer may exempt up to 60 percent of its production or 10,000 units, whichever is greater, in model year 1993. The percentage exemption decreases gradually until 1995 when all vehicles must comply. Given the lead time constraints discussed above, this three year phase-in of cold temperature CO emission standards should provide ample time for manufacturers to apply technology in an orderly fashion across their product lines. The phase-in schedule is slightly less aggressive than might be indicated by the overall lead time needed by the industry to allow for variations in fleet mix between manufacturers (i.e., some manufacturers' fleets may have a higher proportion of harder-to-control engines than the industry average on which the phase-in schedule is based).

The current Clean Air Act has been interpreted to require four years of lead time for trucks over 6,000 pound GVWR. Therefore, standards for these vehicles would not take effect until the 1995 MY

[16] Ref. chapter II in regulatory support document. The phase-in schedule for this proposed rule is slightly less aggressive than might be indicated by the overall lead time needed by industry.

when sufficient lead time will allow 100 percent of these vehicles to comply. However, the same technological constraints apply to these larger trucks as to the smaller trucks and LDVs. Without the current Clean Air Act's four-year lead time mandate, trucks with greater than 6,000 pounds GVWR should be able to follow the same phase-in schedule as the other trucks and LDVs. Should the Clean Air Act be amended to remove this mandated four-year lead time, trucks with over 6,000 pounds GVWR are proposed to be included with other trucks and meet the same phase-in schedule.

EPA believes this phase-in approach for compliance will yield greater air quality improvements more quickly and at lower cost than the traditional approach of implementing the requirements no sooner than the first year in which all vehicles could be made to comply. Because the necessary lead times for different vehicle types vary, this phase-in approach should be particularly useful for a manufacturer with a diverse product line, since it can plan an orderly approach to full compliance.

I. High-Altitude

Several high-altitude areas, including Denver, CO; Provo, UT; and Reno, NV, experience significant violations of the CO NAAQS. The combined effect of cold temperatures and high-altitude appears to be affecting CO violations in these areas.

CO emissions are strongly influenced by the amount of air available for fuel combustion. At high-altitude, the air is less dense than at low-altitude. Without compensation, a low-altitude vehicle driven in a high-altitude area will use the same amount of fuel but will have less oxygen delievered to the engine. With the resulting increase in the fuel/air ratio, the fuel will combust less completely, resulting in increased CO emissions. While most current technology vehicles are now equipped with oxygen sensors which measure the amount of oxygen in the exhaust stream and can compensate at least in part for air oxygen content, these systems are unable to function until the vehicle is warm. Therefore, CO emissions during vehicle warm-up can substantially increase at high-altitude.

EPA has regulations in place which require all LDVs to meet emission standards under both low- and high-altitude conditions. As a result of this "all-altitude" requirement, essentially all LDVs have devices installed which automatically compensate for changes in barometric pressure and altitude.

In a limited test program conducted by the Coordinating Research Council (CRC), vehicles with automatic altitude compensation had average cold temperature emissions at high-altitude that were 30–40 percent lower than at low-altitude.[17] This indicates that altitude compensation devices function effectively at all termperatures.

Therefore, EPA is proposing that the existing regulations requiring all LDVs to meet the emission standards at all-altitudes be extended to cold temperature CO requirements.

LDTs currently come under less rigorous provisions. LDTs must meet separate and less stringent high-altitude emission standards. However, automatic high-altitude compensation similar to current LDV requirements are included in the President's proposed CAA amendments of 1989. Therefore, at this time, EPA anticipates that LDTs will be required to meet the same emission standards at high- and low-altitude when tested under the current FTP at warm temperatures.

EPA is proposing to make the high-altitude LDT cold CO emission standards consistent with the anticipated warm temperature high-altitude provisions in the President's proposed CAA amendments. Thus, LDTs would be required to comply with the same numeric cold temperature CO standards at both high- and low-altitudes.

J. Enforcement

EPA's current manufacturer compliance program relies on three complementary elements: Preproduction certification, selective enforcement auditing (SEA) conducted at the end of the assembly line, and in-use enforcement. Each of these serves unique functions and together they offer a strong program capable of assuring adequate manufacturer compliance with emission requirements. In developing these cold temperature CO regulations, EPA considered whether modifications to the basic approach to enforcement were warranted. Specifically, EPA considered the level of oversight appropriate for monitoring the manufacturer's decisions and the level and timing of enforcement action necessary to assure compliance.

As mentioned earlier, the major industry associations recommended a specific, voluntary compliance proposal. As described in section III.D., the MVMA/AIA proposal relied entirely on the voluntary commitment of manufacturers to comply with certain emission performance targets at low mileage. Under that proposal, EPA would have no enforcement authority should it determine that a manufacturer was not meeting its performance commitment.

The primary advantages of voluntary enforcement are potentially lower costs for cold temperature testing and compliance demonstration and perhaps increased flexibility for the manufacturer in demonstrating compliance. The disadvantages, as discussed in detail in section IV.D., are the risk of all manufacturers not making good-faith efforts to comply and the lack of assembly line and in-use enforcement.

The Agency believes that these are significant risks which could result in substantial reductions in the effectiveness of the standards. Also, as outlined in chapter VI of the regulatory support document, the costs of mandatory enforcement programs, on a per vehicle basis, are estimated to be only $0.02 per vehicle. For these reasons, EPA believes a regulatory approach is appropriate.

1. Preproduction Certification Options

The current preproduction certification program requires the manufacturer to conduct emission tests on all of its certification test vehicles and supply this data to EPA. EPA then has the option to perform confirmatory tests on any or all of the manufacturer's test vehicles. Typically, EPA performs such confirmatory tests on less than half of the manufacturers' certification test vehicles. This confirmatory testing is conducted at EPA's laboratory test facility. EPA's experience has shown that this level of testing has been effective in enforcing proper testing by manufacturers.

For this proposal, EPA considered two certification testing options. The first would require each manufacturer to test the emission data vehicle from each engine family which is determined to be the worst case for cold CO compliance, with EPA retaining the right to test for confirmation any emission or fuel economy data vehicle. The second would be patterned after the current program's requirements, as described above.

The first option would reduce the testing and lead time burden on the manufacturer. Since CO is the only pollutant of concern at cold temperature, EPA does not believe it is necessary for manufacturers to test as many vehicles

[17] Coordinating Research Council, "Preliminary Report on Winter CO Emissions Using Gasoline/Oxygenated Blends," Presentation for the 4th Annual Mobile Sources/Clean Air Conference, Sept. 12, 1988.

as at 68 °F–86 °F, where CO, hydrodcarbon and NO_x emissions are all of concern. Testing of one emission data vehicle per engine family at 20 °F should provide sufficient mandatory data to determine compliance with the cold CO standards.

To ensure that the manufacturers have done a credible job of evaluating their vehicles, the Agency would reserve the right to perform confirmatory testing of any emission (or fuel economy) vehicle at its own facility at 20 °F. (A description of how this would work was presented in section II.B.5., above.) EPA is expanding its cold testing facilities and will have sufficient capacity to test at 20 °F some of every manufacturer's product line every model year, and all of any manufacturer's emission vehicles should the need be demonstrated. This option, combined with extensive test capacity, would give EPA the flexibility to increase or decrease its level of confirmatory testing as manufacturer compliance rates warrant.

The advantages of this option are that it would ensure that all manufacturers design their vehicles to meet the cold CO standard while minimizing the manufacturers' cost of compliance testing. Manufacturers would have some flexibility to determine that their vehicles meet the standard by means they believe appropriate, while EPA's ability to approve alternative demonstration and confirm the emission compliance data vehicles by 20 °F testing would ensure that manufacturers were using appropriate methods.

The second option would test vehicles at cold temperatures using the same procedures used for 68 °F–86 °F compliance demonstrations. In this case manufacturers would be required to test each emission and fuel economy vehicle under 20 °F test conditions to demonstrate that it meets the cold temperature CO standard prior to submitting the vehicle for possible confirmatory testing by EPA. The advantage of this approach would be that it requires the manufacturers to demonstrate compliance on more vehicles per engine family to ensure they have been designed to pass the 20 °F CO standard. As in the case of the existing program, the availability of manufacturer data may reduce the need for the Agency to test all of the vehicles, possibly reducing testing costs to the government. The disadvantage is increased manufacturer costs due to potentially substantial increases in the number of 20 °F tests and increased cold temperature test capacity and facility lead time burden to accommodate the increased number of tests.

EPA is recommending an enforcement program which combines SEA and in-use enforcement with a 20 °F confirmatory test program for certification.[18] This combination of enforcement program elements provides significant risk to the manufacturer who has an inadequately designed vehicle. The Agency believes that the incremental control benefits of requiring the manufacturer to test all of its data vehicles at 20 °F do not outweigh the industry cost and lead time disadvantages. Therefore, this full testing option is not being proposed as EPA's primary option. However, EPA requests comments on the incremental costs and benefits of requiring manufacturers to test all certification and fuel economy vehicles at 20 °F prior to submitting these vehicles for potential confirmatory testing. If indicated by the comments or EPA's further analysis, EPA may adopt in the final rule a requirement that the manufacturer test each emission vehicle at 20 °F and, as a separate decision, the requirement that the manufacturer test each fuel economy vehicle at 20 °F.

2. High-Altitude Enforcement

Section 207(c)(1) of the Clean Air Act, 42 U.S.C. 7641 (c)(1), clearly gives EPA the authority to conduct in-use enforcement testing on high-altitude vehicles. Previous rulemaking packages have documented the Agency's policy of foregoing SEA testing at high-altitude locations (e.g., 48 FR 7395, February 18, 1989). The Agency is proposing similar high-altitude provisions for cold temperature CO emissions, i.e., vehicles will be subject to in-use enforcement at high-altitude at 20 °F but exempt from SEA testing at high-altitude locations.

The Agency is also proposing to extend the high-altitude certification procedures first established in 46 FR 23053, April 23, 1981, to 20 °F high-altitude certification. Consistent with the proposed certification procedures in this rule, EPA would also specifically reserve the right to perform a confirmatory test, prior to granting certification, of any data vehicle at high-altitude at either 20 °F or standard FTP temperatures.

K. Safety

This rule has been fully coordinated with the Department of Transportation's National Highway Traffic Safety Administration (DOT) (NHTSA). They had no comments related to vehicle safety. EPA believes that there are no adverse safety impacts.

L. Test Procedure Issues

CO emissions at cold temperatures have not been regulated in the past. Therefore, the Agency has never established official test procedures for cold temperature testing. At the cold CO workshop held by EPA in March 1988, the manufacturers emphasized the need for cold test procedures that would ensure repeatable test results and correlation between different test facilities. The Agency concurred with this need and began developing such test procedures soon after the workshop.

The proposed test procedures are modeled after the current, FTP,[19] with changes made as required to conduct testing at colder ambient temperatures and to better represent cold temperature vehicle operation. In December 1988, a draft of EPA's cold temperature test procedures was circulated throughout industry and to other interested parties to obtain comments. These comments have been reviewed and incorporated into the proposed procedure. A summary and analysis of these comments are contained in chapter IV of the regulatory support document.

A number of proposed changes to the standard FTP were made in response to the comments received, in addition to those changes made initially. The following is an outline of these proposed changes for the three major areas of the test:

1. Vehicle Prep

a. A requirement that the fuel be at the nominal test temperature before the start of the prep cycle was added.

b. The fuel type was changed to be representative of regular unleaded gasoline available in the winter months.

c. The requirement that tire pressure be measured at the nominal test temperature was deleted.

[18] Note that EPA is also considering enforcement options at other temperatures. See section IV. C. of this preamble.

[19] The FTP is a test procedure that collects emissions under transient driving conditions, including acceleration, deceleration, stop and go, and constant speed driving modes. The FTP also includes "loaded" conditions where the test vehicle is subjected to simulated operation loads that represent proper test vehicle weight, aerodynamic drag, and other frictional forces. The FTP exhaust test cycle begins after the test vehicle has been "soaked" (i.e., placed in the controlled ambient environment of an enclosed room with all vehicle power systems turned off for twelve hours minimum) to ensure that all vehicle systems start the test at the same baseline temperature. The actual test starts with one cold start driving cycle followed by one hot transient driving cycle, and finishes with one hot start driving cycle. Emissions are collected from each cycle in a separate enclosed collection medium known as an emission bag. FTP emissions are based on a weighted average of emissions from all three emission bags.

d. The 10 percent extra loading requirement for vehicles with air conditioning was deleted.

e. The allowance of heater and defroster usage during the emissions test (in any combination) was added.

f. The specification that the test cell temperature be measured at the intake of the fixed speed cooling fan was added.

g. The temperature ranges and tolerances were modified.

2. Vehicle Soak

a. An alternative method was specified for cooling the vehicle to the nominal test temperature before the test which included a forced-cooldown.

b. Temperature tolerances were modified for the standard soak procedure.

3. Emissions Test

a. The fuel fill and heat build prior to the emissions test were deleted.

b. The time between the dynamometer warm-up and the start of the emissions test was shortened.

c. A requirement was added that, if a vehicle stabilized at 20 °F was brought through a warm area prior to the emissions test, the vehicle must be restabilized at 20 °F in the test cell prior to the start of the test.

d. The requirement that tire pressure be measured at the nominal test temperature was deleted.

e. The 10 percent extra loading requirement for vehicles with air conditioning was deleted.

f. The allowance of heater and defroster usage during the emissions test (in any combination) was added.

g. The specification that the test cell temperature be measured at the intake of the fixed speed cooling fan was added.

h. The temperature ranges and tolerances were modified.

i. Humidity limits were deleted.

j. The requirement to couple the rolls on twin-roll dynamometers was added.

The test conditions specified in the proposed regulations pertain to a nominal 20 °F test. For tests conducted at other test temperatures (see section IV.C.), EPA is proposing to adopt similar temperature tolerances around the alternative nominal test temperature.

EPA is soliciting additional comments and information on several cold temperature test procedures issues. These are:

(1) *Dyamometer warmup.* The NPRM specifies a 5–10 minute period between the dyanmometer warmup and the beginning of the test as appropriate to ensure the dynamometer remains warm, but limited data indicates that warming the dynamometer before the test may not have a significant effect on dynamometer frictional horsepower, which in turn may not significantly effect vehicle emissions.[20] Comments are solicited on the need for dynamometer warmup.

(2) *Fuel temperature.* The NPRM proposes that the fuel in the vehicle must be at the nominal test temperature ±10 °F before the start of the prep to account for the potential effect of fuel property changes with temperature. Comments are solicited as to whether the benefits of stringent fuel temperature specifications justify the likely higher costs.

(3) *Fuel Specifications.* EPA is concerned about the effect fuel properties such as RVP may have on cold temperature CO emission test results. Therefore, the Agency is proposing that vehicles be capable of complying with the cold temperature standard when tested using fuel determined by the Administrator to be reasonably representative of regular unleaded gasoline without oxygenates sold during winter months, as characterized by nationwide fuel surveys such as those conducted by the Motor Vehicle Manufacturers Association and the National Institute for Petroleum and Energy Research. To facilitate confirmatory testing, EPA will specify a specific reference fuel which will be used for a period of time. Prior to each model year, the Administrator will specify the fuel survey which will determine the fuel used for confirmatory testing and will also specify the ranges of acceptable fuel properties. These specifications would be used for all subsequent compliance testing for that model year, including SEA and in-use compliance testing. An alternative approach for specifying the fuel would be to specify, when this proposed rulemaking is published as a final rule, the survey and a method of determining the range of acceptable fuel values from the yearly surveys. While the Agency would prefer to specify the fuel survey and resulting fuel properties each year, comments are requested about the feasibility of each approach. Commenters supporting the alternative approach are also encouraged to submit recommendations about the best fuel survey.

EPA recognizes that using a different fuel for cold temperature testing than for warm temperature testing will likely place some extra burden on both manufacturers and EPA. Also, some information available to EPA [21] suggests that the fuel used for standard FTP testing may result in a representative evaluation of cold CO emission performance. The Agency would consider using the fuel specified for standard FTP testing if conclusive information were submitted demonstrating that the use of the standard FTP fuel did not affect cold temperature CO emissions.

As noted in Section IV.C., above, EPA is considering options for assuring emission reductions at temperatures between the nominal 20 °F and 75 °F test conditions. The appropriate test fuel across this range of test temperatures is an issue. If EPA adopts a winter specification test fuel for 20 °F testing, EPA is proposing this fuel be used for all emission tests conducted at test temperatures up to 50 °F. For 50 °F and higher test temperatures, the standard FTP test fuel would be used. EPA requests comment on the appropriateness of limiting winter grade test fuel to this discrete temperature range.

(4) *Road Load Power.* As part of the standard FTP, the dynamometer is adjusted to simulate the road load power requirements of the test vehicle. This road load power is normally determined by evaluating a vehicle's design using a road coastdown procedure conducted at warm temperatures.[22] Of concern is the potential unrepresentativeness of a base road load power value for simulating cold ambient emission tests conducted at test temperatures up to 50 °F. Using the current guidance for determining dynamometer power adjustment (OMS Advisory Circular Number 55C), EPA estimates the impact of the greater air density alone to result in a decrease in the target coastdown time of approximately 5 percent compared to the value used for setting the dynamometer power absorber at the standard ETP temperature conditions of 68 °F to 86 °F. An appropriate cold temperature dynamometer load adjustment could be determined by

[20] Memo from C. Don Paulsell, EPA, to John German, "Dynamometer Warmup Procedure," October 17, 1989.

[21] "The Influence of Ambient Temperature on Tailpipe Emissions from Late Model Light-Duty Gasoline Motor Vehicles," ORD Journal Article, September 1987.

Also, "Emissions and Vehicle Performance with Lower RVP Fuel," Dennis McClement, American Petroleum Institute, Jan. 27, 1988.

Also, "The Influence of Ambient Temperature on Tailpipe Emissions from 1985–1987 Model Year Light-Duty Gasoline Motor Vehicles—Part II," ORD Journal Article, September 1988.

[22] EPA Office of Mobile Sources Advisory Circular Number 55C, "Determination and Use of Alternative Dynamometer Power Absorber Setting," December 12, 1986.

coasting a vehicle down on the road under cold temperature conditons (i.e., approximately 20 °F). However, EPA recognizes the difficulty in conducting repeatable coastdown tests at such a cold temperature and expects that such testing would be quite expensive. As an alternative, EPA is considering using a standardized adjustment factor, such as a 10 percent decrease in target coastdown time, to compensate for the effect of colder ambient conditions on vehicle power requirements. EPA requests comments on the basic issue of the effects of colder ambient conditions on road load power requirements and the need to compensate for those effects when measuring cold temperature CO performance. Additionally, should such compensation be deemed appropriate, EPA requests comments on which method is best to use: Cold ambient vehicle coastdown or a temperature correction factor such as 10 percent substracted from the warm ambient coastdown time.

(5) *Engine Compartment Cooling.* During standard FTP testing, a single speed fan is directed at the engine compartment and the hood is raised to prevent over temperature operation and to promote engine cooling more representative of in-use operations. EPA is proposing to continue this practice for the cold temperature test procedure. However, some commenters to our draft recommended cold temperature test procedure asked that the Agency consider the alternative of using a variable speed fan and conducting the test with the hood down, which they believed was more representative of actual in-use operation. The Agency requests comments on these alternatives and may choose to adopt them in the final rule if it concludes that such revisions to the test procedure are administratively and technically appropriate.

(6) *Temperature Tolerances.* As included in the draft regulations accompanying this notice, EPA is proposing to adopt the same test temperature tolerances for the vehicle prep phase of the cold temperature FTP as required during the actual exhaust emission test. However, EPA would consider relaxing the temperature tolerances during vehicle prep if, in doing so, the cost of the total test sequence would be appreciably less and if the Agency can determine that no adverse impact on emission test measurement is likely to result. Comments on this issue are requested.

EPA is also considering additional dynamometer or cold room specifications to reduce test variability and improve lab correlation. These specifications would include requiring the use of a rigid horizontal force to restrain the vehicle and coupled dynamometer rolls if a dual roll dynamometer is used. Additional information on these issues can be found in chapter IV of the regulatory support document. The Agency solicits comments on the relative benefits of these laboratory procedural changes and the desirability of implementing them.

V. Environmental Benefits

A. In-Use CO Reductions

The Agency believes that these standards should reduce CO emissisons from mobile sources an additional 20–29 percent at 20 °F compared to the expected benefits of the existing FMVCP. The expected additional benefit at 40 °F is estimated to be 17–23 percent. These reductions, averaged over the nationwide distribution of VMT by temperature, can amount to annual reductions of 2.6–3.1 million tons by the year 2000 and 5.8–7.7 million tons after complete fleet turnover.

These emissions reductions are expected to result in improved air quality. An analysis of the ambient CO concentrations for the 12 cities modeled using area specific air quality modeling inputs showed an 11–18 percent reduction in expected second-highest 8-hour ambient CO concentrations in 2010. These are significant reductions that have the potential to bring additional areas into attainment by offsetting the increase in VMT.

B. Greenhouse Gas Reductions

The cold temperature CO emission reduction would also have an overall beneficial effect on greenhouse gases. Fuel economy reduction due to decreases in cold start fuel consumption and conversion to MPI are expected to yield corresponding reductions in carbon dioxide (CO_2) emissions. Partially offsetting these reductions is an increase in CO_2 due to increased oxidation of CO. (CO_2 is the end product in the oxidation of CO.) While the overall reduction in CO_2 emissions is not large, the rule is expected to have a directionally beneficially effect on CO_2 emissions.

This rule is also expected to have a significant impact on overall motor vehicle CO emissions. CO has been shown to have a negative impact on the decomposition of methane, another greenhouse gas. Thus, decreases in CO emissions should benefit methane decomposition. While the effect on global warming of decreased CO emissions is expected to be relatively small, it may not be insignificant. EPA requests comment on the magnitude and importance of this potential benefit from this proposed regulation.

C. Effect on Hydrocarbon Emissions

The reductions in fuel enrichment and increased oxidation during cold starts will also cause substantial reductions in exhaust hydrocarbon (HC) emissions at cold temperatures. However, most of these reductions will occur at temperatures below those where ozone exceedances typically occur. EPA has not quantified the exhaust HC reductions associated with this rule because of the less understood benefit of reducing HC emissions at colder temperatures. However, the rule will have a beneficial effect on ozone.

This rule is not anticipated to have any effect on evaporative HC emission.

D. Effect on Emissions of Oxides of Nitrogen (NO_x)

This proposed rule is primarily directed at reducing CO emissions during cold starts at cold temperatures, when fuel mixtures are rich and engines are cold. NO_x emissions are primarily formed under conditions of high combustion temperature and/or lean air/fuel ratios. (While this action should reduce cold-start fuel enrichment, it will not eliminate it.) Therefore, this rule is not expected to have any significant effect on NO_x emissions.

E. Effect on Vehicle Deterioration

This proposed rule is not anticipated to significantly affect the operation of the vehicle after it reaches normal operating temperatures. Therefore, any effect on the deterioration of the emission control system would be caused only by changes in cold start calibration strategies or by changes in hardware prompted by the standards.

The potential does exist for higher catalyst temperatures due to increased air injection during cold start fuel enrichment. If air injection calibrations are improperly determined, the reaction of the extra oxygen injected in the exhaust with the excess unburned fuel could cause temperatures high enough to permanently damage the catalyst. However, there are several factors which should prevent damage to the catalyst due to high exhaust temperature. The cold CO reduction strategies used to comply with this rule will cause reductions in fuel enrichment during cold starts, reducing the amount of fuel available to be burned in the catalyst during the first few minutes after cold startup. Also, recent

improvements in catalyst formation have made catalysts more resistant to thermal degradation.[23] Based on EPA's testing, manufacturers may adopt strategies with earlier use of supplemental air without risk of catalyst overheating. Should a manufacturer desire a "fail-safe" mechanism to cover unusual driving modes, an available option would be to install catalyst temperature sensors in catalysts to divert air injection, should the catalyst begin to approach potentially damaging temperatures. While EPA does not envision that such sensors will be required to meet the standards for any vehicle, the technology is readily available and may be simpler to use than assessing catalyst temperatures under every possible scenario of ambient temperature and driving conditions. Finally, in many cases, manufacturers can opt to avoid the use of additional air injection by converting carbureted or TBI vehicles to MPI.

F. Effect on 68 °F–86 °F Emissions

This proposed rule is likely to have little effect on 68 °F–86 °F emissions. What effect it does have is expected to be favorable, due to conversion of some vehicles to MPI and possible benefits, on some vehicles, due to generally improved adaptive memory and feedback control strategies (such as use of heated oxygen sensors).

VI. Economic Impacts

Cost estimates are broken down into five separate costs: Development costs, which include design work, development testing costs, and calibration costs; emission control hardware costs; compliance demonstration costs; test facility costs; and annual costs, which include certification testing and reporting costs, testing of recalibrated engine families, and testing of in-use and assembly line vehicles. Costs are presented both in terms of manufacturer costs and the cost to the consumer, or retail price equivalent (RPE).

The enforcement options chosen are assumed to have no impact on hardware or development costs. Cost estimates for compliance demonstration and cold temperature test facilities are presented separately for the proposed program of certification confirmations and the option of full certification testing. A complete analysis of these costs can be found in chapter VI of the regulatory support document.

[23] N. Miyoshi, S. Matsumoto, M. Ozawa, M. Kimura, Toyota, "Development of Thermal Resistant Three-Way Catalysts," SAE 891970, September, 1989.

A. Variable Cost of Emission Control Hardware

EPA analyzed the 20 °F CO emission performance of current technology vehicles and has assessed the impact of cold start fuel and air injection recalibration strategies on cold start CO emissions. These analyses indicate that 65–70 percent of the LDV fleet should be able to comply with the proposed rule with recalibration of existing hardware, assuming that all vehicles use heated oxygen sensors. Approximately 15 percent of the LDV fleet could require the addition of pulse air injection. The remainder of the LDV fleet, approximately 15–20 percent, would likely require the addition of air pumps or MPI (but not both) to achieve the standards. EPA believes that MPI offers many advantages in terms of reduced fuel consumption, better driveability and performance, and improved vehicle deterioration that would make it more desirable than using air pumps. However, MPI is significantly more costly to the manufacturer than air pumps. Since EPA cannot confidently predict which option manufacturers are more likely to pursue, hardware costs (and fuel economy benefits) have been calculated for two different scenarios. Scenario I assumes that air pumps are used wherever possible. Scenario II assumes that vehicles convert to MPI where needed. The total estimated hardware costs under each scenario, amortized over the entire fleet, are:

MANUFACTURER VARIABLE COSTS

	Scenario I	Scenario II
LDV	$9.98	$16.68
LDT1	9.13	36.26
LDT2	31.95	43.03

Another possible cost could be catalyst temperature sensors. As discussed in section V.A.5., above, EPA does not anticipate that such sensors would be required to meet the standard. However, some manufacturers could elect to include them on some large engines with air pumps as insurance against catalyst deterioration under all possible in-use driving conditions. Assuming that 25 percent of large engines (about 2–3 percent of the fleet) use catalyst temperature sensors, the incremental costs, amortized over the entire fleet, are estimated to be $0.36 per LDV and $1.34 per LDT2 (LDT1s are not projected to include large 8-cylinder engines.)

B. One-Time Fixed Costs

1. Development Costs

Since the proposed standards are not expected to require any new technology, it is reasonable to expect that there would be little or no need for technology research. It is expected that some vehicles will have to be redesigned to incorporate more advanced fuel control systems, air injection, or a combination of the two. Associated with any new design would be vehicle testing to prove the mechanical integrity and emission durability of the redesigned system. It is also expected that all engine families would undergo partial recalibration of the engine control systems. Grouping these costs together and amortizing them at 10 percent annual interest over an assumed 5-year engine family life results in an estimated cost to the manufacturer for development of:

	Scenario I	Scenario II
LDV	$0.66	$0.56
LDT1	1.65	1.20
LDT2	0.29	0.24

2. Test Facility Costs

These are the costs for construction and/or expansion of cold temperature test facilities. Some manufacturers already have test facilities capable of conducting the proposed cold temperature test procedures. The additional facility costs for each enforcement option, amortized over 10 years, are estimated to be:

Option	Manufacturer test facility costs per vehicle
Base program	$0.46
Option with full certification testing	0.65

The facility costs are higher for the optional full-testing program because this option would require more test and vehicle soak capacity for conducting more extensive certification testing.

3. Compliance Demonstration Costs to Manufacturers

The estimated costs for compliance demonstration with the proposed standards (i.e., initial certification testing and durability vehicle mileage accumulation) are:

	Scenario I	Scenario II
LDV	$0.06	$0.07
LDT1	0.33	0.38

	Scenario I	Scenario II
LDT2	0.14	0.16

C. Annual Fixed Costs

These costs include annual certification testing and reporting, testing of recalibrated engine families and SEA testing. Only the costs for certification testing and reporting will vary by enforcement option with the option for full certification testing requiring more extensive testing and reporting and, consequently, higher costs.

Grouping these costs together and amortizing them over the fleet results in the cost estimates shown below:

Option	Manufacturer annual fixed costs		
	LDV	LDT1	LDT2
Base program	$0.13	$0.16	$0.08
Option with full certification testing	0.27	0.35	0.16

Option	Total manufacturer costs LDV	
	Scenario I	Scenario II
Base program	$11.29	$17.90
Option with full certification testing	11.62	18.23

Option	LDT1	
	Scenario I	Scenario II
Base program	$11.73	$38.46
Option with full certification testing	12.11	38.84

Option	LDT2	
	Scenario I	Scenario II
Base program	$32.92	$43.97
Option with full certification testing	33.19	44.24

D. Retail Price Equivalent

The retail price equivalent (RPE) is the estimated retail price increase that will be charged to purchasers of new motor vehicles. Details on how RPE is calculated can be found in chapter VI of the RSD. The estimated RPE increases due to the proposed rule are:

	RPE per vehicle (proposed program)	
	Scenario I	Scenario II
LDV	$15.06	$22.86
LDT1	15.62	47.88
LDT2	41.93	55.68
Overall [24]	18.74	31.49

[24] LDV, LDT1, and LDT2 costs weighted by their respective projected yearly sales volumes of 10.304 million, 2.538 million, and 1.975 million, as determined in Chapter VI of the regulatory support document.

E. Operating Costs

Any impact of the proposed rule on I/M programs and consumer maintenance cost is likely to be minor. Some changes, such as conversion to MPI or use of heated oxygen sensors, may reduce maintenance costs while others, such as the addition of air injection, may increase maintenance costs, leaving the net result ambiguous. However, consumers can expect to realize a fuel economy benefit from the proposed rule.

Overall discounted nationwide fuel consumption savings for LDVs of $14.15 per vehicle were calculated for Scenario I (air pump strategies) and $27.56 for Scenario II (MPI strategies). Similar calculations for LDT1s yielded discounted lifetime fuel savings of $12.69 and $82.45 per vehicle under Scenarios I and II, respectively. LDT2s would achieve discounted lifetime fuel savings of $57.41 and $78.54 per vehicle under Scenarios I and II, respectively. The methodology used to calculate these fuel consumptions reductions is contained in chapter VI of the RSD.

The estimated total cost increases of the proposed rule to consumers, including fuel economy benefits, are:

	Total Cost to Consumer (RPE—fuel economy benefit)	
	Scenario I	Scenario II
LDV	$0.91	−$4.70
LDT1	2.93	−34.57
LDT2	15.48	−23.08
Overall [25]	0.93	−12.27

[25] Ibid.

F. Cost to the Government

EPA will need to improve its cold test facilities as a result of this rule. Amortizing the estimated $1.5 million to upgrade the Agency's cold testing facilities over 10 years at 10 percent interest yields an annual facility cost increase of about $245,000. Additional costs would also be incurred to conduct certification confirmation, SEA, and in-use enforcement testing and to review certificates of conformity and oversee the in-use enforcement programs. The total increase in EPA expenses are estimated to be no more than about $880,000 per year, or about $0.06 per vehicle.

VII. Cost-Effectiveness

A. Cost per Ton CO Emission Reduced Without Fuel Economy Benefit

The costs per ton of CO emissions reduced, without considering the fuel economy benefit, are shown below. The low and high figures are based on the different strategies that may be adopted by the manufacturers to comply with the proposed rule. For example, improvements in closed-loop fuel control would lead to proportionately lower CO emissions over a wide range of vehicle conditions and operation. Such strategies would yield relatively higher emissions reduction benefits and relatively lower costs per ton. A strategy emphasizing reductions in cold-start fuel enrichment, for example, would produce lower overall in-use CO emissions benefits. Additional information on cost effectiveness may be found in the regulatory support document, chapter VII.

Fleet	High	Low
Manufacturer Cost per ton:		
Scenario I	$102.52	$73.83
Scenario II	179.14	129.02
RPE Costs per ton:		
Scenario I	134.82	97.10
Scenario II	226.55	163.16

B. Cost per Ton CO Emissions Reduced With Fuel Economy Benefit

When the fuel economy benefit is taken into account, the net consumer cost per ton CO reduced would be:

Fleet	High	Low
Net Consumer Cost:		
Scenario I	$4.82	$6.69
Scenario II	63.56	88.27

VIII. Public Participation

A. Comments and the Public Docket

EPA welcomes comments on any aspect of this proposed rulemaking. Commenters are especially encouraged to provide suggestions for modification of any aspects of the proposal that they find objectionable. All comments should be directed to the Air Docket, Docket No. A-89-01 (see "Addresses" above).

Commenters desiring to submit proprietary information for

consideration should clearly distinguish such information from other comments to the greatest possible extent and label it as "Confidential Business Information." Submissions containing such proprietary information should be sent directly to the contact person listed above, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket. If a commenter wants EPA to base the final rule in part on a submission labeled as confidential business information, then a nonconfidential version of the document which summarizes the key data or information should be placed in the public docket. Information covered by a claim of confidentiality will be disclosed by EPA only to the extent allowed and by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies the submission when it is received by EPA, it may be made available to the public without further notice to the commenter.

B. Public Hearing

Any person desiring to present testimony regarding this proposal at the public hearing (see "**DATES**") should, if possible, notify the contact person listed above of such intent at least seven days prior to the opening day of the hearing. The contact person should also be given an estimate of the time required for the presentation of the testimony and notification of any need for audio/visual equipment. Testimony will be scheduled on a first come, first serve basis. A sign-up sheet also will be available at the registration table the morning of the hearing for scheduling testimony.

EPA suggests that approximately 50 copies of the statement or material to be presented be brought to the hearing for distribution to the audience. In addition, EPA would find it helpful to receive an advance copy of any statement or material to be presented at the hearing at least one week before the scheduled hearing date, in order to give EPA staff adequate time to review such material before the hearing. Such advance copies should be submitted to the contact person listed above.

The official records of the hearing will be kept open for 30 days following the hearing to allow submission of rebuttal and supplementary testimony. All such submittals should be directed to the Air Docket, Docket No. A-89-01 (see "**ADDRESSES**").

Mr. Richard D. Wilson, Director of the Office of Mobile Sources, is hereby designated Presiding Officer of the hearing. The hearing will be conducted informally, and technical rules of evidence will not apply. A written transcript of the hearing will be placed in the above docket for review. Anyone desiring to purchase a copy of the transcript should make individual arrangements with the court reporter recording the proceeding.

C. Administrative Designation and Regulatory Analysis

Under the Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore subject to the requirement that a Regulatory Impact Analysis (RIA) be prepared. Since EPA has determined that this regulation is not major, an RIA has not been prepared.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB and any EPA response to those comments are in the public docket for this rulemaking.

D. Reporting and Recordkeeping Requirements

All of the information collection requirements contained in this proposed rule have been approved by the OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and have been assigned OMB Control Number 2060-0104. The information collection provisions relating to the measurement and reporting of cold temperature emissions have been submitted for approval to OMB. Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs of OMB marked Attention: Desk Officer for EPA. The final rulemaking package will respond to any OMB or public comments.

E. Impact on Small Entities

The Regulatory Flexibility Act of 1980 requires federal agencies to identify potentially adverse impacts of federal regulations upon small entities. In instances where significant impacts are possible on a substantial number of these entities, agencies are required to perform a Regulatory Flexibility Analysis (RFA). EPA has determined that the regulations proposed today will not have a significant impact on a substantial number of small entities. This regulation will affect only manufacturers of motor vehicles and motor vehicle engines, a group which does not contain a substantial number of small entities. Further, small motor vehicle manufacturers typically purchase emission control components developed by larger organizations. As explained earlier in this notice, technology is available to meet the proposed standards, so small manufacturers should not be adversely affected. Further, since all manufacturers are permitted to exempt a minimum of 10,000 units until the 1995 MY, the smaller manufacturers will have adequate lead time to employ available technology.

Therefore, as required under section 605 of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* I certify that this regulation does not have a significant impact on a substantial number of small entities.

IX. Authority

Legal Authority

The promulgation of these standards is authorized by section 202(a) of the Clean Air Act, 42 U.S.C. 7521 (a), which directs the Administrator to prescribe and revise standards applicable to any class or classes of new vehicles or engines which in his judgment cause air pollution and may reasonably be expected to endanger the public health. Revision of the existing standards is needed because CO emissions from vehicles continue to contribute to the unacceptable CO air quality, and the exceedance of NAAQS level for CO in many urban areas. The Agency has previously reduced CO levels, as required by CAA section 202(b)(1), to 90 percent of the emissions allowable in model year 1970 when the emissions are determined under existing test procedures in a temperature range of 68 °F–86 °F. 40 CFR 86.081–8. The present proposal under CAA section 202(a) would further reduce CO emissions, as determined at a temperature of 20 °F, to provide added protection with respect to the public health concerns posed by CO emissions.

Under CAA 202(a)(2), any regulations under section 202(a)(1) is to take effect after such period as the Administrator finds "necessary to permit the development and application of the requisite technology giving appropriate consideration to the cost of compliance within such period." That section calls for a determination that the technology needed for compliance will be available when the standard takes effect. In *Natural Resources Defense Council (NRDC)* v. *U.S.*, 655 F.2d 318 (D.C. Cir.). *cert. denied* 454 U.S. 1017 (1981) the court found that the legislative history indicates that Congress intended the Agency to project future advances in pollution control capability, and it was "expected to press for the development and application of improved technology rather than be limited by that which exists." 655 F.2d at 328, citing S. Rep. No. 91-1196 91 Cong., 2d Sess. 24 (1970) reprinted in Legislative History 424. The

Agency must be able to provide a reasoned basis for believing that its projection is reliable, and it must provide a "reasonable basis for belief that a new technology will be available and economically achievable." 655 F.2d at 328, and 331. The time period for compliance that would be established by the regulation has been established in light of the factors relevant under paragraph (b), as discussed elsewhere in this proposal.

List of Subjects in 40 CFR Part 86

Administrative practice and procedure, Air pollution control, Gasoline, Motor vehicles, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: September 11, 1990.

William K. Reilly,

Administrator.

For the reasons set out in the preamble, part 86 of title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 86—CONTROL OF AIR POLLUTION FROM NEW MOTOR VEHICLES AND NEW MOTOR VEHICLE ENGINES: CERTIFICATION AND TEST PROCEDURES

1. The authority citation for part 86 continues to read as follows:

Authority: Secs. 202, 203, 206, 207, 208, 215, 301(a), Clean Air Act, as amended (42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, 7549, 7550, and 7601(a)), unless otherwise noted.

2. A new section 86.093–8 is added to read as follows:

§ 86.093–8 Emission standards for 1993 model year light-duty vehicles.

(a) to (i) [Reserved]

(j)(1) For gasoline-fueled light-duty vehicles, cold temperature carbon monoxide exhaust emissions shall not exceed 10.0 grams per vehicle mile as measured and calculated under the provisions set forth in subpart C; this standard applies at both low and high altitude.

(2) A manufacturer may elect, by entire engine families, to exempt vehicles from the standard in paragraph (j)(1) of this section. The total number of vehicles exempted from the standards in paragraph (j)(1) and § 86.093–9 (h)(1) shall not exceed the greater of:

(i) 60% of the manufacturers combined production of light-duty vehicles and light-duty trucks with a gross vehicle weight rating of less than 6,001 lbs., or

(ii) 9,999 units

3. A new § 86.093–9 is added to read as follows:

§ 86.093–9 Emission standards for 1993 model year light-duty trucks.

(a) to (g) [Reserved]

(h)(1)(i) Cold temperature CO emissions measured and calculated in accordance with subpart C shall not exceed:

(A) For gasoline-fueled light-duty trucks with a loaded vehicle weight of 3,750 lbs. and less, 12.0 grams per vehicle mile.

(B) For gasoline-fueled light-duty trucks with a loaded vehicle weight greater than 3,750 lbs., 15.0 grams per vehicle mile.

(ii) The standards in paragraph (h)(1)(i) of this section apply at both low and high altitude.

(2) A manufacturer may elect, by entire engine families, to exempt vehicles from the standard in paragraph (h)(1) of this section. The total number of vehicles exempted from the standards in paragraph (h)(1) and in § 86.093–8 (j)(1) shall not exceed the greater of:

(i) 60% of the manufacturers combined production of light-duty vehicles and light-duty trucks with a gross vehicle weight rating of less than 6,001 lbs., or

(ii) 9,999 units

(3) Vehicles with a gross vehicle weight rating greater than 6,000 lbs. are exempt from the standards in paragraph (j)(1) of this section.

4. A new § 86.093–16 is added to read as follows:

§ 86.093–16 Emission performance, intermediate temperature conditions.

(a) For the specific combination of vehicle startup temperature between 25 °F and 68 °F and FTP operating modes, vehicles shall not have CO emissions levels greater than the levels determined by a linear interpolation of the cold CO standard at 25 °F and the CO standard applicable at 68 °F. The temperature used for calculating the interpolated CO comparison value will be the vehicle bulk oil temperature at the start of the test.

5. A new § 86.093–21 is added to read as follows:

§ 86.093–21 Application for certification.

(a) to (f) [Reserved]

(g) The manufacturer shall identify those families which will be exempt from compliance with cold temperature carbon monoxide standards.

6. A new § 86.093–24 is added to read as follows:

§ 86.093–24 Test vehicles and engines.

(a) [Reserved]

(b)(1)(i) to (b)(1)(x) [Reserved]

(xi) For cold temperature CO exhaust emission compliance for each engine family, the Administrator will select for testing the vehicle expected to emit the highest emissions from the vehicles selected in accordance with § 86.093–24 (b)(1) (i), (ii), (iii), and (iv) of this section. This vehicle shall be tested by the manufacturer in accordance with the test procedures in subpart C or with alternative procedures requested by the manufacturer and approved in advance by the Administrator.

7. A new § 86.093–35 is added to read as follows:

§ 86.093–35 Labeling.

(a)(1)(i) to (a)(1)(iii)(H) [Reserved]

(I) If applicable, a statement that the vehicle is exempt from cold temperature carbon monoxide standards.

(a)(2)(i) to (a)(2)(iii)(K) [Reserved]

(L) If applicable, a statement that the vehicle is exempt from cold temperature carbon monoxide standards.

(a)(3) to (g) [Reserved]

8. A new § 86.094–8 is added to read as follows:

§ 86.094–8 Emission standards for 1994 model year light-duty vehicles.

(a) to (i) [Reserved]

(j)(1) For gasoline-fueled light-duty vehicles, cold temperature carbon monoxide exhaust emissions shall not exceed 10.0 grams per vehicle mile as measured and calculated under the provisions set forth in subpart C; this standard applies at both low and high altitude.

(2) A manufacturer may elect, by entire engine families, to exempt vehicles from the standard in paragraph (j)(1) of this section. The total number of vehicles exempted from the standards in paragraph (j)(1) and in § 86.094–9(h)(1) shall not exceed the greater of:

(i) 20% of the manufacturers combined production of light-duty vehicles and light-duty trucks with a gross vehicle weight rating of less than 6001 lbs., or

(ii) 9,999 units.

9. A new § 86.094–9 is added to read as follows:

§ 86.094–9 Emission standards for 1994 model year light-duty trucks.

(a) to (g) [Reserved]

(h)(1)(i) Cold temperature CO emissions measured and calculated in accordance with subpart C shall not exceed:

(A) For gasoline-fueled light-duty trucks with a loaded vehicle weight of 3,750 lbs. and less, 12.0 grams per vehicle mile.

(B) For gasoline-fueled light-duty trucks with a loaded vehicle weight greater than 3,750 lbs., 15.0 grams per vehicle mile.

(ii) The standards in paragraph (h)(1)(i) of this section apply at both low and high altitude.

(2) A manufacturer may elect, by entire engine families, to exempt vehicles from the standard in paragraph (h)(1) of this section. The total number of vehicles exempted from the standards in paragraph (h)(1) and in § 86.094–8 (j)(1) shall not exceed the greater of:

(i) 20% of the manufacturers combined production of light-duty vehicles and light-duty trucks with a gross vehicle weight rating of less than 6001 lbs., or

(ii) 9,999 units.

(3) Vehicles with a gross vehicle weight rating greater than 6,000 lbs are exempt from the standards in paragraph (h)(1) of this section.

10. A new § 86.095–8 is added to read as follows:

§ 86.095–8 Emission standards for 1995 and later model year light-duty vehicles.

(a) to (i) [Reserved]

(j)(1) For gasoline-fueled light-duty vehicles, cold temperature carbon monoxide exhaust emissions shall not exceed 10.0 grams per vehicle mile as measured and calculated under the provisions set forth in subpart C; this standard applies at both low and high altitude.

(2) [Reserved]

11. A new § 86.095–9 is added to read as follows:

§ 86.095–9 Emission standards for 1995 and later model year light-duty trucks.

(a) to (g) [Reserved]

(h)(l)(i) Cold temperature CO emissions measured and calculated in accordance with subpart C shall not exeed:

(A) For gasoline fueled light-duty trucks with a loaded vehicle weight of 3,750 lbs. and less, 12.0 grams per vehicle mile.

(B) For gasoline-fueled light-duty trucks with a loaded vehicle weight greater than 3,750 lbs. 15.0 grams per vehicle mile.

(ii) The standards in paragraph (h)(1)(k) of this section apply at both low and high altitude.

(2) [Reserved]

(3) [Reserved]

12. A new subpart C is added to read as follows:

Subpart C—Emission Regulations for 1993 and later model year new light-duty vehicles and new light duty trucks; cold temperature test procedures.

Sec.

86.201 General applicability.
86.202 Definitions.
86.203 Abbreviations.
86.204 Section numbering; construction.
86.205 Introduction; structure of subpart.
86.206–93 Equipment required; overview.
86.207 [Reserved]
86.208–93 Dynamometer.
86.209–93 Exhaust gas sampling system; gasoline-fueled vehicles.
86.210 [Reserved]
86.211–93 Exhaust gas analytical system.
86.212 [Reserved]
86.213–93 Fuel specifications.
86.214–93 Analytical gases.
86.215–93 EPA urban dynamometer driving schedule.
86.216–93 Calibrations, frequency and overview.
86.217–93 [Reserved]
86.218–93 Dynamometer calibration.
86.219–93 CVS calibration.
86.220–93 [Reserved]
86.221–93 Hydrocarbon analyzer calibration.
86.222–93 Carbon monoxide analyzer calibration.
86.223 [Reserved]
86.224–93 Carbon dioxide analyzer calibration.
86.225 [Reserved]
86.226–93 Calibration of other equipment.
86.227–93 Test Procedures; overview.
86.228–93 Transmissions.
86.229–93 Road load power, test weight and inertia weight class determination.
86.230–93 Test Sequence; general requirements.
86.231–93 Vehicle Preparation.
86.232–93 Vehicle Preconditioning.
86.233 [Reserved]
86.234 [Reserved]
86.235–93 Dynamometer procedure.
86.236–93 Engine starting and restarting.
86.237–93 Dynamometer test run, gaseous emissions.
86.238 [Reserved]
86.239 [Reserved]
86.240–93 Exhaust sample analysis.
86.241 [Reserved]
86.242–93 Records required.
86.243–93 [Reserved]
86.244–93 Calculations; exhaust emissions.
86.245 [Reserved]

Subpart C—Emission Regulations for 1993 and Later Model Year New Light-Duty Vehicles and New Light Duty Trucks; Cold Temperature Test Procedures.

§ 86.201 General applicability.

(a) The provisions of this subpart are applicable to 1993 and later model year new gasoline-fueled light-duty vehicles and light-duty trucks at a nominal test temperature of 20 °F.

(b) Provisions of this subpart apply to 20 °F temperature tests performed by both the Administrator and motor vehicle manufacturers for tests required under supart A of 40 CFR part 86

§ 86.202 Definitions.

The definitions in subpart A apply to this subpart.

86.203 Abbreviations.

The abbreviations in subpart A apply to this subpart.

§ 86.204 Section numbering; construction.

The model year of initial applicability is indicated by the section number. The two digits following the hyphen designate the first model year for which a section is effective. A section remains effective until superseded.

Example. Section 86.211–93 applies to the 1993 and subsequent model years until superseded. If a § 86.211–96 is promulgated it would take effect beginning with the 1996 model year; § 86.211–93 would apply to model years 1993 through 1995.

§ 86.205 Introduction; structure of subpart.

(a) This subpart describes the equipment required and the procedures to follow in order to perform gaseous exhaust emission tests on light-duty vehicles and light-duty trucks. Subpart A sets forth testing requirements and test intervals necessary to comply with EPA certification procedures.

(b) Three topics are addressed in this subpart. Sections 86.206 through 86.215 set forth specifications and equipment requirements; §§ 86.216 through 86.226 discuss calibration methods and frequency; test procedures and data requirements are listed (in approximate order of performance) in §§ 86.227 through 86.245.

§ 86.206–93 Equipment required; overview.

(a) This subpart contains procedures for exhaust emissions tests on gasoline-fueled light-duty vehicles and light-duty trucks. Equipment required and specifications are as follows:

(1) *Exhaust emission tests.* Exhaust from gasoline-fueled vehicles is tested for gaseous emissions, using the Constant Volume Sampler (CVS) concept (§ 86.209). Equipment necessary and specifications appear in §§ 86.208 through 86.214.

(2) *Fuel, analytical gas, and driving schedule specifications.* Fuel specifications for exhaust emissions testing and for mileage accumulation for gasoline-fueled vehicles are specified in § 86.213. Analytical gases are specified in § 86.214. The EPA Urban Dynamometer Driving Schedule (UDDS) for use in gasoline-fueled emissions tests is specified in § 86.215 and appendix I.

§ 86.207 [Reserved]

§ 86.208–93 Dynamometer.

(a) The dynamometer shall have a power absorption unit for simulation of

road labor power and flywheels or other means of simulating the inertia weight as specified in § 86.229.

(b) The dynamometer shall have a roll or shaft revolution counter or other means for determination of distance driven.

(c) The dynamometer shall utilize twin rollers that are 20.0 inches in diameter with a nominal spacing of 24 inches. Roll speeds shall be synchronized by use of a mechanical coupling device. Dynamometers with other roll specifications may be used if the total simulated road load horsepower can be shown to be equivalent, and if approved in advance by the Administrator.

§ 86.209-93 Exhaust gas sampling system; gasoline-fueled vehicles.

The provisions of § 86.109 apply to this subpart, except that paragraph (c)(4) of § 86.109 has been modified to the following:

The piping configuration, flow capacity of the CVS, and the temperature and specific humidity of the dilution air (may be different than the vehicle combustion air source) shall be controlled to virtually eliminate water condensation in the system. (300 to 350 cfm (0.142 to 0.165 m^3/s) is sufficient for most vehicles.)

§ 86.210 [Reserved]

§ 86.211-93 Exhaust gas analytical system.

The provisions of § 86.111 apply to this subpart except that measurement of NO_x is optional.

§ 86.212 [Reserved]

§ 86.213-93 Fuel specifications.

The test fuel used shall be representative of regular-grade winter-time commercial unleaded fuel without oxygenates. The Administrator will specify the range of acceptable fuel properties for each model year prior to certification. Such specifications will be based upon nationwide survey(s) of winter-time fuel properties, as determined by the Administrator.

§ 86.214-93 Analytical gases.

The provisions of § 86.114 apply to this subpart.

§ 86.215-93 EPA urban dynamometer driving schedule.

The provisions of § 86.115 apply to this subpart.

§ 86.216-93 Calibrations, frequency and overview.

The provisions of § 86.116 apply to this subpart.

§ 86.217-93 [Reserved]

§ 86.218-93 Dynamometer calibration.

The provisions of § 86.118 apply to this subpart.

§ 86.219-93 CVS calibration.

The provisions of § 86.119 apply to this subpart.

§ 86.220-93 [Reserved]

§ 86.221-93 Hydrocarbon analyzer calibration.

The provisions of § 86.121 apply to this subpart.

§ 86.222-93 Carbon monoxide analyzer calibration.

The provisions of § 86.122 apply to this subpart.

§ 86.223 [Reserved]

§ 86.224-93 Carbon dioxide analyzer calibration.

The provisions of § 86.124 apply to this subpart.

§ 86.225 [Reserved]

§ 86.226-93 Calibration of other equipment.

The provisions of § 86.126 apply to this subpart.

§ 86.227-93 Test procedures; overview.

The provisions of § 86.127 paragraphs (a), (b), and (e) apply to this subpart.

§ 86.228-93 Transmissions.

The provisions of § 86.128 apply to this subpart.

§ 86.229-93 Road load power, test weight and inertia weight class determination.

The provisions of § 86.129 apply to this subpart, except that dynamometer settings shall not be increased to simulate the effects of air conditioning.

§ 86.230-93 Test sequence; general requirements.

The test sequence in figure C93-1 shows the steps encountered as the test vehicle undergoes the procedures subsequently described, to determine conformity with the standards set forth. Ambient temperature levels encountered by the test vehicle shall average 20 °F±5 °F and shall not be less than 10 °F (−14 °C) nor more than 30 °F (−1 °C). The ambient temperature reported shall be a simple average of the test cell temperatures measured at constant intervals no more than one minute apart. In addition, the temperature may not exceed 25 °F or fall below 15 °F for more than three consecutive minutes. The test cell temperatures monitored during testing must be measured at the intake of the fixed speed cooling fan (§ 86.235(b)). The vehicle shall be approximately level during all phases of the test sequence to prevent abnormal fuel distribution.

§ 86.231-93 Vehicle preparation.

The provisions of § 86.131 apply to this subpart.

§ 86.232-93 Vehicle preconditioning.

(a) The vehicle shall be moved to the test area and the following operations performed:

(1) The fuel tank(s) shall be filled to approximately the prescribed "tank fuel volume" with the specified test fuel § 86.213. If the existing fuel in the fuel tank(s) does not meet the specifications contained in § 86.213, the existing fuel must be drained prior to the fuel fill. The test fuel shall be at a temperature less than or equal to 60 °F. For the above operations the evaporative emission control system shall neither be abnormally purged nor abnormally loaded.

(2) The drive wheel tires shall be inflated up to a gauge pressure of 45 psi for a vehicle stabilized at ambient temperatures corresponding to the standard FTP temperatures of 68 °F to 86 °F. Alternatively, the drive wheel tires may be inflated to a gauge pressure of 40 psi if the vehicle has stabilized at ambient temperatures corresponding to the cold CO test temperature of 20 °F. The drive wheel tire pressures shall be reported with the test results.

(3) The fuel in the vehicle shall be stabilized at 20 °F±10 °F prior to the start of the driving cycle.

(4) The vehicle shall be placed, either by being driven or pushed, on a dynamometer and operated through one Urban Dynamometer Driving Schedule test procedure; see § 86.115 and appendix I. A test vehicle may not be used to set dynamometer horsepower.

(5) Before the driving cycle may begin, the test cell temperature shall be 20 °F±3 °F, as measured at the intake of the fixed speed cooling fan.

(6) During operation of the vehicle through the driving cycle, ambient temperature levels encountered by the test vehicle shall average 20 °F±5 °F and shall not be less than 10 °F (−14 °C) nor more than 30 °F (−1 °C). The ambient temperature reported shall be a simple average of the test cell temperatures measured at constant intervals no more than one minute apart. In addition, the temperature may not exceed 25 °F or fall below 15 °F or more than three consecutive minutes. The test cell temperatures monitored during testing must be measured at the intake of the fixed speed cooling fan (§ 86.235(b)).

(7) During operation of the vehicle through the driving schedule, the heater and defroster may be used at any temperature and fan settings.

(8) For those unusual circumstances where additional preconditioning is desired by the manufacturer, such preconditioning may be allowed with the advance approval of the Administrator.

(9) The Administrator may also choose to conduct additional preconditioning. The additional preconditioning shall consist of one or more driving cycles of the UDDS, as described in paragraph (a)(4) of this section.

(b) Within five minutes of completion of preconditioning, the vehicle shall be shut off. During this five minute period, the vehicle shall not experience ambient temperatures less than 10 °F nor more than 30 °F.

(c) One of the following two methods shall be utilized to stabilize the vehicle before the emissions test:

(1) The vehicle shall be stored for not less than 12 hours not for more than 36 hours prior to the cold start exhaust test. The ambient temperature (dry bulb) during this period shall be maintained at an average temperature of 20 °F±5 °F during each hour of this period and shall not be less than 10 °F nor more than 30 °F. The ambient temperature reported shall be a simple average of the test cell temperature measured at constant intervals no more than one minute apart. In addition, the temperature may not exceed 25 °F or fall below 15 °F for more than three consecutive minutes.

(2)(i) The vehicle shall be stored for no more than 36 hours prior to the cold start exhaust test. The vehicle shall not be stored at ambient temperatures which exceed 86 °F during this period.

(ii) Vehicle cooling may be accomplished by either force-cooling or force-warming the vehicle to the test temperature. If cooling is augmented by fans, the fans shall be placed in a vertical position for maximum drive train and engine cooling, not primarily oil pan cooling. Fans shall not be placed under the vehicle.

(iii) The ambient temperature need only be stringently controlled after the vehicle has been cooled to 20 °F±3 °F, as determined by a representative bulk oil temperature. A representative bulk oil temperature is the temperature of the oil measured near the middle of the oil, not at the surface or at the bottom of the oil pan. If two or more diverse locations in the oil are monitored, they must all meet the temperature requirements.

(iv) The vehicle must be stored for at least one hour after it has been cooled to 20 °F±3 °F prior to the cold start exhaust test. The ambient temperature (dry bulb) during this period shall average 20 °F ±5 °F and shall not be less than 10 °F nor more than 30 °F. In addition, the temperature may not exceed 25 °F or fall below 15 °F for more than three consecutive minutes.

(d) If the vehicle is stabilized at 20 °F in a separate area and is moved through a warm area to the test cell, the vehicle must be restabilized in the test cell for at least six times the period the vehicle is exposed to warmer temperatures. The ambient temperature (dry bulb) during this period shall average 20 °F±5 °F and shall not be less than 10 °F nor more than 30 °F. In addition, the temperature may not exceed 25 °F or fall below 15 °F for more than three consecutive minutes. The maximum time for moving a vehicle through a warm area shall be 10 minutes.

§ 86.233 [Reserved]

§ 86.234 [Reserved]

§ 86.235-93 Dynamometer procedure.

(a) Overview—The emission sampling is completed over two test sequences, a "cold" start test after a minimum 12-hour and a maximum 36-hour soak according to the provisions of § 86.232 and a "hot" start test following the "cold" start test by 10 minutes. Engine startup, operation over the UDDS and engine shut-down make a complete cold start test. Engine startup and operation over the first 505 seconds of the driving schedule complete the hot start test. The exhaust emissions are diluted with ambient air and a continuously proportional sample is collected for analysis during each phase. The composite samples collected in bags are analyzed for hydrocarbon, carbon monoxide, carbon dioxide, and, optionally, oxides of nitrogen. A parallel sample of the dilution air is similarly analyzed for hydrocarbon, carbon monoxide, and, optionally, oxides of nitrogen.

(b) During dynamometer operation, a fixed speed cooling fan shall be positioned so as to direct cooling air to the vehicle in an appropriate manner with the engine compartment cover open. In the case of vehicles with front engine compartments, the fan shall be squarely positioned within 12 inches (30.5 centimeters) of the vehicle. In the case of vehicles with rear engine compartments (or if special designs make the normal front engine positioning impractical), the cooling fan shall be placed in a position to provide sufficient air to maintain vehicle cooling. The fan capacity shall normally not exceed 5,300 cfm (2.50 cubic meters per second). If, however, the manufacturer showed (as provided in § 86.135(b)) that additional cooling is necessary, the fan capacity may be increased or additional fans used if approved in advance by the Administrator.

(c) The vehicle speed as measured from the coupled dynamometer rolls shall be used.

(d) As long as an emission sample is not taken, practice runs over the prescribed driving schedule may be performed at test point for the purpose of finding the minimum throttle action to maintain the proper speed-time relationship or to permit sampling system adjustment.

(e) Humidity should be set low enough to prevent condensation on the dynamometer rolls.

(f) The dynamometer shall be warmed as recommended by the dynamometer manufacturer, and using procedures or control methods that assure stability of the residual frictional horsepower.

(g) The time between dynamometer warming and the start of the emissions test shall be no longer than 10 minutes if the dynamometer bearings are not independently heated. If the dynamometer bearings are independently heated, the emissions test shall begin no longer than 20 minutes after dynamometer warming.

(h) If the dynamometer horsepower must be adjusted manually, it shall be set within one hour prior to the exhaust emissions test phase. The test vehicle shall not be used to make the adjustment. Dynamometer using automatic control of preselectable power settings may be set anytime prior to the beginning of the emissions test.

(i) Before the driving cycle may begin, the test cell temperature shall be 20 °F ± 3 °F, as measured at the intake of the fixed speed cooling fan.

(j) During operation of the vehicle through the driving schedule, the heater and defroster may be used at any temperature and fan setting.

(k) The driving distance, as measured by counting the number of dynamometer roll or shaft revolutions, shall be determined for the transient cold start, stablilized cold start, and transient hot start phases of the test. The revolutions shall be measured on the same roll or shaft used for measuring the vehicle's speed.

(l) Four-wheel drive vehicles will be tested in a two-wheel drive mode of operation. Full time four-wheel drive vehicles will have one set of drive wheels temporarily disengaged by the vehicle manufacturer. Four-wheel drive vehicles which can be manually shifted to a two-wheel drive mode will be tested in the normal on-highway two-wheel drive mode of operation.

§ 86.236-93 Engine starting and restarting.

The provisions of § 86.136 apply to this subpart.

§ 86.237-93 Dynamometer test run, gaseous emissions.

(a) General—The complete dynamometer test consists of a cold start drive of 7.5 miles (12.1 kilometers) and simulates a hot start drive of 7.5 miles (12.1 kilometers). The vehicle is allowed to stand on the dynamometer during the ten minute time period between the cold and hot start test. The cold start test is divided into two periods. The first period, representing the cold start "transient" phase, terminates at the end of the deceleration which is scheduled to occur at 505 seconds of the driving schedule. The second period, representing the "stabilized" phase, consists of the remainder of the driving schedule, including engine shutdown. The hot start test, similarly, consists of two periods. The first period, representing the hot start "transient" phase, terminates at the same point in driving schedule as the first period of the cold start test. The second period of the hot start test, "stabilized" phase, is assumed to be identical to the second period of the cold start test. Therefore, the hot start test terminates after the first period (505 seconds) is run.

(b) The provisions of § 86.137 paragraph (b) apply to this subpart.

§ 86.238 [Reserved]

§ 86.239 [Reserved]

§ 86.240-93 Exhaust sample analysis.

The provisions of Section 86.140 apply to this subpart.

§ 86.241 [Reserved]

§ 86.242-93 Records required.

The provisions of § 86.142 apply to this subpart.

§ 86.243 [Reserved]

§ 86.244-93 Calculations; exhaust emissions.

The provisions of § 86.144 apply to this subpart, except that NOx measurements are optional.

§ 86.245 [Reserved]

18. Section 86.608-88 is amended by revising paragraphs (a) introductory text and (a)(1) and adding a new paragraph (a)(3) to read as follows:

§ 86.608-88 Test Procedures.

(a) The prescribed test procedures are contained in subpart B and/or subpart C of this part 86. For purposes of Selective Enforcement Audit testing, the manufacturer shall not perform any of the test procedures in subpart B of this part relating to evaporative emission testing, except as specified in paragraph (a)(2) of this section.

(1) The Administrator may, on the basis of a written application by a manufacturer, prescribe test procedures other than those in subpart B and/or subpart C of this part for any motor vehicle which he determines is not susceptible to satisfactory testing using the procedures in subpart B and/or subpart C or this part.

* * * * *

(3) The following exceptions to the test procedures in subpart C of this part are applicable to Selective Enforcement Audit testing:

(i) The manufacturer may measure the temperature of the test fuel at other than the approximate mid-volume of the fuel tank, as specified in paragraph (a) of § 86.231, and may drain the test fuel from other than the lowest point of the fuel tank as specified in paragraph (b) of § 86.231, provided an equivalent method is used. Equivalency documentation shall be maintained by the manufacturer and shall be made available to the Administrator upon request.

(ii) In performing exhaust sample analysis under § 86.240, the manufacturer shall exercise care to prevent moisture from condensing in the sample collection bags.

(iii) The manufacturer need not comply with § 86.242 since the records required therein are provided under other provisions of subpart G of this part.

(iv) In addition to the requirements of subpart C of this part, the manufacturer shall prepare gasoline-fueled vehicles as follows prior to exhaust emission testing:

(A) The manufacturer shall inspect the fuel system to ensure the absence of any leaks of liquid or vapor to the atmosphere by applying a pressure of 14.5+0.5 inches of water to the fuel system allowing the pressure to stabilize and isolating the fuel system from the pressure source. Following isolation of the fuel system, pressure must not drop more than 2.0 inches of water in five minutes. If required, the manufacturer shall perform corrective action in accordance with paragraph § 86.608(d) and report this action in accordance with paragraph § 86.609(d).

(B) When performing this pressure check, the manufacturer shall exercise care to neither purge nor load the evaporative emission control system.

(C) The manufacturer shall not modify the test vehicle's evaporative emission control system by component addition, deletion or substitution, except if approved in advance by the Administrator, to comply with paragraph (a)(3)(i) of this section.

* * * * *

19. Section 86.1008-88 is amended by revising paragraph (a)(3) and adding a new paragraph (a)(6) to read as follows:

§ 86.1008-88 Test procedures.

(a) * * *

(3) For light-duty trucks, the prescribed test procedure is the Federal Test Procedure and described in subparts B, P, and/or C of this part. The manufacturer shall not perform the evaporative emission test procedure contained in subpart B.

* * * * *

(6) When testing light-duty trucks, the following exceptions to the test procedures in subpart C are applicable:

(i) The manufacturer may measure the temperature of the test fuel at other than the approximate mid-volume of the fuel tank as specified in paragraph (a) of § 86.231 and may drain the test fuel from other than the lowest point of the fuel tank as specified in paragraph (b) of § 86.231 provided an equivalent method is used. Equivalency documentation shall be maintained by the manufacturer and shall be made available to the Administrator upon request.

(ii) In performing exhaust sample analysis under § 86.240, the manufacturer shall exercise care to prevent moisture from condensing in the sample collection bags.

(iii) The manufacturer need not comply with § 86.242 since the records required therein are provided under other provisions of subpart K of this part.

(iv) In addition to the requirements of subpart C of this part, the manufacturer shall prepare gasoline-fueled vehicles as follows prior to exhaust emission testing.

(A) The manufacturer shall inspect the fuel system to ensure the absence of any leaks of liquid or vapor to the atmosphere by applying a pressure of 14.5±0.5 inches of water in the fuel system allowing the pressure to stabilize and isolating the fuel system from the pressure sources. Following isolation of the fuel system, pressure must not drop more than 2.0 inches of water in 5 minutes. If required, the manufacturer shall perform corrective action in accordance with paragraph § 86.608(d) and report this action in accordance with paragraph § 86.609(d).

(B) When performing this pressure check, the manufacturer shall exercise care to neither purge nor load the evaporative emission control system.

(C) The manufacturer shall not modify the test vehicle's evaporative emission control system by component addition, deletion or substitution, except if approved in advance by the Administrator to comply with paragraph (a)(6)(i) of this section.

* * * * *

20. Section 86.1009–84 is amended by revising paragraph (c)(1) to read as follows:

§ 86.1009–84 Calculation and reporting of test results.

* * * * *

(c) *Final deteriorated test results.* (1) The final deteriorated test results for each heavy-duty engine or light-duty truck tested according to subpart B, C, D, N, or P of this part are calculated by multiplying the final test results by the appropriate deterioration factor derived from the certification process for the engine family-control system combination and model year for the selected configuration to which the test engine or vehicle belongs. If the deterioration factor computed during the certification process is less than one that deterioration factor will be assumed to be one.

* * * * *

[FR Doc. 90–21896 Filed 9–14–90; 8:45 am]

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Monday
September 17, 1990

Part VIII

Department of Commerce

National Institute of Standards and Technology

15 CFR Part 290

Regional Centers for Transfer of Manufacturing Technology; Final Rule and Notice

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

15 CFR Part 290

[Docket No. 900109-1068]

RIN 0693-AA82

Regional Centers for the Transfer of Manufacturing Technology

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Final rule.

SUMMARY: On May 1, 1990 the National Institute of Standards and Technology published a notice of proposed rulemaking in the **Federal Register** (55 FR 18124) which provided a description of a program for establishing Regional Centers for the Transfer of Manufacturing Technology in accordance with the Omnibus Trade and Competitiveness Act of 1988. The objective of the Centers is to enhance productivity and technological performance in United States manufacturing through the transfer of manufacturing technology and techniques developed at NIST and the dissemination of scientific, engineering, technical and management information to manufacturing companies. The purpose of that notice was to solicit written comments on the proposed rule for the selection and establishment of the Regional Centers. The purpose of this notice is to provide an analysis of the comments received in response to the proposed rule and sets forth policies and procedures for the program.

EFFECTIVE DATE: September 17, 1990.

FOR FURTHER INFORMATION CONTACT: Dr. Philip Nanzetta, Director, NIST Manufacturing Technology Centers Program, Room B-112, Metrology Building, National Institute of Standards and Technology, Gaithersburg, MD 20899. Telephone: (301) 975-3414. Fax: (301) 963-6556.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to Public Law 100-418, the National Institute of Standards and Technology (NIST) has developed a program to establish Regional Centers for the Transfer of Manufacturing Technology. The objective of the Centers is to enhance productivity and technological performance in United States manufacturing through the transfer of manufacturing technology and techniques developed at NIST, and through them, to manufacturing companies throughout the United States.

On May 1, 1990, NIST published a notice of proposed rulemaking for the selection and establishment of Regional Centers (55 FR 18124). The purpose of that notice was to solicit public comment on the proposed rule. This notice provides an analysis of the comments received by NIST, an outline of the actions taken by NIST in response to each comment, and the final rule to be incorporated in the Code of Federal Regulations (CFR).

The final rule is to be included in the CFR so that all affected parties shall have a widely-distributed public source of information describing how the Centers Program will operate and outlining the criteria for Center qualification, application, selection, and establishment.

Analysis of Comments on Proposed Rule

NIST received 27 comments from nine colleges and universities, five non-manufacturing enterprises, four manufacturing enterprises, four state agencies, four technology related consortiums, and one professional society.

Of the 27 responses, 11 offered supportive comments about both the program and the proposed rule, with no recommendations for change. One response set forth an issue not related to the program or the rulemaking. The remaining 15 responses collectively provided 33 comments concerning the proposed rule.

Analysis of Comments by Section

Section 290.3—(14 comments). Six of the 14 comments on this section were targeted specifically at wording in the rule which placed emphasis on transferring NIST Automated Manufacturing Research Facility (AMRF) technology as a priority of the Centers program. The comments indicated that the program should directly address the needs of the client manufacturers, that the apparent priority of transferring AMRF technology should be reexamined, that a program focus on transferring primarily AMRF technology could place unnecessary constraints on developing the best possible solutions for the target firms, that most of the legislatively targeted firms require as a first step the application of "best practices" rather than individual implementation of AMRF technology, that small vendors are not in a position to implement the sophisticated technology that is being developed in the AMRF, and that AMRF technology is exceptional in the laboratory. The real needs of the target population of smaller manufacturers are answered best by proven, off-the-shelf technology. The legislation specifically states that the objective of the Centers is to enhance productivity in United States manufacturing through the transfer of manufacturing technology and techniques developed at NIST. This will become less of an emphasis for the Centers as they increasingly become financially self-sufficient.

Four comments indicated a lack of clarity in the rule's description of the regional character of the Manufacturing Technology Centers Program. A section has been added to the rule to clarify the Centers' anticipated regional impact.

Two additional comments on this section concern the statement that, "A Center should avoid *ad hoc* solutions to individual company's problems, but rather should carry out projects which offer a prospect for generalization to concerns of other companies." The respondents stated that frequently the solution to a given client's problem will have a degree of uniqueness to that client and that the rule, as stated, would restrict Center involvement. Wording in the rule has been clarified to emphasize that while projects should be tailored to a particular company's manufacturing problem, the Center should be mindful of the leveraging aspects of each project it undertakes.

An additional concern (two comments) with this section was that it described only the transfer of hardware and software; respondents argued that Centers should also employ world-class manufacturing technology such as just-in-time production, statistical process control, total quality management, etc. The rule has been revised accordingly.

Comments recommending tighter restriction on the loaning of equipment resulted in the lending provisions being strengthened to the extent permissible under the law. Another comment recommended that the rule include a statement requiring that the Centers explicitly document their activities in order that other organizations may benefit from the lessons learned. NIST recognizes the merit of this comment and appropriate changes have been made to the rule.

The remaining two comments applicable to this section were interpretational in nature and required no changes to the proposed rule.

Section 290.4—(3 comments). One respondent did not understant what is meant by "Host Contribution." A minor revision clarifies the wording. A second respondent suggested that the maximum amount of NIST contribution during the first year should be allowed to exceed 50%, contrary to the governing

legislation. A final respondent expressed concern that funding commitments which predate selection as a Center would not be allowed as the host contribution even if the funds will be used for purposes fully congruent with NIST objectives. This is a misinterpretation of the rule. Existing funding sources, programmed for activities "fully congruent" with the NIST objectives would be considered appropriate as part of the host contribution or match.

Section 290.5—(2 comments). Two respondents ask that the 25 page limit on proposals be increased to 50 pages. Since the rule allows appendices of relevant supplementary attachments and tabular material and in view of the fact that only two respondents expressed this concern, NIST considers the current page limitation of 25 pages plus attachments to be appropriate.

Section 290.6—(4 comments). Four respondents expressed concern over the clarity of the proposed rule as it relates to "geographical location" and "service region." Specific changes have been made to further clarify these phrases.

Section 290.7—(3 comments). One respondent recommended reordering the selection criteria by moving *Technology delivery mechanisms* to the first item based on its relative importance. Since the order does not imply any weighting of the election criteria, no change was made. One respondent recommended that NIST adopt a finer-grained weighting of the selection criteria. NIST believes that a finer-grained statement of the selection criteria would inappropriately constrain the creativity of the proposer. No change was made. A final comment in this section suggests that the 60 day timeframe for proposal preparation is too short. NIST views the 60 days timeframe as an adequate lower limit.

General Interest Comments

A number of comments were made in the general interest of the program without reference to a particular section. An analysis of these comment is provided in the following:

Three respondents recommended an increase and perhaps mandatory involvement of state technology extension services—in particular those included in the Omnibus Trade Act (15 U.S.C. 2781). NIST does not think that this is necessary since all proposals will be judged according to the selection criteria "Technology Delivery Mechanisms" which may involve industry, universities or state governments.

One respondent suggested that the rule discriminates against applicants in rural and small population states because of the substantial matching fund requirement. NIST, notes, however, that the matching requirement is set by law. The program does provide serivces to firms in low population states through linkages and direct service from a Center located nearer to a concentration of manufacturing firms.

Effective Date of the Final Rule

This final rule relating to grants, benefits and contracts is exempt under section 553(a)(2) from the delayed effective date requirement of the Administrative Procedure Act (5 U.S.C. 553) and, therefore, is being made effective immediately without a 30-day delay in effective date.

Classification

Executive Order 12291

This document is not a major rule requiring a regulatory impact analysis under Executive Order 12291 because it will not have an annual impact on the economy of $100 million or more, nor will it result in a major increase in costs or prices for any group, nor have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The General Counsel of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration at the time this rule was proposed that, if it were adopted as proposed, it would not have a significant economic effect on a substantial number of small entities requiring a flexibility analysis under the Regulatory Flexibility Act. This is because the program is entirely voluntary for the participants that seek funding.

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 Environment Policy Act.

Paperwork Reduction Act

This rule contains a collection of information requirements subject to the Paperwork Reduction Act which have been approved by the Office of Management and Budget under control number 0693-0005 for use through July 31, 1991.

Executive Order 12372

The Regional Technology Centers Program does not involve the mandatory payment of any matching funds from a state or local government, and does not affect directly any state or local government. Accordingly, the Technology Administration has determined that Executive Order 12372 is not applicable to this program.

Executive Order 12612

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

List of Subjects in 15 CFR Part 290

Grant programs, Science and technology, Cooperative agreements.

John W. Lyons,
Director.

For reasons set forth in the preamble, title 15 of the Code of Federal Regulations is amended by adding part 290 to read as follows:

PART 290—REGIONAL CENTERS FOR THE TRANSFER OF MANUFACTURING TECHNOLOGY

Sec.
290.1 Purpose.
290.2 Definitions.
290.3 Program description.
290.4 Terms and schedule of financial assistance.
290.5 Basic proposal qualifications.
290.6 Proposal evaluation and selection criteria.
290.7 Proposal selection process.
290.8 Reviews of centers.
290.9 Intellectual property rights.

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

§ 290.1 Purpose.

This rule provides policy for a program to establish Regional Centers for the Transfer of Manufacturing Technology as well as the prescribed policies and procedures to insure the fair, equitable and uniform treatment of proposals for assistance. In addition, the rule provides general guidelines for the management of the program by the National Institute of Standards and Technology, as well as criteria for the evaluation of the Centers, throughout the lifecycle of financial assistance to the Centers by the National Institute of Standards and Technology.

§ 290.2 Definitions.

(a) The phrase *advanced manufacturing technology* refers to new technologies which have recently been developed, or are currently under development, for use in product or part

design, fabrication, assembly, quality control, or improving production efficiency.

(b) The term *Center* or *Regional Center* means a NIST-established Regional Center for the Transfer of Manufacturing Technology described under these procedures.

(c) The term *operating award* means a cooperative agreement which provides funding and technical assistance to a Center for purposes set forth in § 290.3 of these procedures.

(d) The term *Director* means the Director of the National Institute of Standards and Technology.

(e) The term *NIST* means the National Institute of Standards and Technology, U.S. Department of Commerce.

(f) The term *Program* or "Centers Program" means the NIST program for establishment of, support for, and cooperative interaction with Regional Centers for the Transfer of Manufacturing Technology.

(g) The term *qualified proposal* means a proposal submitted by a nonprofit organization which meets the basic requirements set forth in § 290.5 of these procedures.

(h) The term *Secretary* means the Secretary of Commerce.

(i) The term *target firm* means those firms best able to absorb advanced manufacturing technologies and techniques, especially those developed at NIST, and which are already well prepared in an operational, management and financial sensse to improve the levels of technology they employ.

§ 290.3 Program description.

(a) The Secretary, acting through the Director, shall provide technical and financial assistance for the creation and support of Regional Centers for the Transfer of Manufacturing Technology. Each Center shall be affiliated with a U.S.-based nonprofit institution or organization which has submitted a qualified proposal for a Center Operating Award under these procedures. Support may be provided for a period not to exceed six years. The Centers work with industry, universities, nonprofit economic development organizations and state governments to transfer advanced manufacturing technologies, processes, and methods as defined in § 290.2 to small and medium sized firms. These technology transfer efforts focus on the continuous and incremental improvement of the target firms. The advanced manufacturing technology which is the focus of the Centers is the subject of research in NIST's Automated Manufacturing Research Facility (AMRF). The core of AMRF research has principally been applied in discrete part manufacturing, including electronics, composites, plastics, and metal parts fabrication and assembly. Centers will be afforded the opportunity for interaction with the AMRF and will be given access to reasearch projects and results to strengthen their technology transfer. Where elements of a solution are available from an existing source, they should be employed. Where private-sector consultants who can meet the needs of a small- or medium-sized manufacturer are available, they should handle the task. Each Center should bring to bear the technology expertise described in § 290.3(d) to assist small- and medium-sized manufacturing firms in adopting advanced manufacturing technology.

(b) *Program objective.* The objective of the NIST Manufacturing Technology Centers is to enhance productivity and technological performance in United States manufacturing. This will be accomplished through:

(1) The transfer of manufacturing technology and techniques developed at NIST to Centers and, through them, to manufacturing companies throughout the United States;

(2) The participation of individuals from industry, universities, State governments, other Federal agencies, and, when appropriate, NIST in cooperative technology transfer activities;

(3) Efforts to make new manufacturing technology and processes usable by United States-based small- and medium-sized companies;

(4) The active dissemination of scientific, engineering, technical, and management information about manufacturing to industrial firms, including small- and medium-sized manufacturing companies; and

(5) The utilization, when appropriate, of the expertise and capability that exists in Federal laboratories other than NIST.

(c) *Center Activities.* The activities of the Centers shall include:

(1) The establishment of automated manufacturing systems and other advanced production technologies based on research by NIST and other Federal laboratories for the purpose of demonstrations and technology transfer;

(2) The active transfer and dissemination of research findings and Center expertise to a wide range of companies and enterprises, particularly small- and medium-sized manufacturers; and

(3) Loans, on a selective, short-term basis, of items of advanced manufacturing equipment to small manufacturing firms with less than 100 employees.

(d) *Center Organization and Operation.* Each Center will be organized to transfer advanced manufacturing technology to small and medium sized manufacturers located in its service region. Regional Centers will be established and operated via cooperative agreements between NIST and the award-receiving organizations. Individual awards shall be decided on the basis of merit review, geographical diversity, and the availability of funding.

(e) *Leverage.* The Centers program must concentrate on approaches which can be applied to other companies, in other regions, or by other organizations. The lessons learned in assisting a particular target firm should be documented in order to facilitate the use of those lessons by other target firms. A Center should build on unique solutions developed for a single company to develop techniques of broad applicability. It should seek wide implementation with well-developed mechanisms for distribution of results. Leverage is the principle of developing less resource-intensive methods of delivering technologies (as when a Center staff person has the same impact on ten firms as was formerly obtained with the resources used for one, or when a project once done by the Center can be carried out for dozens of companies by the private sector or a state or local organization.) Leverage does not imply a larger non-federal funding match (that is, greater expenditure of non-federal dollars for each federal dollar) but rather a greater impact per dollar.

(f) *Regional impact.* A new Center should not begin by spreading its resources too thinly over too large a geographic area. It should concentrate first on establishing its structure, operating style, and client base within a manageable service area.

§ 290.4 Terms and schedule of financial assistance.

(a) NIST may provide financial support to any Center for a period not to exceed six years, subject to the availability of funding and continued satisfactory performance. Awards under this program shall be subject to all Federal and Departmental regulations, policies, and procedures applicable to Federal assistance awards. NIST may not provide more than 50 percent of the capital and annual operating and maintenance required to create and maintain such Center. Allowable capital costs may be treated as an expense in the year expended or obligated.

(b) *NIST Contribution.* The funds provided by NIST may be used for capital and operating and maintenance expenses. Each Center will operate on one-year, annually renewable cooperative agreements, contingent upon successful completion of informal annual reviews. Funding can not be provided after the sixth year of support. A formal review of each Center will be conducted during its third year of operation by an independent Merit Review Panel in accordance with § 290.8 of these procedures. Centers will be required to demonstrate that they will be self-sufficient by the end of six years of operation. The amount of NIST investment in each Center will depend upon the particular requirements, plans, and performance of the Center, as well as the availability of NIST funds. NIST may support the budget of each Center on a matching-funds basis not to exceed the Schedule of Financial Assistance outlined in Table 1. The remaining portion of the Center's funding shall be provided by the host organization.

TABLE 1.—SCHEDULE OF NIST MATCHING FUNDS

Year of center operation	Maximum NIST share (percent)
1-3	50
4	40
5	30
6	20

(c) *Host Contribution.* The host organization may count as part of its share:

(1) Dollar contributions from state, county, city, industrial, or other sources;

(2) Revenue from licensing and royalties;

(3) Fees for services performed,

(4) In-kind contributions of full-time personnel,

(5) In-kind contribution of part-time personnel, equipment, software, rental value of centrally located space (office and laboratory) and other related contributions up to a maximum of 45 percent of the host's annual share. Allowable capital expenditures may be applied in the award year expended or in subsequent award years. These restrictions on host contribution apply to all awards issued or extended after September 30, 1990.

§ 290.5 Basic proposal qualifications.

(a) NIST shall designate each proposal which satisfies the qualifications criteria below as "qualified proposal" and subject the qualified proposals to a merit review. Applications which do not meet the requirements of this section will not receive further consideration.

(1) *Qualified Organizations.* Any nonprofit institution, or group thereof, or consortium of nonprofit institutions, including entities which already exist or may be incorporated specifically to manage the Center.

(2) *Proposal Format.* Proposals for Center Operating Awards shall:

(i) Be submitted with a Standard Form 424 to the above address;

(ii) *Not exceed 25 typewritten pages in length for the basic proposal document* (which must include the information requirements of paragraph (a)(3) of this section); it may be accompanied by additional appendices of relevant supplementary attachments and tabular material. Basic proposal documents which exceed 25 pages in length will not be qualified for further review.

(3) *Proposal Requirements.* In order to be considered for a Center Operating Award, proposals must contain:

(i) A plan for the allocation of intellectual property rights associated with any invention or copyright which may result from the involvement in the Center's technology transfer or research activities consistent with the conditions of § 290.9;

(ii) A statement which provides adequate assurances that the host organization will contribute 50 percent or more of the proposed Center's capital and annual operating and maintenance costs for the first three years and an increasing share for each of the following three additional years. Applicants should provide evidence that the proposed Center will be self-supporting after six years.

(iii) A statement describing linkages to industry, government, and educational organizations within its service region.

(iv) A statement defining the initial service region including a statement of the constituency to be served and the level of service to be provided, as well as outyear plans.

(v) A statement agreeing to focus the mission of the Center on technology transfer activities and not to exclude companies based on state boundaries.

(vi) A proposed plan for the annual evaluation of the success of the Center by the Program, including appropriate criteria for consideration, and weighting of those criteria.

(vii) A plan to focus the Center's technology emphasis on areas consistent with NIST technology research programs and organizational expertise.

(viii) A description of the planned Center sufficient to permit NIST to evaluate the proposal in accordance with § 290.6 of these procedures.

§ 290.6 Proposal evaluation and selection criteria.

(a) In making a decision whether to provide financial support, NIST shall review and evaluate all qualified proposals in accordance with the following criteria, assigning equal weight to each of the four categories.

(1) *Identification of Target Firms in Proposed Region.* Does the proposal define an appropriate service region with a large enough population of target firms of small- and medium-sized manufacturers which the applicant understands and can serve, and which is not presently served by an existing Center?

(i) *Market Analysis.* Demonstrated understanding of the service region's manufacturing base, including business size, industry types, product mix, and technology requirements.

(ii) *Geographical Location.* Physical size, concentration of industry, and economic significance of the service region's manufacturing base. Geographical diversity of Centers will be a factor in evaluation of proposals; a proposal for a Center located near an existing Center may be considered only if the proposal is unusually strong and the population of manufacturers and the technology to be addressed justify it.

(2) *Technology Resources.* Does the proposal assure strength in technical personnel and programmatic resources, full-time staff, facilities, equipment, and linkages to external sources of technology to develop and transfer technologies related to NIST research results and expertise in the technical areas noted in these procedures?

(3) *Technology Delivery Mechanisms.* Does the proposal clearly and sharply define an effective methodology for delivering advanced manufacturing technology to small- and medium-sized manufacturers?

(i) *Linkages.* Development of effective partnerships or linkages to third parties such as industry, universities, nonprofit economic organizations, and state governments who will amplify the Center's technology delivery to reach a large number of clients in its service region.

(ii) *Program Leverage.* Provision of an effective strategy to amplify the Center's technology delivery approaches to achieve the proposed objectives as described in § 290.3(e).

(4) *Management and Financial Plan.* Does the proposal define a management structure and assure management

personnel to carry out development and operation of an effective Center?

(i) *Organizational Structure.* Completeness and appropriateness of the organizational structure, and its focus on the mission of the Center. Assurance of full-time top management of the Center.

(ii) *Program Management.* Effectiveness of the planned methodology of program management.

(iii) *Internal Evaluation.* Effectiveness of the planned continuous internal evaluation of program activities.

(iv) *Plans for Financial Matching.* Demonstrated stability and duration of the applicant's funding commitments as well as the percentage of operating and capital costs guaranteed by the applicant. Identification of matching fund sources and the general terms of the funding commitments. Evidence of the applicant's ability to become self-sustaining in six years.

(v) *Budget.* Suitability and focus of the applicant's detailed one-year budget and six-year budget outline.

§ 290.7 Proposal selection process.

Upon the availability of funding to establish Regional Centers, the Director shall publish a notice in the **Federal Register** requesting submission of proposals from interested organizations. Appliclants will be given an established time frame, not less than 60 days from the publication date of the notice, to prepare and submit a proposal. The proposal evaluation and selection process will consist of four principal phases: Proposal qualification; Proposal review and selection of finalists; Finalist site visits; and, Award determination. Further descriptions of these phases are provided in the following:

(a) *Proposal qualification.* All proposals will be reviewed by NIST to assure compliance with § 290.5 of these procedures. Proposals which satisfy these requirements will be designated qualified proposals; all others will be disqualified at this phase of the evaluation and selection process.

(b) *Proposal review and selection of finalists.* The Director of NIST will appoint an evaluation panel to review and evaluate all qualified proposals in accordance with the criteria set forth in section 290.6 of these procedures, assigning equal weight to each of the four categories. From the qualified proposals, a group of finalists will be selected based on this review.

(c) *Finalist Site Visits.* NIST representatives will visit each finalist organization. Finalists will be reviewed and assigned numeric scores using the criteria set forth in § 290.6 of these procedures assigning equal weight to each of the four categories. NIST may enter into negotiations with the finalists concerning any aspect of their proposal.

(d) *Award Determination.* The Director of NIST or his designee shall select awardees for Center Operating Awards based upon the rank order of applicants, the need to assure appropriate regional distribution, and the availability of funds. Upon the final award decision, a notification will be made to each of the proposing organizations.

§ 290.8 Reviews of centers.

(a) *Overview.* Each Center will be reviewed at least annually, and at the end of its third year of operation according to the procedures and criteria set out below. There will be regular management interaction with NIST and the other Centers for the purpose of evaluation and program shaping. Centers are encouraged to try new approaches, must evaluate their effectiveness, and abandon or adjust those which do not have the desired impact.

(b) *Annual Reviews of Centers.* Centers will be reviewed annually as part of the funding renewal process using the criteria set out in § 290.8(d). The funding level at which a Center is renewed is contingent upon a positive program evaluation and will depend upon the availability of federal funds and on the Center's ability to obtain suitable match, as well as on the budgetary requirements of its proposed program. Centers must continue to demonstrate that they will be self-supporting after six years.

(c) *Third Year Review of Centers.* Each host receiving a Center Operating Award under these procedures shall be evaluated during its third year of operation by a Merit Review Panel appointed by the Secretary of Commerce. Each such Merit Review Panel shall be composed of private experts, none of whom shall be connected with the involved Center, and Federal officials. An official of NIST shall chair the panel. Each Merit Review Panel shall measure the involved Center's performance against the criteria set out in § 290.8(d). The Secretary shall not provide funding for the fourth through the sixth years of such Center's operation unless the evaluation is positive on all grounds. As a condition of receiving continuing funding, the Center must show evidence at the third year review that they are making substantial progress toward self-sufficiency. If the evaluation is positive and funds are available, the Secretary of Commerce may provide continued funding through the sixth year at declining levels, which are designed to insure that the Center no longer needs financial support from NIST by the seventh year. In no event shall funding for a Center be provided by the NIST Manufacturing Technology Centers Program after the sixth year of support.

(d) *Criteria for Annual and Third Year Reviews.* Centers will be evaluated under the following criteria in each of the annual reviews, as well as the third year review:

(1) The program objectives specified in § 290.3(b) of these procedures;

(2) Funds-matching performance;

(3) The extent to which the target firms have successfully implemented recently developed or currently developed advanced manufacturing technology and techniques transferred by the Center;

(4) The extent to which successes are properly documented and there has been further leveraging or use of a particular advanced manufacturing technology or process;

(5) The degree to which there is successful operation of a network, or technology delivery mechanism, involving the sharing or dissemination of information related to manufacturing technologies among industry, universities, nonprofit economic development organizations and state governments.

(6) The extent to which the Center can increasingly develop continuing resources—both technological and financial—such that the Centers are finally financially self-sufficient.

§ 209.9 Intellectual property rights.

(a) Awards under the Program will follow the policies and procedures on ownership to inventions made under grants and cooperative agreements that are set out in Public Law 96–517 (35 U.S.C. chapter 18), the Presidential Memorandum on Government Patent Policy to the Heads of Executive Departments and Agencies Dated February 18, 1983, and part 401 of title 37 of the Code of Federal Regulations, as appropriate. These policies and procedures generally require the Government to grant to Centers selected for funding the right to elect to obtain title to any invention made in the course of the conduct of research under an award, subject to the reservation of a Government license.

(b) Except as otherwise specifically provided for in an Award, Centers selected for funding under the Program may establish claim to copyright subsisting in any data first produced in the performance of the award. When claim is made to copyright, the funding

recipient shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship to the data when and if the data are delivered to the Government, are published, or are deposited for registration as a published work in the U.S. Copyright Office. For data other than computer software, the funding recipient shall grant to the Government, and others acting on its behalf, a paid up, nonexclusive, irrevocable, worldwide license for all such data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government. For computer software, the funding recipient shall grant to the Government, and others acting on its behalf, a paid up, nonexclusive, irrevocable, worldwide license for all such computer software to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government.

[FR Doc. 90-21906 Filed 9-14-90; 8:45 am]

BILLING CODE 3510-13-M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 900781-0181]

Regional Centers for the Transfer of Manufacturing Technology

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice of the availability of funding; notice of meeting.

SUMMARY: In accordance with the provisions of the Omnibus Trade and Competitiveness Act of 1988, the National Institute of Standards and Technology is announcing the availability of funds and requesting proposals to establish two additional Regional Centers for the Transfer of Manufacturing Technology. In addition, NIST is announcing a public briefing for potential applicants to further discuss the program and answer questions concerning the application and selection process. (Catalog of Federal Domestic Assistance No. 11.611 "Manufacturing Technology Centers Program.")

DATES:

1. Closing Date. Proposals must be received at the address below by November 16, 1990.

2. The applicants' briefing will begin at 9:30 on October 5, 1990.

ADDRESSES:

1. Applicants must submit one signed original plus fourteen (14) copies of their proposal along with the Standard Form 424 to: Director, NIST Manufacturing Technology Centers Program, Room B-112, Metrology Building, National Institute of Standards and Technology, Gaithersburg, MD 20899. Plainly mark on the outside of the package that it contains an "MTC Proposal."

2. The applicants' briefing will be held in the Administration Building, National Institute of Standards and Technology, Gaithersburg, MD.

FOR FURTHER INFORMATION CONTACT: Kevin Carr at (301) 975-5020 (voice) or (301) 963-6556 (fax).

SUPPLEMENTARY INFORMATION:

Background

The National Institute of Standards and Technology (NIST) shall provide assistance for the creation and support of Regional Centers for the Transfer of Manufacturing Technology. Such Centers shall be affiliated with any United States-based nonprofit institution or organization, or group thereof, that applies for and is awarded financial assistance in accordance with the procedures set forth in 15 CFR part 290. Individual awards shall be decided on the basis of merit review.

The objective of the Centers is to enhance productivity and technological performance in United States manufacturing through:

(1) The transfer of manufacturing technology and techniques developed at the Institute to Centers and, through them, to manufacturing companies throughout the United States;

(2) The participation of individuals from industry, universities, State governments, other Federal agencies, and, when appropriate, the Institute in cooperative technology transfer activities;

(3) Efforts to make new manufacturing technology and processes usable by United States-based small- and medium-sized companies;

(4) The active dissemination of scientific, engineering, technical, and management information about manufacturing to industrial firms, including small- and medium-sized manufacturing companies; and

(5) The utilization, when appropriate, of the expertise and capability that exists in Federal laboratories other than the Institute.

Regional Centers will be established and operated via cooperative agreements between NIST and the award-receiving organizations. To date, NIST has awarded funding for its first three (3) Centers. These Centers are the Southeast Manufacturing Technology Center (SMTC) in Columbia, South Carolina, the Great Lakes Manufacturing Technology Center (GLMTC) in Cleveland, Ohio, and the Northeast Manufacturing Technology Center (NEMTC) in Troy, New York. The technology emphasis of the first three Centers is focused primarily in the area of metal parts fabrication.

Request for Proposals

NIST currently has available the funding to establish two (2) new Centers with a maximum NIST funding level of $1.5 million each in the first year. Second year NIST funding level will be contingent upon the availability of funds but will not exceed $3 million per year for each of the Centers. Future or continued funding will not exceed $3 million per year for each of the Centers and will be at the discretion of NIST based on such factors as satisfactory performance and the availability of funds.

The competition is open to proposals based on any of the major discrete part manufacturing technology disciplines in which NIST has technical expertise (for example, mechanical parts, electronics assembly, composites). Geographical location, physical size, concentration of industry, and economic significance of the service region's manufacturing base will be factors in the evaluation of new proposals. A proposal for a Center located near an existing Center may be considered only if the proposal is unusually strong and the population of manufacturers and the technology to be addressed justify it.

NIST will provide all qualified proposals to a Merit Review Panel organized by the National Research Council (NRC) which will evaluate the proposals in accordance with the evaluation and selection criteria from 15 CFR part 290. NIST will consider the findings of the NRC Merit Review Panel in its final selection. NIST anticipates making the selection and announcement of the award receiving Centers by February 1991.

Applicant's Briefing

NIST will conduct a public meeting to present an overview of the Program and to allow interested parties and potential applicants to discuss program issues with Institute staff. Representatives from existing NIST Centers will be available at the briefing to answer any questions concerning their respective programs. The meeting will be held at the Institute at the location and time shown above. The advanced registration or fee for attendance is required.

Proposal Requirement Highlights

Applicants should refer directly to 15 CFR 290, which contains the guidelines for the application, qualification, selection and establishment of Centers. Applicants should particularly note:

- There is a 25 page limitation on the basic proposal text;
- The applicant is required to contribute 50 percent or more of the proposed Center's capital and annual operating and maintenance costs for the first three years and an increasing share of 60, 70, and 80 percent in years 4, 5, and 6, respectively;
- At least 55% of the applicant's share must consist of cash from various sources or in-kind contributions of full-time personnel;
- The Center must focus its activities on *transferring* new manufacturing technology rather than on performing research and development;
- Each Center shall be affiliated with a U.S.-based nonprofit institution or organization which has submitted a qualified proposal for a Center Operating Award under these procedures; and,
- Support may be provided by NIST for a period not to exceed six years.

Supporting Information Packet

NIST has prepared a supplementary information packet which contains: a copy of 15 part CFR 290; background information on the existing Centers and the NIST Automated Manufacturing Research Facility, Center for Electronics and Electrical Engineering, and the Materials Science and Engineering Laboratory; Standard Form 424; and OMB Circular A-110. Information packets are available upon request from the information contact above.

Other Requirements, Requests, and Provisions

Applicants who have outstanding accounts receivable with the Federal Government may not be considered for Regional Centers Program funding until the debts have been paid or arrangements satisfactory to the Department are made to pay the debt.

The Regional Technology Centers Program does not involve the mandatory payment of any matching funds from a state or local government, and does not affect directly any state or local government. Accordingly, the Technology Administration has determined that Executive Order 12372 is not applicable to this program.

Section 319 of Public Law 101-121 prohibits recipients of Federal contracts, grants, cooperative agreements and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, cooperative agreement or loan. A "Certification for Contracts, Grants, Loans, and Cooperative Agreements" is required to be submitted with any application for funding under the Regional Centers program. Applicants for funding are subject to Government-wide Debarment Suspension (Nonprocurement) requirements as stated in 15 CFR part 26. In accordance with the Drug-Free Workplace Act of 1988, each applicant must make the appropriate certification as a "prior condition" to receiving a grant or cooperative agreement. A false statement on any application for funding under the Regional Centers program may be grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment. Awards under the Regional Centers program shall be subject to all Federal and Departmental regulations, policies, and procedures applicable to Federal assistance awards.

John W. Lyons,

Director, National Institute of Standards and Technology.

[FR Doc. 90-21907 Filed 9-14-90; 8:45 am]

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federal register

Monday
September 17, 1990

Part IX

Office of Management and Budget

Cumulative Report on Rescissions and Deferrals; Notice

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

September 1, 1990.

This report is submitted in fulfillment of the requirement of section 1014(e) of the Congressional Budget and Impoundment Control Act of 1974 (Pub. L. 93–344). Section 1014(e) requires a monthly report listing all budget authority for this fiscal year for which, as of the first day of the month, a special message has been transmitted to Congress.

This report gives the status, as of September 1, 1990, of 28 deferrals and eleven rescission proposals contained in seven special messages for FY 1990. These messages were transmitted to Congress on October 2, 1989, January 29, 1990, February 6, 1990, April 18, 1990, April 23, 1990, June 26, 1990 and June 28, 1990.

Rescissions (Table A and Attachment A)

As of September 1, 1990, eight rescission proposals totalling $327.4 million were pending before Congress.

Deferrals (Table B and Attachment B)

As of September 1, 1990, $2,300.5 million in budget authority was being deferred from obligation. Attachment B shows the history and status of each deferral reported during FY 1990.

Information from Special Messages

The special messages containing information on deferrals and rescissions that are covered by this cumulative report are printed in the **Federal Register** as cited below:

54 FR 41410, Friday, October 6, 1989
55 FR 3860, Monday, February 5, 1990
55 FR 5388, Wednesday, February 14, 1990
55 FR 17364, Tuesday, April 24, 1990
55 FR 18276, Tuesday May 1, 1990
55 FR 27974, Friday, July 6, 1990
55 FR 28584, Wednesday, July 11, 1990

Richard G. Darman,
Director.

BILLING CODE 3110-01-M

TABLE A

STATUS OF FY 1990 RESCISSIONS

	Amounts (In millions of dollars)
Rescissions proposed by the President	554.3
Accepted by the Congress	0
Funding made available	-45.1
Funding never withheld	-181.8
Pending before the Congress	327.4

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TABLE B

STATUS OF FY 1990 DEFERRALS

	Amounts (In millions of dollars)
Deferrals proposed by the President	11,071.5
Routine Executive releases through September 1, 1990 (OMB/Agency releases of $8,807.0 million, partly offset by cumulative positive adjustments of $36.0 million.)	8,771.0
Overturned by the Congress	0
Currently before the Congress	2,300.5

Attachments

ATTACHMENT A
Status of FY 1990 Rescissions
(Amounts in thousands of dollars)

As of September 1, 1990 Agency/Bureau/Account	Rescission Number	Amount: Previously Considered by Congress	Amount: Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
DEPARTMENT OF AGRICULTURE								
Agricultural Research Service								
Buildings and facilities	R90-1	4,075		04-23-90		4,075	06-18-90	
Cooperative State Research Service								
Buildings and facilities	R90-2	41,008		04-23-90		41,008	06-18-90	
DEPARTMENT OF COMMERCE								
Economic Development Administration								
Economic development assistance program	R90-3	181,800		04-23-90		(See note below.)		
DEPARTMENT OF DEFENSE, MILITARY								
Military Construction, Army	R90-4		155,745	06-28-90				
Military Construction, Navy	R90-5		6,200	06-28-90				
Military Construction, Air Force	R90-6		27,290	06-28-90				
Military Construction, Defense Agencies	R90-7		68,119	06-28-90				
Family Housing, Army	R90-8		12,664	06-28-90				
Family Housing, Navy	R90-9		11,037	06-28-90				
Family Housing, Air Force	R90-10		46,020	06-28-90				
Family Housing, Defense Agencies	R90-11		300	06-28-90				
TOTAL, RESCISSIONS PROPOSED		226,883	327,375			45,083		

NOTE: The $181.8 million proposed for rescission in Rescission Proposal No. 90-3 was never withheld from obligation. Therefore, there was no need to release the funds.

ATTACHMENT B
Status of FY 1990 Deferrals - As of September 1, 1990
(Amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted: Original Request	Amounts Transmitted: Subsequent Change (+)	Date of Message	Releases(-): Cumulative OMB/ Agency	Releases(-): Congressionally Required	Congressional Action	Cumulative Adjustments (+)	Amount Deferred as of 9-1-90
FUNDS APPROPRIATED TO THE PRESIDENT									
International Security Assistance									
Economic support fund	D90-1	271,000		10-02-89					
	D90-1A		1,798,079	01-29-90					
	D90-1B		19,831	04-18-90					
	D90-1C		383,950	06-26-90	2,071,694				401,165
Foreign military financing	D90-8	4,156,642		01-29-90	4,110,588				46,054
International military education and training	D90-9	23,293		01-29-90	23,293				0
DEPARTMENT OF AGRICULTURE									
Forest Service									
Expenses, brush disposal	D90-2	188,680		10-02-89	52,726				135,954
Cooperative work	D90-3	410,189		10-02-89					
	D90-3A		367,148	01-29-90	322,896			36,000	490,441
DEPARTMENT OF DEFENSE - MILITARY									
Aircraft Procurement, Army	D90-10	16,000		02-06-90	16,000				0
Procurement of Ammunition, Army	D90-11	310,000		02-06-90	310,000				0
Procurement of Ammunition, Army	D90-12	90,000		02-06-90	90,000				0
Other Procurement, Army	D90-13	11,000		02-06-90	11,000				0

ATTACHMENT B

Status of FY 1990 Deferrals - As of September 1, 1990

(Amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted: Original Request	Amounts Transmitted: Subsequent Change (+)	Date of Message	Releases(-): Cumulative OMB/ Agency	Releases(-): Congressionally Required	Congressional Action	Cumulative Adjustments (+)	Amount Deferred as of 9-1-90
Aircraft Procurement, Navy	D90-14	200,000		02-06-90	200,000				0
Weapons Procurement, Navy	D90-15	13,900		02-06-90	13,900				0
Shipbuilding and Conversion, Navy	D90-16	592,398		02-06-90	592,398				0
Shipbuilding and Conversion, Navy	D90-17	324,800		02-06-90	324,800				0
Aircraft Procurement, Air Force	D90-18	181,700		02-06-90	181,700				0
Missile Procurement, Air Force	D90-19	131,000		02-06-90	131,000				0
Other Procurement, Air Force	D90-20	70,000		02-06-90	70,000				0
National Guard and Reserve Equipment, Defense	D90-21	40,900		02-06-90	40,900				0
Research, Development, Test and Evaluation, Air Force	D90-22	100,000		02-06-90	100,000				0
Research, Development, Test and Evaluation, Defense Agencies	D90-23	21,000		02-06-90	21,000				0
Military Construction, Army	D90-24	3,200		02-06-90	3,200				0
Military Construction, Army	D90-25	16,150		02-06-90	16,150				0
Military Construction, Army National Guard	D90-26	18,301		02-06-90	18,301				0
Military Construction, Air National Guard	D90-27	36,841		02-06-90	36,841				0
Military Construction, Army Reserve	D90-28	16,660		02-06-90	16,660				0
DEPARTMENT OF DEFENSE - CIVIL									
Wildlife Conservation, Military Reservations									
Wildlife conservation, Defense	D90-4	1,047		10-02-89					
	D90-4A		450	04-18-90	47				1,450

ATTACHMENT B
Status of FY 1990 Deferrals - As of September 1, 1990
(Amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted: Original Request	Amounts Transmitted: Subsequent Change (+)	Date of Message	Releases(-): Cumulative OMB/ Agency	Releases(-): Congressionally Required	Congressional Action	Cumulative Adjustments (+)	Amount Deferred as of 9-1-90
DEPARTMENT OF HEALTH AND HUMAN SERVICES									
Social Security Administration									
Limitation on administrative expenses (construction).....	D90-5	7,078		10-02-89					
	D90-5A		49	04-18-90					7,127
DEPARTMENT OF STATE									
Bureau for Refugee Programs									
United States emergency refugee and migration assistance fund, executive....	D90-6	44		10-02-89					
	D90-6A		49,785	01-29-90					
	D90-6B		25,000	06-26-90	31,950				42,879
DEPARTMENT OF TRANSPORTATION									
Federal Aviation Administration									
Facilities and equipment (Airport and airway trust fund).....	D90-7	502,361		10-02-89					
	D90-7A		673,064	01-29-90					1,175,425
TOTAL, DEFERRALS.....		7,754,185	3,317,355		8,807,043	0		36,000	2,300,496

The above totals may not add due to rounding.

[FR Doc. 90-21941 Filed 9-14-90; 8:45 am]
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federal register

Monday
September 17, 1990

Part X

The President

Proclamation 6179—Modification of Tariffs and Quota on Certain Sugars, Syrups, and Molasses

Federal Register
Vol. 55, No. 180
Monday, September 17, 1990

Presidential Documents

Title 3—

The President

Proclamation 6179 of September 13, 1990

Modification of Tariffs and Quota on Certain Sugars, Syrups, and Molasses

By the President of the United States of America

A Proclamation

1. Additional U.S. note 2 to chapter 17 of the Harmonized Tariff Schedule of the United States (HTS), contained in title I of the Tariff Act of 1930 (46 Stat. 590), as amended by section 1204(a) of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. 3004(a)), authorizes the President, for such time as title II of the Sugar Act of 1948 (61 Stat. 922) or substantially equivalent legislation is not in effect, to modify HTS column 1 customs duty rates and quota limitations for articles classified in subheadings 1701.11.00, 1701.12.00, 1701.91.20, 1701.99.00, 1702.90.30, 1806.10.40, and 2106.90.10, if the President finds and proclaims that such modifications are required or appropriate to give due consideration to the interests in the United States sugar market of domestic producers and materially affected contracting parties to the General Agreement on Tariffs and Trade (GATT). Previously, Proclamation No. 3822 of December 16, 1967 (82 Stat. 1455), had added almost identical provisions to the former Tariff Schedules of the United States (TSUS) in the form of headnote 2 to subpart A, part 10, schedule 1, in order to carry out a provision in the trade agreement known as the Geneva (1967) Protocol of the GATT (Note 1 of Unit A, Chapter 10, Part I of Schedule XX; 19 U.S.T., Part II, 1282).

2. The Sugar Act of 1948 expired on December 31, 1974, and it has not been replaced with substantially equivalent legislation. Proclamation No. 4334 of November 16, 1974 (39 FR 40739), established rates of duty, and an absolute import quota, for such sugars, syrups, and molasses, to become effective on January 1, 1975. Proclamation No. 4334 further proclaimed such quantitative limitations in the form of headnote 3 of subpart A, part 10, schedule 1 of the TSUS. Subsequent proclamations have modified such rates of duty and quota limitations. The provisions of headnote 3 to subpart A, part 10, schedule 1 of the TSUS are now set forth in additional U.S. note 3 to chapter 17 of the HTS.

3. On June 22, 1989, the Council of the GATT adopted a panel report that concluded that the absolute quota on imports of sugar, syrups, and molasses maintained by the United States pursuant to additional U.S. note 2 to chapter 17 of the HTS is inconsistent with the obligations of the United States and which recommended that the United States either terminate such import restrictions or bring them into conformity with the GATT.

4. Section 902(a) of the Food Security Act of 1985 (99 Stat. 1443; 7 U.S.C. 1446 note) requires the President to "use all authorities available to the President as is necessary to enable the Secretary of Agriculture to operate the sugar program established under section 201 of the Agricultural Act of 1949 (7 U.S.C. 1446) at no cost to the Federal Government by preventing the accumulation of sugar acquired by the Commodity Credit Corporation."

5. Section 504(a)(1) of the Trade Act of 1974 (19 U.S.C. 2464(a)(1)) authorizes the President to withdraw, suspend, or limit the application of the duty-free treatment accorded under section 501 of that act with respect to any article or with respect to any country, except that no rate of duty may be established with respect to any article other than the rate that would otherwise apply. In

taking such action, the President must consider the factors set forth in sections 501 and 502(c) of that act.

6. Section 213(d) of the Caribbean Basin Economic Recovery Act (CBERA) (19 U.S.C. 2703(d)) provides specific rules with respect to imports of sugars, syrups, and molasses from CBERA beneficiary countries for as long as there is a proclamation issued by the President pursuant to the authority vested in him by section 22 of the Agricultural Adjustment Act of 1933, as amended (7 U.S.C. 624), to protect a price-support program for sugar beets and sugarcane. With respect to imports of sugars, syrups, and molasses from all CBERA beneficiary countries except the Dominican Republic, Guatemala, and Panama, section 213(d)(1)(A) requires that "duty-free treatment shall be provided in the same manner as it is provided pursuant to title V of the Trade Act of 1974 . . . ." With respect to imports of sugars, syrups, and molasses from the Dominican Republic, Guatemala, and Panama, paragraph (2) of section 213(d) provides for absolute quotas and further provides that such quantities of sugars, syrups, and molasses shall be admitted free of duty. However, the President, upon the recommendation of the Secretary of Agriculture, may suspend the quantitative limitations imposed under paragraph (2) if he determines such action will not interfere with the price support program for sugar beets and sugarcane and is appropriate in light of market conditions and may suspend duty-free treatment for all or part of the quantity of sugar, syrups, and molasses permitted to be entered by paragraph (2) if such action is necessary to protect the price-support program for sugar beets and sugarcane.

7. Section 1204(c)(3) of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. 3004(c)(3)) provides that if a rate of duty established in column 1 of the HTS by the President is higher than the existing rate of duty in column 2, the President may increase the rate in column 2 to the higher rate established in column 1.

8. Section 604 of the Trade Act of 1974, as amended (19 U.S.C. 2483), authorizes the President to embody in the HTS the substance of the provisions of that act, and of other acts affecting import treatment, and actions taken thereunder, including the removal, modification, continuance, or imposition of any rate of duty or other import restriction.

9. I find that the modifications hereinafter proclaimed of the import duty rates, and the quantitative limitations thereof, on the importation of sugar, syrups, and molasses classified in subheadings 1701.11.00, 1701.12.00, 1701.91.20, 1701.99.00, 1702.90.30, 1806.10.40, and 2106.90.10 of the HTS are required and appropriate to give due consideration to the interests in the United States sugar market of domestic producers and materially affected contracting parties to the GATT.

10. Having considered the factors set forth in sections 501 and 502(c) of the Trade Act of 1974, including the anticipated impact on United States producers of like or directly competitive products, I further find that the limitations, hereinafter proclaimed, of the application of the duty-free treatment accorded under section 501 of that act with respect to sugars, syrups, and molasses classified under subheadings 1701.11.00, 1701.12.00, 1701.91.20, 1701.99.00, 1702.90.30, 1806.10.40, and 2106.90.10 of the HTS are necessary and appropriate.

11. I find that there are currently in effect proclamations issued by the President pursuant to the authority vested in him by section 22 of the Agricultural Adjustment Act of 1933, as amended (7 U.S.C. 624), to protect a price-support program for sugar beets and sugarcane, including Proclamation No. 4940 of May 5, 1982, Proclamation No. 5071 of June 28, 1983, Proclamation No. 5164 of March 19, 1984, Proclamation No. 5294 of January 28, 1985, Proclamation No. 5313 of March 29, 1985, and Proclamation No. 5340 of May 17, 1985. Accordingly, I determine that the duty-free treatment of sugars, syrups, and molasses imported from beneficiary countries under the CBERA and classified under subheadings 1701.11.00, 1701.12.00, 1701.91.20, 1701.99.00, 1702.90.30, 1806.10.40, and 2106.90.10 of the HTS must be subject to the

limitations hereinafter proclaimed, corresponding to the limitation of duty-free treatment for the same articles when imported from designated beneficiary developing countries under the Generalized System of Preferences (GSP), as is provided pursuant to title V of the Trade Act of 1974.

12. I further find and determine, upon the recommendation of the Secretary of Agriculture, that the suspension of the quantitative limitations imposed under paragraph (2) of section 213(d) of the CBERA, as hereinafter proclaimed, will not interfere with the price support program for sugar beets and sugarcane and is appropriate in light of market conditions and that the suspension of duty-free treatment for part of the quantity of sugar, syrups, and molasses permitted to be entered by paragraph (2) of that act, as hereinafter proclaimed, is necessary to protect the price-support program for sugar beets and sugarcane.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States, including but not limited to the provisions of title I of the Tariff Act of 1930, as amended; sections 501, 502, 504, and 604 of the Trade Act of 1974, as amended; section 213 of the CBERA; section 1204 of the Omnibus Trade and Competitiveness Act of 1988; additional U.S. note 2 to chapter 17 of the HTS; and section 301 of Title 3 of the United States Code, do hereby proclaim:

(1) Subheadings 1701.11.00, 1701.12.00, 1701.91.20, 1701.99.00, 1702.90.30, 1806.10.40, and 2106.90.10 of the HTS are modified as provided in Annex I to this proclamation.

(2) Additional U.S. notes 3 and 4 to chapter 17 of the HTS are modified as provided in Annex II to this proclamation.

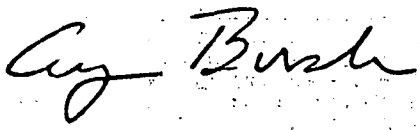
(3) The duty-free treatment accorded to sugars, syrups, and molasses described in subheadings 1701.11.01, 1701.12.01, 1701.91.21, 1701.99.01, 1702.90.31, 1806.10.41, and 2106.90.11 of the HTS, which are imported from beneficiary countries for purposes of the GSP and CBERA, shall be limited to the quantities as established and allocated pursuant to paragraphs (a) and (b) of additional U.S. note 3 to chapter 17 of the HTS. Duty-free treatment shall be accorded to the importation of sugars, which are imported from the beneficiary countries for purposes of the GSP and CBERA, as described in subheading 1701.11.02 of the HTS. Duty-free treatment shall not be accorded to the importation of sugars, syrups, and molasses, imported from beneficiary countries for purposes of the GSP and CBERA, as described in subheadings 1701.11.03, 1701.12.02, 1701.91.22, 1701.99.02, 1702.90.32, 1806.10.42, and 2106.90.12 of the HTS. Accordingly, the quantitative limitations imposed under paragraph (2) of section 213(d) of the CBERA are hereby suspended.

(4) All previous proclamations issued under the authority vested in the President by section 201 of the Trade Expansion Act of 1962 (19 U.S.C. 1821) and headnote 2 of subpart A of part 10 of schedule 1 of the former TSUS, with respect to rates of duty or quantitative limitations on the importation of sugars, syrups, and molasses, including Proclamation No. 4334 of November 16, 1974, Proclamation No. 4463 of September 21, 1976, Proclamation No. 4466 of October 4, 1976, Proclamation No. 4539 of November 11, 1977, Proclamation No. 4610 of November 30, 1978, Proclamation No. 4663 of May 24, 1979, Proclamation No. 4720 of February 1, 1980, Proclamation No. 4770 of July 1, 1980, Proclamation No. 4888 of December 23, 1981, Proclamation No. 4941 of May 5, 1982, Proclamation No. 5002 of November 30, 1982, Proclamation No. 5104 of September 23, 1983, and Proclamation No. 5297 of January 31, 1985, are hereby terminated and rescinded.

(5) The modifications made by this proclamation shall be effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after October 1, 1990.

(6) In order to provide for the continuation of previously proclaimed staged rate reductions on goods originating in the territory of Canada in the HTS subheadings in Annex I to this proclamation, effective with respect to goods originating in the territory of Canada which are entered, or withdrawn from warehouse for consumption, on or after January 1, 1991, the rate of duty in the HTS set forth in the Rates of Duty 1-Special subcolumn followed by the symbol "CA" in parentheses for each of the HTS subheadings enumerated in such annex shall be deleted, and the rate of duty pursuant to the terms of the United States-Canada Free-Trade Agreement shall be inserted in lieu thereof.

IN WITNESS WHEREOF, I have hereunto set my hand this thirteenth day of September, in the year of our Lord nineteen hundred and ninety, and of the Independence of the United States of America the two hundred and fifteenth.



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ANNEX I

MODIFICATIONS TO THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES

Notes:

1. Bracketed matter is included to assist in the understanding of proclaimed modifications.

2. The following supersedes matter now in the Harmonized Tariff Schedule of the United States (HTS). The subheadings and superior descriptions are set forth in columnar format, and material in such columns is inserted in the columns of the HTS designated "Heading/Subheading", "Article Description", "Rates of Duty 1-General", "Rates of Duty 1-Special", and "Rates of Duty 2", respectively.

Effective as to articles entered, or withdrawn from warehouse for consumption, on or after October 1, 1990.

(a) The Harmonized Tariff Schedule of the United States is modified as follows:

(1) (A) Subheading 1701.11.00 is stricken and the following new subheadings are inserted in lieu thereof:

[1701	Cane or beet sugar and chemically pure sucrose, in solid form:] [Raw sugar . . . :]			
"1701.11	Cane sugar:			
1701.11.01	Described in paragraphs (a) and (b) of additional U.S. note 3 to chapter 17 and entered pursuant to its provisions	1.4606¢/kg less 0.020668¢/kg for each degree under 100 degrees (and fractions of a degree in proportion) but not less than 0.943854¢/kg	Free (A*,E*,IL) 1.1684¢/kg less 0.016534¢/kg for each degree under 100 degrees (and fractions of a degree in proportion) but not less than 0.755083¢/kg (CA)	4.38170¢/kg less 0.0622005¢/kg for each degree under 100 degrees (and fractions of a degree in proportion) but not less than 2.831562¢/kg
1701.11.02	Other sugar to be used for the production (other than by distillation) of polyhydric alcohols, except polyhydric alcohols for use as a substitute for sugar in human food consumption, or to be refined and re-exported in refined form or in sugar-containing products, provided that the exportation of such refined or manufactured articles is not used as the basis of any claim for, or result in, a refund, as drawback, of duties paid on articles classified in subheadings 1701.11.03, 1701.12.02, 1701.91.22, 1701.99.02, 1702.90.32, 1806.10.42, or 2106.90.12	1.4606¢/kg less 0.020668¢/kg for each degree under 100 degrees (and fractions of a degree in proportion) but not less than 0.943854¢/kg	Free (A*,E*,IL) 1.1684¢/kg less 0.016534¢/kg for each degree under 100 degrees (and fractions of a degree in proportion) but not less than 0.755083¢/kg (CA)	4.38170¢/kg less 0.0622005¢/kg for each degree under 100 degrees (and fractions of a degree in proportion) but not less than 2.831562¢/kg

1701.11.03	Other. . . .	37.386¢/kg less 0.529¢/kg for each degree under 100 degrees (and fractions of a degree in proportion) but not less than 24.161¢/kg	1.1684¢/kg less 0.016534¢/kg for each degree under 100 degrees (and fractions of a degree in proportion) but not less than 0.755083¢/kg(CA)	37.386¢/kg less 0.529¢/kg for each degree under 100 degrees (and fractions of a degree in proportion) not less than 24.161¢/kg"

(B) Any staged reduction of a rate of duty set forth in subheading 1701.11.00 of the HTS that was proclaimed by the President before the effective date of this proclamation and would otherwise take effect after the effective date of this proclamation shall also apply to the corresponding rates of duty set forth in subheadings 1701.11.01, 1701.11.02, and 1701.11.03, inclusive, of the HTS.

(2)(A) Subheading 1701.12.00 is stricken and the following new subheadings are inserted in lieu thereof:

[1701	Cane or beet sugar and chemically pure sucrose, in solid form:] [Raw sugar . . . :]			
"1701.12	Beet sugar:			
1701.12.01	Described in paragraphs (a) and (b) of additional U.S. note 3 to chapter 17 and entered pursuant to its provisions	1.4606¢/kg less 0.020668¢/kg for each degree under 100 degrees (and fractions of a degree in proportion) but not less than 0.943854¢/kg	Free (A*,E*,IL) 1.1684¢/kg less 0.016534¢/kg for each degree under 100 degrees (and fractions of a degree in proportion) but not less than 0.755083¢/kg (CA)	4.38170¢/kg less 0.06220050¢/kg for each degree under 100 degrees (and fractions of a degree in proportion) but not less than 2.8315620¢/kg
1701.12.02	Other.	37.386¢/kg less 0.529¢/kg for each degree under 100 degrees (and fractions of a degree in proportion) but not less than 24.161¢/kg	1.1684¢/kg less 0.016534¢/kg for each degree under 100 degrees (and fractions of a degree in proportion) but not less than 0.755083¢/kg(CA)	37.386¢/kg less 0.529¢/kg for each degree under 100 degrees (and fractions of a degree in proportion) not less than 24.161¢/kg"

(B) Any staged reduction of a rate of duty set forth in subheading 1701.12.00 of the HTS that was proclaimed by the President before the effective date of this proclamation and would otherwise take effect after the effective date of this proclamation shall also apply to the corresponding rates of duty set forth in subheadings 1701.12.01 and 1701.12.02, inclusive, of the HTS.

(3)(A) Subheading 1701.91.20 is stricken and the following new subheadings are inserted in lieu thereof:

[1701	Cane or beet sugar and chemically pure sucrose, in solid form:] [Other:]			
[1701.91	Containing added coloring but not added flavoring matter:]			
"1701 91.21	Described in paragraphs (a) and (b) of additional U.S. note 3 to chapter 17 and entered pursuant to its provisions	1.4606¢/kg less 0.020668¢/kg for each degree under 100 degrees (and fractions of a degree in proportion) but not less than 0.943854¢/kg	Free (A*,E*,IL) 1.1684¢/kg less 0.016534¢/kg for each degree under 100 degrees (and fractions of a degree in proportion) but not less than 0.755083¢/kg (CA)	4.38170¢/kg less 0.0622005¢/kg for each degree under 100 degrees (and fractions of a degree in proportion) but not less than 2.8315620¢/kg

1701.91.22	Other.	37.386¢/kg less 0.529¢/kg for each degree under 100 degrees (and fractions of a degree in proportion) but not less than 24.161¢/kg	1.1684¢/kg less 0.016534¢/kg for each degree under 100 degrees (and fractions of a degree in proportion) but not less than 0.755083¢/kg(CA)	37.386¢/kg less 0.529¢/kg for each degree under 100 degrees (and fractions of a degree in proportion) not less than 24.161¢/kg"

(B) Any staged reduction of a rate of duty set forth in subheading 1701.19.20 of the HTS that was proclaimed by the President before the effective date of this proclamation and would otherwise take effect after the effective date of this proclamation shall also apply to the corresponding rates of duty set forth in subheadings 1701.19.21 and 1701.19.22, inclusive, of the HTS.

(4) (A) Subheading 1701.99.00 is stricken and the following new subheadings are inserted in lieu thereof:

[1701	Cane or beet sugar and chemically pure sucrose, in solid form:]			
"1701.99	Other:			
1701.99.01	Described in paragraphs (a) and (b) of additional U.S. note 3 to chapter 17 and entered pursuant to its provisions	1.46066¢/kg less 0.020668¢/kg for each degree under 100 degrees (and fractions of a degree in proportion) but not less than 0.943854¢/kg	Free (A*,E*,IL) 1.1684¢/kg less 0.016534¢/kg for each degree under 100 degrees (and fractions of a degree in proportion) but not less than 0.755083¢/kg (CA)	4.38170¢/kg less 0.06220005¢/kg for each degree under 100 degrees (and fractions of a degree in proportion) but not less than 2.831562¢/kg
1701.99.02	Other.	37.386¢/kg less 0.529¢/kg for each degree under 100 degrees (and fractions of a degree in proportion) but not less than 24.161¢/kg	1.1684¢/kg less 0.016534¢/kg for each degree under 100 degrees (and fractions of a degree in proportion) but not less than 0.755083¢/kg(CA)	37.386¢/kg less 0.529¢/kg for each degree under 100 degrees (and fractions of a degree in proportion) not less than 24.161¢/kg"

(B) Any staged reduction of a rate of duty set forth in subheading 1701.99.00 of the HTS that was proclaimed by the President before the effective date of this proclamation and would otherwise take effect after the effective date of this proclamation shall also apply to the corresponding rates of duty set forth in subheadings 1701.99.01 and 1701.99.02, inclusive, of the HTS.

(5) (A) Subheading 1702.90.30 is stricken and the following new subheadings are inserted in lieu thereof:

[1702 90	Other :]			
	"Containing soluble non-sugar solids (excluding any foreign substances that may have been added or developed in the product) equal to 6 percent or less by weight of the total soluble solids:			
1702.90.31	Described in paragraphs (a) and (b) of additional U.S. note 3 to chapter 17 and entered pursuant to its provisions	Dutiable on total sugars at the rate per kg applicable under heading 1701 to sugar testing 100 degrees	Free(A,E*,IL) 1.1684¢/kg(CA)	Dutiable on total sugars at the rate per kg applicable under heading 1701 to sugar testing 100 degrees
1702.90.32	Other	37.386¢/kg	1.1684¢/kg(CA)	37.386¢/kg"

(B) Any staged reduction of a rate of duty set forth in subheading 1702.90.30 of the HTS that was proclaimed by the President before the effective date of this proclamation and would otherwise take effect after the effective date of this proclamation shall also apply to the corresponding rates of duty set forth in subheadings 1702.90.31 and 1702.90.32, inclusive, of the HTS.

(6) (A) Subheading 1806.10.40 is stricken and the following new subheadings are inserted in lieu thereof:

[1806	Chocolate...:]			
[1806.10	Cocoa...:]			
[1806.10.20	Containing...]			
[1806.10.30	Containing...]			
	"Other:			
1806 10.41	Described in paragraphs (a) and (b) of additional U.S. note 3 to chapter 17 and entered pursuant to its provisions	Dutiable on total sugars at the rate applicable under subheading 1701.11.01	Free(A*,E*,IL) Dutiable on total sugars at the rate applicable under subheading 1701.11.01 (CA)	Dutiable on total sugars at the rate applicable under subheading 1701.11.01
*806.10.42	Other.	Dutiable on total sugars at the rate applicable under subheading 1701.11.03	Dutiable on total sugars at the rate applicable under subheading 1701.11.03	Dutiable on total sugars at the rate applicable under subheading 1701.11.03"

(B) Any staged reduction of a rate of duty set forth in subheading 1806.10.40 of the HTS that was proclaimed by the President before the effective date of this proclamation and would otherwise take effect after the effective date of this proclamation shall also apply to the corresponding rates of duty set forth in subheadings 1806.10.41 and 1806.10.42, inclusive, of the HTS.

(7) (A) Subheading 2106.90.10 is stricken and the following subheadings are inserted in lieu thereof:

[2106	Food...:]			
[2106.90	Other:]			
	"Syrups derived from cane or beet sugar, containing added coloring but not added flavoring matter			
2106.90.11	Described in paragraphs (a) and (b) of additional U.S. note 3 to chapter 17 and entered pursuant to its provisions. . . .	Dutiable on total sugars at 1.4606¢/kg	Free (A,E*,IL) Dutiable on total sugars at 1.1684¢/kg (CA)	Dutiable on total sugars at 4.38170¢/kg
2106.90.12	Other . . .	Dutiable on total sugars at 37.386¢/kg	Dutiable on total sugars at 1.1684¢/kg (CA)	Dutiable on total sugars at 37.386¢/kg"

(B) Any staged reduction of a rate of duty set forth in subheading 2106.90.10 of the HTS that was proclaimed by the President before the effective date of this proclamation and would otherwise take effect after the effective date of this proclamation shall also apply to the corresponding rates of duty set forth in subheadings 2106.90.11 and 2106.90.12, inclusive, of the HTS.

(b) General note 3(c)(ii)(D) of the HTS is modified by striking out "1701.11.00 Brazil, Dominican Republic", "1701.12.00 Brazil", "1701.91.20 Brazil", "1701.99.00 Brazil", and "1806.10.40 Brazil" and inserting in numerical sequence the following HTS subheadings and countries set opposite them:

1701.11.01 Brazil; Dominican Republic	1701.12.01 Brazil
1701.11.02 Brazil; Dominican Republic	1701.91.21 Brazil
	1701.99.01 Brazil
	1806.10.41 Brazil

(c) Paragraphs (1) and (2) of general note 3(c)(v)(D) of the HTS are modified by striking out "1702.90.30, 1806.10.40 and 2106.90.10" and inserting in lieu thereof "1702.90.31, 1806.10.41, 1806.10.42, and 2106.90.11".

(d) The superior text to subheadings 9904.40.20 and 9904.40.40 of the HTS is modified by striking out "1701.91.20" and inserting in lieu thereof "1701.91.21, 1701.91.22".

(e) The description of subheading 9904.40.60 of the HTS is modified by striking out "subheading 2106.90.10" and inserting in lieu thereof "subheadings 2106.90.11 or 2106.90.12".

(f) The description of subheading 9904.10.60 of the HTS is modified by adding "0402.29" in numerical sequence.

ANNEX II

MODIFICATIONS TO THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES

The following supersedes and replaces additional U.S. notes 3 and 4 to chapter 17 of the Harmonized Tariff Schedule of the United States (HTS).

Effective as to articles entered, or withdrawn from warehouse for consumption, on or after October 1, 1990.

1. Additional U.S. note 3 to chapter 17 of the Harmonized Tariff Schedule is modified to provide as follows:

"3. (a)(i) The total amount of sugars, syrups and molasses entered, or withdrawn from warehouse for consumption, under subheadings 1701.11.01, 1701.12.01, 1701.91.21, 1701.99.01, 1702.90.31, 1806.10.41, and 2106.90.11, during such period as shall be established by the Secretary of Agriculture (hereinafter referred to as "the Secretary"), shall not exceed in the aggregate an amount (expressed in terms of raw value) as shall be established by the Secretary. The Secretary shall determine such total amount as will give due consideration to the interests in the U.S. sugar market of domestic producers and materially affected contracting parties to the General Agreement on Tariffs and Trade. Such total amount shall consist of (1) a base quota amount, and (2) an amount reserved for the importation of specialty sugars as defined by the United States Trade Representative, to be allocated by the United States Trade Representative in accordance with paragraph (b)(i) of this note.

" (ii) The Secretary may modify any quantitative limitations (including the time period for which such limitation are applicable) which have previously been established under this paragraph, if the Secretary determines that such action or actions are appropriate to give due consideration to the interests in the U.S. sugar market of domestic producers and materially affected contracting parties of the General Agreement on Tariffs and Trade.

"(iii) The Secretary shall inform the Secretary of the Treasury of any determination made under this paragraph. Notice of such determinations shall be filed with the Federal Register, and such determinations shall not become effective until the day following the date of filing of such notice or such later date as may be specified by the Secretary.

"(iv) Sugar entering the United States during a quota period established under this paragraph may be charged to the previous or subsequent quota period with the written approval of the Secretary.

"(b)(i) The base quota amount of sugars, syrups and molasses, described in subheadings 1701.11.01, 1701.12.01, 1701.91.21, 1701.99.01, 1702.90.31, 1806.10.41, and 2106.90.11, established pursuant to paragraph (a) of this note shall be allocated by the United States Trade Representative to the supplying countries and areas listed below as follows:

Country	Percentage distribution	Country	Percentage distribution
Argentina	4.3	India	0.8
Australia	8.3	Jamaica	1.1
Barbados	0.7	Malawi	1.0
Belize	1.1	Mauritius	1.2
Bolivia	0.8	Mozambique	1.3
Brazil	14.5	Nicaragua	2.1
Colombia	2.4	Panama	2.9
Costa Rica	1.5	Peru	4.1
Dominican Republic	17.6	Philippines	15.8
Ecuador	1.1	Swaziland	1.6
El Salvador	2.6	Taiwan	1.2
Fiji	0.9	Thailand	1.4
Guatemala	4.8	Trinidad and Tobago	0.7
Guyana	1.2	Zimbabwe	1.2
Honduras	1.0	Other specified countries and areas	0.3
		Other specialty sugar source countries	*

"* The amount of specialty sugars described in subheadings 1701.11.01, 1701.12.01, 1701.91.21, 1701.99.01, 1702.90.31, 1806.10.41, and 2106.90.11, established pursuant to paragraph (a) of this note, shall be allocated by the United States Trade Representative to the following countries and areas by providing to each an allocation of 72 metric tons, raw value, on an annual basis:

Belgium
Burma
Cameroon
Denmark
Federal Republic of Germany
France
Hong Kong
Indonesia
Ireland
Italy
Japan
Kenya
Luxembourg
Netherlands
Netherlands Antilles
People's Republic of China
Republic of Korea
Suriname
Sweden
Switzerland
United Kingdom
Venezuela
Republic of Yemen

"Note: The category "Other specified countries and areas" shall consist of the following: Congo, Cote d'Ivoire, Gabon, Haiti, Madagascar, Mexico, Papua New Guinea, Paraguay, Saint Kitts and Nevis, and Uruguay.

"(ii) The United States Trade Representative, after consultation with the Secretaries of State and Agriculture, may modify, suspend (for all or part of the quota amount), or reinstate the allocations provided for in this paragraph (including the addition or deletion of any country or area) if he finds that such action is appropriate to carry out the obligations of the United States under any international agreement to which the United States is a party. The United States Trade Representative shall inform the Secretary of the Treasury of any such action and shall publish notice thereof in the Federal Register. Such action shall not become effective until the day following the date of filing of such notice

with the Federal Register or such later date as may be specified by the United States Trade Representative.

"(iii) The United States Trade Representative may promulgate regulations appropriate to provide for the allocations established pursuant to this paragraph. Such regulations may, among other things, provide for the issuance of certificates of eligibility to accompany any sugars, syrups or molasses (including any specialty sugars) imported from any country or area for which an allocation has been provided and for such minimum quota amounts as may be appropriate to provide reasonable access to the U.S. market for imports from the "Other specified countries and areas."

"(c)(i) Subheading 1701.11.02 shall not be applicable if any duties imposed on the entry of sugar under subheading 1701.11.03, 1701.12.02, 1701.91.22, 1701.99.02, 1702.90.32, 1806.10.42, or 2106.90.12 are refunded, as drawback pursuant to section 313 of the Tariff Act of 1930, as amended, on the basis, or as a result, of the exportation pursuant to subheading 1701.11.02 of any refined sugar or sugar-containing product, whether such article has been produced or manufactured from sugar entered under subheading 1701.11.02 or from other sugar. Subheading 1701.11.02 shall not be applicable if any duties imposed on the entry of sugar under subheading 1701.11.03, 1701.12.02, 1701.91.22, 1701.99.02, 1702.90.32, 1806.10.42, or 2106.90.12 are refunded, as drawback pursuant to section 313 of the Tariff Act of 1930, as amended, on the basis, or as a result, of the exportation of any polyhydric alcohol, if such polyhydric alcohol has been produced or manufactured from sugar entered under subheading 1701.11.02. The Commissioner of Customs shall suspend liquidation of entries of sugar entered under subheading 1701.11.02 until he/she is satisfied that a claim for drawback of duties imposed under subheading 1701.11.03, 1701.12.02, 1701.91.22, 1701.99.02, 1702.90.32, 1806.10.42, or 2106.90.12 has not, and cannot be, based on the exportation of such polyhydric alcohol, refined sugar or sugar-containing product; if the Commissioner of Customs is not satisfied that the drawback of such duties has not and will not be claimed, he/she shall liquidate the entry of such imported sugar at the rates provided for under subheading 1701.11.03.

"(ii) A drawback entry and all documents necessary to complete a drawback claim, including those issued by one Customs officer to another, with respect to the refund of any duties imposed under subheadings 1701.11.01, 1701.11.02, 1701.11.03, 1701.12.01, 1701.12.02, 1701.91.21, 1701.91.22, 1701.99.01, 1701.99.02, 1702.90.31, 1702.90.32, 1806.10.41, 1806.10.42, 2106.90.11 and 2106.90.12 , shall be filed or applied for, as applicable, within 90 days after the date of exportation of the articles on which drawback is claimed, except that any landing certificate required by regulations issued by the United States Customs Service shall be filed within the time limit prescribed therein. Claims not completed within the 90-day period shall be considered abandoned. A drawback claimant shall file all drawback claims with respect to the refund of any duties imposed under subheadings 1701.11.01, 1701.11.02, 1701.11.03, 1701.12.01, 1701.12.02, 1701.91.21, 1701.91.22, 1701.99.01, 1701.99.02, 1702.90.31, 1702.90.32, 1806.10.41, 1806.10.42, 2106.90.11 and 2106.90.12 with the Regional Commissioner of Customs, as specified in regulations. The Secretary of the Treasury shall promulgate or amend such regulations as are appropriate to enforce the terms, conditions and other limitations contained in this paragraph.

(iii) Sugar described in subheading 1701.11.02 shall be entered only under a license issued by the Secretary of Agriculture. The Secretary of Agriculture may promulgate such regulations (including any terms, conditions, certifications, bonds or other limitations) as are appropriate to ensure that sugar entered under subheading 1701.11.02 is used only for the purposes specified in subheading 1701.11.02 and that such licenses are not credited for the exportation of any polyhydric alcohol, refined sugar or sugar-containing products if any duties imposed on the entry of sugar under subheading 1701.11.03, 1701.12.02, 1701.91.22, 1701.99.02, 1702.90.32, 1806.10.42, or 2106.90.12 are refunded, as drawback, on the basis, or as a result, of the exportation of such polyhydric alcohol, refined sugar or sugar-containing products. Subheading 1701.11.02 shall not be applicable unless the Secretary of Agriculture and the Commissioner of Customs shall be satisfied that the licensee has complied with all requirements set forth in such license and in such regulations.

"(d) For purposes of this chapter and chapter 18, the term "raw value" means the equivalent of such articles in terms of ordinary commercial raw sugar testing 96 degrees by the polariscope as determined in accordance with regulations or instructions issued by the Secretary of the Treasury. Such regulations or instructions may, among other things, provide: (a) for the entry of such articles pending a final determination of polarity; and (b) that positive or negative adjustments for differences in preliminary and final raw values be made in the same or succeeding quota periods. The principal grades and types of sugar shall be translated into terms of raw value in the following manner --

"(i) For articles described in subheadings 1701.11.01, 1701.11.02, 1701.11.03, 1701.12.01, 1701.12.02, 1701.91.21, 1701.91.22, 1701.99.01, 1701.99.02, 1806.10.41, 1806.10.42, 2106.90.11, and 2106.90.12 by multiplying the number of kilograms thereof by the greater of 0.93, or 1.07 less 0.0175 for each degree of polarization under 100 degrees (and fractions of a degree in proportion).

"(ii) For articles described in subheadings 1702.90.31 and 1702.90.32, by multiplying the number of kilograms of the total sugars thereof (the sum of the sucrose and reducing or invert sugars) by 1.07.

"(iii) The Secretary of the Treasury shall establish methods for translating sugar into terms of raw value for any special grade or type of sugar, syrup, or molasses for which he/she determines that the raw value cannot be measured adequately under the above provisions."

2. Additional U.S. note 4 to chapter 17 of the Harmonized Tariff Schedule is modified to provide as follows:

"4. (a) The duty-free treatment accorded to the importation of sugars, syrups and molasses described in subheadings 1701.11.01, 1701.12.01, 1701.91.21, 1701.99.01, 1702.90.31, 1806.10.41 and 2106.90.11, from the beneficiary countries for purposes of the Generalized System of Preferences and Caribbean Basin Economic Recovery Act, shall be limited to the quantities as established and allocated pursuant to paragraphs (a) and (b) of additional U.S. note 3 to chapter 17.

"(b) Duty-free treatment shall be accorded to the importation of sugars, the products of beneficiary countries for purposes of the Generalized System of Preferences and Caribbean Basin Economic Recovery Act, described in subheading 1701.11.02."

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[2] No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1989. The CFR volume issued January 1, 1987, should be retained.

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[5] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[6] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.