7-8-92
Vol. 57 No. 131
Pages 30099-30378

federal register

Wednesday
July 8, 1992

Briefing 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:

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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.

SAN FRANCISCO, CA

WHEN: July 22, at 9:00 am
WHERE: Federal Building and U.S. Courthouse, Conference Room 7209–A, 450 Golden Gate Avenue, San Francisco, CA
RESERVATIONS: Federal Information Center, 1–800–726–4995

SEATTLE, WA

WHEN: July 23, at 1:00 pm
WHERE: Henry M. Jackson Federal Building, North Auditorium, 915 Second Avenue, Seattle, WA
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CFR PARTS AFFECTED IN THIS ISSUE

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

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Presidential Documents

Title 3—

The President

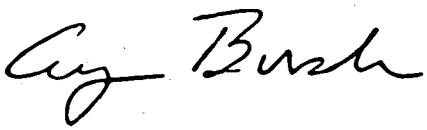
Presidential Determination No. 92–34 of June 22, 1992

Determination Under Section 405(a) of the Trade Act of 1974, as Amended—Romania

Memorandum for the Secretary of State

Pursuant to the authority vested in me under the Trade Act of 1974 (Public Law 93–618, January 3, 1975; 88 Stat. 1978), as amended (the "Trade Act"), I determine, pursuant to section 405(a) of the Trade Act (19 U.S.C. 2435(a)), that the "Agreement on Trade Relations Between the Government of the United States of America and the Government of Romania" will promote the purposes of the Trade Act and is in the national interest.

You are authorized and directed to transmit copies of this determination to the appropriate Members of Congress and to publish it in the **Federal Register.**



THE WHITE HOUSE,
Washington, June 22, 1992.

[FR Doc. 92–16170
Filed 7–6–92; 3:04 pm]
Billing code 3195–01–M

Editorial note: For the President's letter to Congressional leaders on trade with Romania, see p. 1126 of the *Weekly Compilation of Presidential Documents.*

Rules and Regulations

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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.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

1 CFR Part 305

Recommendations of the Administrative Conference Regarding Administrative Practice and Procedure

AGENCY: Administrative Conference of the United States.

ACTION: Recommendations.

SUMMARY: The Administrative Conference of the United States adopted six recommendations at its Forty-Fifth Plenary Session addressing: (1) The procedural and practice rule exemption from the APA notice-and-comment rulemaking requirements; (2) agency policy statements; (3) enforcement procedures under the Fair Housing Act; (4) coordination of migrant and seasonal farmworker service programs; (5) streamlining attorney's fee litigation under the Equal Access to Justice Act; and (6) implementation of the Noise Control Act.

The Administrative Conference of the United States is a federal agency established to study the efficiency, adequacy, and fairness of the administrative procedures used by federal agencies in carrying out administrative programs, and to make recommendations for improvements.

Recommendations of the Administrative Conference are published in full text in the **Federal Register** upon adoption. Complete lists of recommendations, together with the texts of those deemed to be of continuing interest, are published in the Code of Federal Regulations (1 CFR part 305).

DATES: These recommendations were adopted June 18–19, 1992, and issued June 30, 1992.

FOR FURTHER INFORMATION CONTACT: Renee Barnow, Information Officer, or Jeffrey S. Lubbers, Research Director (202–254–7020).

SUPPLEMENTARY INFORMATION: The Administrative Conference of the United States was established by the Administrative Conference Act, 5 U.S.C. 571–576. The Conference studies the efficiency, adequacy, and fairness of the administrative procedures used by federal agencies in carrying out administrative programs, and makes recommendations for improvements to the agencies, collectively or individually, and to the President, Congress, and the Judicial Conference of the United States (5 U.S.C. 574(1)).

At its Forty-Fifth Plenary Session, held June 18–19, 1992, the Assembly of the Administrative Conference of the United States adopted six recommendations.#

Recommendation 92–1, The Procedural and Practice Rule Exemption from the APA Notice-and-Comment Rulemaking Requirements, encourages agencies to voluntarily use notice-and-comment procedures in promulgating rules of procedure and practice except in situations in which the costs of such procedures will outweigh the benefits of having public input. The recommendation also proposes that a rule should be found to fall within the statutory exception only when it both (a) relates solely to agency methods of internal operations or of interacting with regulated parties or the public, and (b) does not (i) significantly affect conduct, activity, or a substantive interest that is the subject of agency jurisdiction, or (ii) affect the standards for eligibility for a government program. The Conference urges OMB to refrain from exercising jurisdiction under Executive Order 12,291 with respect to rules relating to procedure and practice that an agency voluntarily publishes for comment.

Recommendation 92–2, Agency Policy Statements, advises agencies to not issue statements of general applicability that are intended to impose binding substantive standards or obligations upon affected persons without using legislative procedures (normally including notice-and-comment). Agencies should not attempt to bind affected persons through policy statements.

Recommendation 92–3, Enforcement Procedures Under the Fair Housing Act, deals with the Department of Housing and Urban Development's implementation of the 1988 amendments to the Fair Housing Act. The Conference recommends that changes be made to ensure that complainant's litigation interests are protected, that HUD continue to study the reasons why parties are choosing to go to court rather than taking advantage of the administrative remedy, and that it take a number of actions to ensure that the enforcement program remains effective.

Recommendation 92–4, Coordination of Migrant and Seasonal Farmworker Service Programs, urges establishment by executive order of an Interagency Coordinating Council on migrant and seasonal farmworker programs. The recommendation suggests that the Council be charged with identifying specific coordination tasks, giving particular attention to gaps in services and unjustified overlap. In most instances, primary responsibility should be given to an appropriately chosen lead agency. The recommendation also calls for development of a reliable and comprehensive migrant and seasonal farmworker population census system, independent of any existing specific programs.

Recommendation 92–5, Streamlining Attorney's Fee Litigation Under the Equal Access to Justice Act, suggest ways in which Congress should amend the Equal Access to Justice Act, a statue providing for the award of attorney's fees to certain individuals and entities who prevail over the United States in court and administrative litigation. The Conference recommends that the Act be amended to reduce collateral litigation over the amount of awardable fees and encourage settlement of fee petitions. In addition, the recommendation proposes that the standard for award of attorney's fees in cases involving individual benefit claims (such as Social Security disability claims) be changed by eliminating the proviso that the United States need not pay fees if its position was substantially justified. The Conference also urges Congress to resolve difficulties concerning the timeliness of fee applications when cases are remanded to agencies and to consider whether certain administrative and Article I court proceedings not now covered by the Equal Access to Justice Act should be included within its coverage.

Recommendation 92–6, Implementation of the Noise Control

Act, responds to a request by the Environmental Protection Agency to assist it in addressing procedural concerns arising in connection with the absence of funding for EPA's responsibilities under the Noise Control Act. The recommendation advises EPA to analyze the preemptive impact of its existing regulations under the Act, taking into account a number of related issues. The recommendation suggests that the analysis be followed by appropriate congressional action, either to repeal the Noise Control Act or to fund whatever responsibilities may be delegated by Congress to EPA under the Act.

The full texts of the recommendations are set out below. The recommendations will be transmitted to the affected agencies and, if so directed, to the Congress of the United States. The Administrative Conference has advisory powers only, and the decision on whether to implement the recommendations must be made by each body to which the various recommendations are directed.

The transcript of the Plenary Session is available for public inspection at the Conference's offices at suite 500, 2120 L Street NW., Washington, DC.

List of Subjects 1 CFR Part 305

Administrative practices and procedure, attorney's fees, the Equal Access to Justice Act, fair housing law enforcement, informal rulemaking procedure, migrant and seasonal farmworker programs, the Notice Control Act, and policy statements.

PART 305—RECOMMENDATIONS OF THE ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

1. The authority citation for part 305 continues to read as follows:

Authority: 5 U.S.C. 571–576.

2. The table of contents to part 305 of title 1 CFR is amended to add the following new sections:

Sec.

305.92–1 The Procedural and Practice Rule Exemption from the APA Notice-and-Comment Rulemaking Requirements (Recommendation No. 92–1).
305.92–2 Agency Policy Statements (Recommendation No. 92–2).
305.92–3 Enforcement Procedures Under the Fair Housing Act (Recommendation No. 92–3).
305.92–4 Coordination of Migrant and Seasonal Farmworker Service Programs (Recommendation No. 92–4).
305.92–5 Streamlining Attorney's Fee Litigation Under the Equal Access to Justice Act (Recommendation No. 92–5).
305.92–6 Implementation of the Noise Control Act (Recommendation No. 92–6).

3. New §§ 305.92–1 through 305.92–6 are added part 305, to read as follows:

§ 305.92–1 The procedural and practice rule exemption from the APA notice-and-comment rulemaking requirements (Recommendation No. 92–1).

The Administrative Procedure Act, 5 U.S.C. 553, establishes the procedural requirements for notice-and-comment rulemaking. It requires that an agency generally publish notice and provide opportunity for public comment before adopting a rule. The section also provides for a number of specific exemptions. One of these exemptions in subsection (b)(A), provides that the requirements for notice and comment do not apply to "rules of agency organization, procedure, or practice * * *.[1]

The scope of APA exceptions has been described as "enshrouded in considerable smog,"[2] and the question of what is a procedural or practice rule has no clear answer.[3] The issues is in a state of flux.[4] Although courts have used a number of different tests to determine whether a rule was one of procedure or practice, none has been particularly satisfactory. Over the years the Conference has addressed the scope of most of the other exceptions to the APA rulemaking requirements.[5] Because the procedural rule exception is a subject of increasing controversy, it is appropriate for the Conference to fill this gap.

The Conference has long advocated the value of notice and comment in rulemaking,[6] and this recommendation encourages agencies to use such processes voluntarily in promulgating rules of procedure or practice. Notice and comment can provide the agency with valuable input from the public as well as furnish enhanced public acceptance of the rules. On the other hand, there can be costs to the agency in using notice-and-comment procedures, including the time and effort of agency personnel, the cost of Federal Register publication, and the additional delay in implementation that results from seeking public comments and responding to them. For significant procedural rule changes, the benefits seem likely to outweigh the costs; but this may not be the case for minor procedural amendments. Thus, unless the costs outweigh the benefits, we strongly encourage agencies voluntarily to use notice and comment even where an APA exemption applies.

The Conference believes, however, that the procedural and practice rule exemption can in appropriate circumstances serve a legitimate governmental purpose, and that Congress intended it to be available in such cases. Where such rules are truly procedural, rather than substantive in a procedural mask, the statutory exemption should be available. The Conference therefore recommends, as a guide to agencies in determining when a rule is procedural, that agencies should establish first that the rule relates to an agency's internal operations[7] methods of interacting with the public and second that the rule has no substantive impact because it neither significantly affects conduct, activity or a substantive interest that is the subject of agency regulation, nor affects the standards for eligibility for government programs.[8]

[1] The term procedural rule will be used herein to refer to rules of agency practice and procedure. Other exemptions from notice-and-comment rulemaking requirements cover interpretive rules, policy statements, and situations where good cause exists. See section 553(b). Section 553(a) completely exempts from notice-and-comment rulemaking rules involving military or foreign affairs, agency management or personnel, grants, loans, benefits, or contracts.

[2] *Noel* v. *Chapman*, 508 F.2d 1023, 1030 (2d Cir. 1975); *see also Community Nutrition Institute* v. *Young*, 818 F. 2d 943, 946 (D.C. Cir. 1987).

[3] There has been less debate about what are rules of agency organization.

[4] *Air Transport Association* v. *Department of Transportation*, 900 F.2d 369 (D.C. Cir. 1990), *cert. granted*, 111 S. Ct. 669 (1991), *judgment acated and remanded*, 111 S. Ct. 944 (1991), *opinion vacated and petition dismissed on mootness grounds*, 933 F.2d 1043 (D.C. Cir. 1991), has recently focused attention on the scope of the exemption.

[5] Recommendation 69–8, "Elimination of Certain Exemptions from the APA Rulemaking Requirements, 1 CFR 305.69–8; Recommendation 73–5, "Elimination of the 'Military or Foreign Affairs Function' Exemption From APA Rulemaking Requirements," 1 CFR 305.73–5; Recommendation 76–5, "Interpretive Rules of General Applicability and Statements of General Policy," 1 CFR 305.76–5; Recommendation 83–2, "The 'Good Cause' Exemption from APA Rulemaking Requirements," 1 CFR 305.83–2.

[6] See, eg., Recommendation 69–8, supra n.5.

[7] It is likely that some rules relating to agency internal operations will also fall within a category of rules exempt from all of section 553's requirements (including publication of a statement of basis and purpose and delayed effective date) as a "matter relating to agency management or personnel." 5 U.S.C. 553(a)(2).

[8] The term "program" is meant to be interpreted broadly to include, among others, those involving benefits, contracts, licenses, permits, and loan guarantees. In this connection, it should be noted that many agencies, following Recommendation 69–8, have voluntarily waived the exemption from notice-and-comment rulemaking for matters relating to loans, grants, benefits, or contracts.

Only if the proposed rule meets both parts of this test, should it be considered as being within the exemption from notice-and-comment requirements as a rule of practice or procedure. Examples of rules that would be procedural under this standard include rules governing conduct of formal hearings or appeals, ex parte rules, and rules concerning the business hours of the agency. Examples of nonexempt rules include rules relating to the criteria for determining the severity of enforcement sanctions, levels of civil money penalties, or application requirements that serve to limit eligibility for a government benefit program.

In order to encourage agencies voluntarily to use notice and comment, the Conference also recommends that the Office of Management and Budget refrain from exercing its jurisdiction to review rules fitting within the definition of rules relating to an agency's procedure or practice when an agency voluntarily publishes them.

Recommendation

1. Federal agencies should exercise restraint in invoking the Administrative Procedure Act's statutory exceptions to the notice-and-comment rulemaking procedures. Thus, the Administrative Conference has consistently urged agencies voluntarily to use notice-and-comment procedures when issuing rules that fall within the terms of most of the exemptions under 5 U.S.C. 553.[9]

2. For rules falling within the "procedure or practice" exception in 5 U.S.C. 553(b)(A), agencies should use notice-and-comment procedures voluntarily except in situations in which the costs of such procedures will outweigh the benefits of having public input and information on the scope and impact of the rules, and of the enhanced public acceptance of the rules that would derive from public comment.

3. In determining whether a proposed rule falls within the statutory exception for rules of agency "procedure or practice," agencies should apply the following standard: A rule is within the terms of the exception when it both (a) relates solely to agency methods of internal operations or of interacting with regulated parties or the public, and (b) does not (i) significantly affect conduct, activity, or a substantive interest that is the subject of agency jurisdiction, or (ii) affect the standards for eligibility for a government program.[10]

4. To assist agencies in implementing this recommendation, the Office of Management and Budget should refrain from exercising jurisdiction under Executive Order 12291 with respect to rules relating to an agency's procedure or practice that an agency voluntarily publishes for notice and comment.

§ 305.92-2 Agency policy statements (Recommendation No. 92-2).

This recommendation addresses use of agency policy statements. Policy statements fall within the category of agency actions that are "rules" within the Administrative Procedure Act's definition because they constitute "the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or describe law or policy," 5 U.S.C. 551(4). "Rules" include (a) legislative rules, which have been promulgated through use of legislative rulemaking procedures, usually including the notice-and-comment procedures of the Administrative Procedure Act, 5 U.S.C. 553, and (b) nonlegislative rules—that is, interpretive rules and policy statements—which fall within the above definition of "rules" but which are not required to be promulgated through use of legislative rulemaking procedures. Thus, policy statements include all substantive nonlegislative rules to the extent that they are not limited to interpreting existing law. They come with a variety of labels and include guidances, guidelines, manuals, staff instructions, opinion letters, press releases or other informal captions.

Policy statements that inform agency staff and the public regarding agency policy are beneficial to both. While they do not have the force of law (as do legislative rules) and therefore can be challenged within the agency, they nonetheless are important tools for guiding administration and enforcement of agency statutes and for advising the public of agency policy.

The Conference is concerned, however, about situations where agencies issue policy statements which they treat or which are reasonably regarded by the public as binding and dispositive of the issues they address.[1] The issuance of such binding pronouncements as policy statements does not offer the opportunity for public comment which is normally afforded during the notice-and-comment legislative rulemaking process for rules which have the force of law. Courts have frequently overruled agency reliance on policy statements as binding on affected persons.

Where the policy statement is treated by the agency as binding, it operates effectively as a legislative rule but without the notice-and-comment protection of section 553. It may be difficult or impossible for affected persons to challenge the policy statement within the agency's own decisional process; they may be foreclosed from an opportunity to contend that the policy statement is unlawful or unwise, or that an alternative policy should be adopted. Of course, affected persons could undergo the application of the policy to them, exhaust administrative remedies and then seek judicial review of agency denials or enforcement actions, at which time they may find that the policy is given deference by the courts. The practical consequence is that this process may be costly and protracted, and that affected parties have neither the opportunity to participate in the process of policy development nor a realistic opportunity to challenge the policy when applied within the agency or on judicial review. The public is therefore denied the opportunity to comment and the agency is denied the educative value of any facts and arguments the party may have tendered.

The Conference believes this outcome should be avoided, first by requiring that when an agency contemplates an announcement of substantive policy (other than through an adjudicative decision), it should decide whether to issue the policy as a legislative rule, in a form that binds affected persons, or as a nonbinding policy statement.[2] Second,

[9] In some cases, the Conference has recommended that agencies generally use notice and comment, Recommendation 76-5, "Interpretive Rules of General Applicability and Statements of General Policy," 1 CFR 305.76-5, Recommendation 83-2, "The 'Good Cause' Exemption from APA Rulemaking Requirements," 1 CFR 305.83-2. In the case of some other exemptions, the Conference has also recommended eliminating them altogether. Recommendation 69-8, "Elimination of Certain Exemptions from the APA Rulemaking Requirements, 1 CFR 305.69-8; Recommendation 73-5, "Elimination of the "Military or Foreign Affairs Function" exemption from APA Rulemaking Requirements," 1 CFR 305.73-5.

[10] The term "program" is meant to be interpreted broadly to include, among others, those involving benefits, contracts, licenses, permits, and loan guarantees. See footnote 7, *supra*.

[1] There are many facets that must be assessed in determining whether a policy statement is operationally a rule that binds affected persons. In general, we apply the concept here to agency statements that are usually issued in permanent form and that are relied upon by an agency and its staff to decide policy whose basis, legality, and soundness cannot be challenged within the agency. Whether a statement is a matter of policy or interpretation, is issued in a permanent form, and is in fact binding (or to what extent it is binding) are often difficult questions that can only be decided in context.

[2] The Conference has already urged agencies to use notice-and-comment procedures, where possible, before promulgating an interpretive rule of

Continued

to prevent policy statements from being treated as binding as a practical matter, the recommendation suggests that agencies establish informal and flexible procedures that allow an opportunity to challenge policy statements. Recognizing that each agency's process differs, the choice of which procedures to change in implementing this recommendation remains in the discretion of each agency. Likewise, actions taken during review of the policy statement would not necessarily be affected by such reconsideration.

Recommendation

The following recommendations applicable to policy statements are intended to ensure that, before an agency promulgates substantive policies which bind [3] affected persons, it provides appropriate notice and opportunity for comment on such policies, and makes sure that policy statements are not treated as binding.

I. Legislative Rulemaking for Binding Policies

A. Agencies should not issue statements of general applicability that are intended to impose binding substantive standards or obligations upon affected persons without using legislative rulemaking procedures (normally including notice-and-comment). Specifically, agencies should not attempt to bind affected persons through policy statements.

B. When an agency publishes a legislative rule (e.g., in the **Federal Register** and in official agency publications), the preamble to the rule should state that it is a legislative rule intended to bind affected persons. The preamble should also cite the specific statutory authority for issuing the rule in binding form as well as the steps that it has taken to comply with procedural requirements.

II. Policy Statements

A. *Notice of nonbinding nature.* Policy statements of general applicability should make clear that they are not binding. Persons affected by policy statements should be advised that such policy statements may be challenged in the manner described in part B below. Agencies should also ensure, to the extent practicable, that the nonbinding nature of policy statements is communicated to all persons who apply them or advise on the basis of them, including agency staff, counsel, administrative law judges, and relevant state officials.

B. *Procedures for challenges to policy statements.* Agencies that issue policy statements should examine and, where necessary, change their formal and informal procedures, where they already exist, to allow as an additional subject requests for modification or reconsideration of such statements. Agencies should also consider new procedures separate from the context in which the policy statement is actually applied. The procedures should not merely consist of an opportunity to challenge the applicability of the document or to request waivers or exemption from it; rather, affected persons should be afforded a fair opportunity to challenge the legality or wisdom of the document and to suggest alternative choices in an agency forum that assures adequate consideration by responsible agency officials. The opportunity should take place at or before the time the policy statement is applied to affected persons unless it is inappropriate or impracticable to do so. Agencies should not allow prior publication of the statement to foreclose full consideration of the positions being advanced. When a policy statement is subject to repeated challenges, agencies should consider instituting legislative rulemaking proceedings on the policy.

III. Instructions to Agency Staff

This recommendation does not preclude an agency from making a policy statement which is authoritative for staff officials in the interest of administrative uniformity or policy coherence. Indeed, agencies are encouraged to provide guidance to staff in the form of manuals and other management directives as a means to regularize employee action that directly affects the public. However, they should advise staff that while instructive to them, such policy guidance does not constitute a standard where noncompliance may form an independent basis for action in matters that determine the rights and obligations of any person outside the agency. Further, agencies are encouraged to obtain public comment on such guidance. Finally, in any case in which staff officials' adherence to such directives may affect a member of the public, care should be taken to observe the requirements of 5 U.S.C. 552(a) which imposes a publication requirement independent of any obligation to employ notice-and-comment procedures.

§ 305.92-3 Enforcement procedures under the Fair Housing Act (Recommendation No. 92-3).

Background

The 1968 Fair Housing Act outlaws various types of discrimination in the sale or rental of residential housing. It prohibits discrimination on the basis of race, color, religion, sex, and national origin, and covers sale and rental of residential housing, refusal to deal, and a number of related actions. In 1988, Congress amended the Fair Housing Act, by altering the enforcement provisions for violations of the antidiscrimination provisions, while at the same time extending the Act's coverage to discrimination against the handicapped and families with children.

The 1968 Act contained limited enforcement provisions, under which the Department of Housing and Urban Development (HUD) had a circumscribed role. The Act provided that persons aggrieved by discrimination could file (within 180 days) a complaint with the Secretary of HUD, who was obligated to conduct an investigation and use informal methods (conferences, conciliation and persuasion) to eliminate any discriminatory practices. If a state or local agency provided rights and remedies that were substantially equivalent to those under the federal statute,[1] the Secretary was required to refer the case to that state or local agency.

If neither agency was able to secure voluntary compliance, the aggrieved party was permitted to file a civil action in a United States District Court, unless state or local forums provided substantially equivalent rights and remedies. In such cases, the state or local court had to be used. The Act also provided for a private right of action in U.S. District Court. Remedies were limited to injunctive relief, actual

general applicability or statement of general policy that is likely to have substantial impact on the public. Agencies were urged to use post-promulgation notice-and-comment procedure if it is not practicable to accept and consider comments before the rule is promulgated. See Recommendation 76-5, "Interpretive Rules of General Applicability and Statements of General Policy."

[3] As the term is used here, an agency rule is "binding" when the agency treats it as a standard where noncompliance may form an independent basis for action in matters that determine the rights and obligations of any person outside the agency. This is true whether or not the rule was promulgated in accordance with section 553. A document that was not issued pursuant to section 553, and therefore cannot be binding legally, may nevertheless be binding as a practical matter if the agency treats it as dispositive of the issue it addresses. This recommendation is concerned only with substantive, as opposed to procedural, rules. See Recommendation 92-1, "The Procedural and Practice Rule Exemption From the APA Notice-and-Comment Rulemaking Requirements."

[1] Among the provisions in the Act were subpoena authority and authority to submit interrogatories to respondents.

damages, and punitive damages not in excess of $1,000. The 1968 Act also authorized the Department of Justice to file suit in cases involving "pattern or practice" or issues of "general public importance." Injunctive relief was available in such cases.

These remedies were considered by many to be inadequate, both because of the limited judicial remedies and the lack of an effective administrative enforcement process. In 1988, Congress amended the Act's enforcement provisions, while at the same time expanding the Act's coverage.

The 1988 amendments created two additional categories of people protected from discrimination under the Act. Discrimination with respect to handicapped persons is now prohibited, and is defined to include refusal to permit certain "reasonable modifications" of existing premises at the handicapped person's expense, and refusal to make certain "reasonable accommodations" for access. Discrimination against families with children is also prohibited, although there is an exception for certain "housing for older persons."

The amended enforcement provisions furnished significant new remedies. The Act now provides an administrative enforcement procedure, which requires HUD to investigate filed complaints within 100 days. The statute of limitations has been doubled to a year. During the investigation period, HUD is to undertake conciliation efforts. If those are not successful, and HUD finds "reasonable cause" to believe a violation has occurred, it must issue a formal charge of discrimination. Upon issuance of a formal charge, the complainant and respondent each have 20 days to elect to have the claim adjudicated in court. If neither party so elects, the case is heard in an APA hearing before a HUD administrative law judge, with evidence presented under the Federal Rules of Evidence. The parties to the hearing are HUD (represented by its Office of General Counsel) and the defendant, with the aggrieved party permitted to intervene. The ALJ has the authority to award compensatory damages and injunctive relief, and to impose civil penalties against a defendant of up to $10,000 for the first offense, $25,000 if there has been a prior violation within the previous 5 years, and $50,000 if there have been two or more violations within the previous 7 years. ALJ decisions are reviewable by the Secretary,[2] and appealable to the U.S. Court of Appeals.

If either party elects to "remove" the case to court, the case is litigated by the Department of Justice, and the complainant may intervene. As in the administrative forum, injunctive relief and compensatory damages are available, but instead of civil money penalties, punitive damages may be awarded. A jury trial is also available.

The private right of action remains, with an extended statute of limitations, and removal of the $1000 cap on punitive damages. (Injunctive relief and compensatory damages are also available, but civil penalties are not.) There is no requirement that a party exhaust its administrative remedies before filing suit in court, but if administrative proceedings are pending, a private suit may not be filed. The Department of Justice's authority to file suite in "pattern and practice" cases remains the same, except that available relief has been expanded to include civil penalties.

As under the old statute, state and local remedies are to be used to the extent that they are "substantially equivalent" to those provided for in the Act. State and local agencies must be certified by HUD as having equivalent procedures before cases must be referred to them. Agencies that had been certified prior to 1988 were grandfathered in for 40 months with respect to handling discrimination complaints covered by the prior Act. The 40-month period expired in January 1992, but was extended until September 1992. During this "grandfathering" period, state agencies could process housing discrimination complaints involving race, color, sex, religion, and national origin, even though their procedures were not substantially equivalent to the Act's amended provisions. However, until they have been specifically certified to do so, they may not handle complaints involving familial status or the handicapped.

Discussion

Implementation of the new enforcement provisions of the Act is in an early stage. HUD appears to be taking its responsibilities seriously. Some portions of the program seem to be working well, while in some others, emerging trends may be cause for concern.

The administrative hearing portion of the enforcement program appears to be functioning smoothly. To the extent that parties have elected to stay in the administrative adjudication process, their cases have been processed expeditiously. However, in more than half the cases, one of the parties has chosen to "remove" the case to court, and most of these court cases are still pending.

HUD has indicated that it is conducting a study on why so many cases are "removed" to court. The Conference applauds that endeavor, and suggests that such a study be an ongoing effort. HUD should also undertake an education program to advise potential complainants and respondents of the practical considerations that relate to the decision on which process to use. Such explanations should address the potential remedies available in each option, as well as the likely time periods that each will require for resolving the dispute.

In virtually all other civil rights enforcement processes, an existing administrative remedy must be used. In fact, in most administrative processes, parties do not have the choice between using an existing administrative process or going to court. Thus, the Fair Housing Act's provision permitting either party the choice of going through the administrative process or to court is an unusual one, offering the potential for quicker hearings in the administrative forum and larger (punitive) damages in judicial forums.

The Fair Housing Act amendments' system arose out of a political compromise resulting from, among other things, concern about the constitutionality of eliminating a party's opportunity for a jury trail in the context of fair housing rights enforcement. The existence of a right to a jury trail in this situation is a subject of some debate, but in light of this debate, as well as the recent nature of the political compromise that permitted enactment of the Fair Housing Act amendments, the Conference does not at this time recommend eliminating the option of a district court remedy. The Conference is reluctant to strongly encourage parties to use the administrative process rather than the judicial route until it has more information as to why parties select one over the other, and more data on alleged significant differences in the relief granted in each.

Under current law, complainants are not automatically parties to proceedings brought by HUD (at the administrative level) or the Department of Justice (in court) as a result of their complaints. Although procedures for intervention exist, concerns have been raised that, in some cases, the interests of complainants and the government may

[2] HUD regulations provide that the Secretary will review only in extraordinary cases.

diverge at points in the litigation where intervention as of right is no longer available. For example, the Department of Justice may not wish to appeal a determination with which the complainant is unsatisfied. If the complainant is not already a party to the litigation, his or her appeal rights may be lost. Providing that a complainant is automatically a party to any case based on his or her complaint would alleviate this problem. Moreover, HUD should notify complainants of their right to be represented by their own counsel (separate from counsel from the government), not only at the beginning of the litigation process, but at subsequent stages where the interests of the government and of the individual complainant may diverge on a significant or dispositive issue (e.g., on the question whether to appeal an adverse decision).

The Act requires that HUD undertake conciliation efforts in cases in which complaints are filed. Conciliation efforts are made by the HUD investigator assigned to the complaint. It appears that close to 25 percent of the cases are conciliated successfully. Conciliation (and other opportunities to use alternative means of dispute resolution) should continue to be encouraged. HUD should study whether using the investigator as conciliator has been advantageous due to the investigator being knowledgeable about the case and the program, or whether parties may tend to perceive some bias because of the investigator's initial involvement in determining the objective merits of the parties' positions. Proper training in conciliation and mediation would be essential for the investigative staff if they are to continue to have a role in this part of the dispute resolution process.

A major area where HUD has not been successful in meeting its responsibility under the Act is its inability to complete investigations and determine whether or not to file charges within the 100 days allowed by statute. In fact, almost 75 percent of the Fair Housing Act complaints filed in 1990 were not processed within the 100-day statutory deadline. There are several possible reasons for this. There has been a significant increase in the number of complaints filed since the Act's amendment. Much of the burden of this increase falls on HUD, because state and local agencies have not been certified for the cases under the expanded coverage. [3] Moreover, HUD has used a fairly complicated internal review system with respect to making "cause" determinations, which might be simplified, now that its personnel have had some experience. HUD has been taking steps to ensure that complaints are processed in a timely fashion, including delegating some decisional authority to regional personnel. Such efforts are to be encouraged, so long as care is taken to ensure adequate training.

As described above, state and local agencies that provide rights and procedures substantially equivalent to those available under federal law may be certified, in which case complaints must be processed by such agencies rather than by HUD. The automatic grandfathering provisions in the 1988 Act have expired (although they have been extended to the extent permitted by the Act), and many state agencies have not been certified. There are concerns from both ends of the spectrum: Concern that HUD will be overlenient in determining that the processes of state and local agencies are substantially equivalent, and concern that HUD will not act expeditiously enough in certifying those that do have equivalent processes.

As a result of the enlarged coverage of the Fair Housing Act, about one-half of the complaints over the last 2 years have involved allegations of discrimination on the basis of familial status. There also have been a substantial number of complaints involving alleged discrimination against the handicapped. Thus, the earlier concentration on discrimination cases arising under the old Act has necessarily been diluted to some degree. HUD should take care to ensure that the importance of attacking all types of discrimination within its purview continues to be recognized, notwithstanding resource limitations.

Recommendation

1. Congress should amend the Fair Housing Act to provide that each aggrieved person on whose behalf a complaint has been filed shall automatically be deemed a party to a lawsuit or administrative proceeding that results from such complaint.

2. The Department of Housing and Urban Development (HUD) should notify each complainant of his or her option to select private counsel (separate from counsel from the Government), at the time a reasonable cause finding is made, and a future points where action by government counsel is potentially adversely dispositive of that complainant's remedies. This notice should explain the potential implications to the complainant of exercising that option.

3. HUD should continue to study why parties in cases under the Fair Housing Act are opting in a large portion of cases to use the judicial process, rather than the administrative adjudication process. The results of such studies should be shared with the Administrative Conference, the Congress and the public.

4. HUD should undertake an educational program to advise potential complainants and respondents of the practical considerations that bear upon a decision to choose the administrative process or the judicial process in Fair Housing Act cases, including an explanation of the potential remedies and time periods for resolution of the dispute.

5. HUD should increase its efforts to process complaints within the 100-day statutory period. Among the alternatives it should consider are delegating increased authority to regional offices, with concomitant additional training and appropriate headquarters oversight.

6. In deciding whether to certify or maintain certifications of state and local agencies, HUD should examine closely whether such agencies offer substantially equivalent rights and procedures, and move as rapidly as possible to certify those that do.

7. HUD should encourage the use of alternative dispute resolution in all stages of Fair Housing Act cases. It should particularly monitor the conciliation process, to ensure that it is perceived as working fairly. It should continue to offer training in conciliation and mediation skills.

8. HUD should not allow efforts directed towards the newly covered categories of discrimination to diminish the recognized importance of complaints falling under the original categories.

§ 305.92–4 Coordination of migrant and seasonal farmworker service programs (Recommendation No. 92–4).

Since the 1960s, the federal government has established numerous service programs to help meet the needs of migrant farmworkers. From the early days, migrants have been considered a uniquely federal responsibility, primarily because of their interstate movement, which makes it hard for the workers and their families to qualify for local assistance and disrupts other services like schooling for the children. As these programs have evolved, many have come to serve nonmigrant seasonal farmworkers as well.

The programs to meet health, education, housing, job training, and

[3] It may also be that, given the financial pressures facing states, they will not take the necessary actions that would allow HUD to certify them.

other needs of migrant and seasonal farmworkers (MSFWs) have developed separately. There are approximately 10 MSFW-specific service programs, and farmworkers also draw upon the assistance of numerous other general programs such as food stamps or Medicaid. The four largest federal programs are Migrant Education, administered by the Department of Education; Migrant Health and Migrant Head Start, both administered by the Department of Health and Human Services; and the Department of Labor's special job training programs for MSFWs under section 402 of the Job Training Partnership Act.

Each program has its own definition of migrant and/or seasonal farmworker, as well as other eligibility standards. The result is a potential for overlap of some services and gaps in others, and there is no overarching provision for effective coordination among the programs. Various efforts have been undertaken at the national level to improve coordination, but with mixed success to date. These include an Interagency Committee on Migrants, a staff-level group that meets quarterly, largely for information-sharing purposes; an Interagency Coordinating Council, established informally as a forum for policy-level decisionmakers involved in the various programs, but now inactive; and a Migrant Inter-Association Coordinating Committee, involving nonprofit grantees and other organizations representing direct service providers.

In addition, MSFWs often qualify for other services provided by state and local governments or funded through private initiative, each governed by its own particular definitions or eligibility standards. These services are especially important in areas where some or all of the major federal programs are not present. Effective local service providers therefore have to be adroit in locating those available services, from whatever source, that can best meet the needs of their clientele. Because of the great variety in locally available services of this kind, much of the task of coordination among MSFW service programs necessarily takes place at the local and state level. Many states are finding ways to encourage this process by the creation of a governor's committee or task force, involving service providers, growers, representative government officials, farmworkers, and others.

The federal government should also take steps to improve coordination of services. For example, the intake procedures for each service program (now typically undertaken separately by each of the agencies, despite considerable duplication) should be streamlined. To effectuate such efforts, and to provide better interagency consultations before program changes are introduced, the President should establish by executive order a policy-level Interagency Coordinating Council on MSFW programs. This Council is not intended to replace, and indeed should promote, existing coordination at the program staff, state, and service delivery level.

To facilitate interagency coordination, whether or not such a Council is created, a reliable system for gathering data on the nation's population of MSFWs is needed. Although each agency has its own mechanism for generating program statistics and estimates of the target population, these vary widely in method and scope, and each suffers from specific inadequacies. They produce widely varying pictures of the nation's population of MSFWs, to the continuing frustration of legislators, service providers, researchers, and others. Agricultural labor data have always been left out of the Department of Labor's regular employment data system, and no other adequate permanent data source now fills the gap. The recommendation provides some guidance on the goals of such an information-gathering effort.

Recommendation

I. Coordination at the National Level

An Interagency Coordinating Council on migrant and seasonal farmworker (MSFW) programs should be established to strengthen national coordination of MSFW service programs. The Council would be charged, inter alia, with identifying specific coordination tasks to be accomplished, in most cases under the primary responsibility of a designated lead agency.

A. To ensure an enduring structure and a clear mandate, the President should issue an executive order creating the Council, specifying the policy-level officials from appropriate agencies who would be permanent members and designating a chair. The order should also designate an agency that would initially have primary responsibility for staffing the Council's meetings and other functions. The Council should be specifically charged to coordinate and review MSFW service programs, giving particular attention to gaps in services and unjustified overlap. It should encourage public participation through public meetings, creation of an advisory committee, or other means.

B. The executive order should provide that the Council, in cooperation with the Office of Management and Budget, review proposals for significant changes in any agency's MSFW service program (including proposed legislation, regulations, and grantee performance standards). OMB should consolidate or coordinate its own oversight of all federal MSFW service programs.

The executive order should assign to the Council the initial responsibility to develop, through delegations to the appropriate agencies, a reliable and comprehensive MSFW population census system, independent of any of the specific programs, along the lines described in part II. Other specific coordination tasks that the Council might wish to take up include development of consolidated or streamlined intake processing for MSFW programs, provision of better linkages among existing MSFW information clearinghouses, and encouragement of cooperation among direct service providers.

D. The Council should identify and assign priorities to the coordination tasks to be accomplished, with a strategy and timetable for their achievement. In most instances, it should assign lead responsibility for each specific coordination task to a designated agency. That agency's coordination efforts with other agencies may include suggesting regulations or other implementation measures.

E. The Council should study the differing eligibility standards of MSFW programs and identify, if appropriate, where consistency could be achieved without substantial impact on the beneficiaries of those programs.

F. The Council should also study and make recommendations on the strengthening of state and local coordination of MSFW programs.

II. Information Gathering on Migrant and Seasonal Farmworkers

A. To improve coordination of and service delivery in MSFW programs, the executive order should:

(1) Authorize the Council to develop an integrated, cost-effective system for gathering data on the number, characteristics, and distribution of MSFWs and their dependents;

(2) Authorize the Council to designate an appropriate agency to have responsibility for collecting the data, with the cooperation of federal agencies with MSFW service programs;

(3) Direct appropriate federal agencies with expertise in gathering these kinds of data, such as the Bureau of the Census, the Bureau of Labor Statistics,

the National Center for Education Statistics, or the National Agricultural Statistics Service, to cooperate with the Council's effort; and

(4) Provide opportunities for submission of data and information from the public.

B. This data system should ensure that the information gathered on MSFWs and their dependents sufficiently describes workers employed in a broad spectrum of U.S. agriculture and related industry. This means that the data should include and distinguish among workers employed, for example, in crop and livestock production, the packing and processing of farm products, and fisheries. Data should be collected on workers and their dependents, including such factors as recency and frequency of migration, farm and nonfarm earnings and periods of employment, and health, education, and housing characteristics. These comprehensive data should be collected in a form designed to be useful to service programs with differing definitions of eligible workers and their dependents.

C. This data system should be designed to help the Council identify general trends—including changes in the total number of MSFWs and their dependents and employment patterns—and opportunities for coordination among MSFW programs. To help achieve this goal, the Council should consider whether there are areas in which a consensus on a set of common characteristics of MSFWs should be developed for statistical purposes.

§ 305.92-5 Streamlining attorney's fee litigation under the Equal Access to Justice Act (Recommendation No. 92-5).

Congress first waived the government's immunity from attorney's fee awards in the Equal Access to Justice Act (EAJA), 5 U.S.C. 504, 28 U.S.C. 2412(d), in 1980 and reenacted the Act in 1985. The EAJA authorizes certain private parties that prevail in nontort civil litigation against the United States in both courts and agencies to recover their fees and expenses. No recovery is allowed, however, if the government demonstrates that its position was substantially justified, which has been construed to require the government to show that its position had a reasonable basis in both law and fact. The Act precludes fee awards to parties that exceed a specified net worth or, in the case of businesses and organizations, number of employees. It also sets a maximum hourly rate for attorney's fees of $75 per hour. The rate can be raised if the court "determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies a higher fee"; in agency proceedings, the agency must make such a determination through rulemaking. With cost-of-living increases, attorneys can, at present, hope to recover a little over $100 per hour under the EAJA for most court litigation, though they remain limited to $75 per hour for most litigation before agencies.

Congress sought to accomplish two interconnected goals in the Act: To provide an incentive for private parties to contest government overreaching and to deter government wrongdoing. Congress feared that parties with limited resources would not be able to defend vigorously against government enforcement actions or to challenge opprobrious regulation. One-way fee shifting under the Act was intended to help rectify the imbalance in resources. Because fee awards must be paid out of the offending agency's budget, Congress hoped that EAJA litigation would also spur agencies to act more prudently, particularly when determining the rights of parties of modest means.

Congress originally estimated that the EAJA would cost the government $100 million a year. In recent years, approximately 2,000 EAJA applications have been resolved each year, of which the vast majority involve social security disability or similar individual benefits disputes. The total payout of fees in these cases has been only $5 to $7 million per year.

Reducing Litigation and Encouraging Settlement

Although the EAJA may not have been used as often as predicted, it has nevertheless generated a significant amount of contentious litigation. Relatively few EAJA applications appear to be settled, and the empirical evidence available indicates that fee litigation often results in more complicated proceedings than are merited. Ambiguous provisions in the Act—such as the substantial justification standard and the provision permitting enhancements to the fee cap—foster additional litigation and minimize the potential for settlement of fee disputes. The Administrative Conference believes that amendments to the EAJA would produce significant savings in litigation costs.

To reduce litigation over the proper amount of fees awardable under the EAJA, the Conference recommends several technical modifications to the Act. First, Congress should strike the provision allowing enhancement of fees when " a special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies a higher fee." The enhancement provision breeds uncertainty, costs money to litigate, and makes settlement more difficult to obtain. Second, Congress should amend 28 U.S.C. 2412(d)(2) to specify how courts should calculate cost-of-living increases. Little is gained by litigating over issues such as which price index or subcategory of an index to use in these calculations. Third, Congress should make clear that fees are to be calculated at the adjusted rate applicable on the date the judge or adjudicator issues an order granting the EAJA application. Currently, courts are split as to when the cost-of-living increase in applicable—for instance, whether it should be calculated as of the date the work is performed, or as of some later date. Choosing the date when the application is granted creates a bright-line rule that should simplify the calculation and compensate a private party to a limited extent for the delay in payment, *e.g.*, payment in 1992 for work performed in 1986. Fourth, because the Conference recommends eliminating the enhancement provision and including an offer-of judgment provision (described below), both of which should tend to reduce the fees payable by the government, it also recommends raising the fee cap to approximate more closely the prevailing market rate for attorneys, to ensure that the level of compensation under the Act remains adequate to serve its purposes.

In addition to these relatively technical modifications to the Act, the Administrative Conference recommends that Congress enact an offer-of-judgment provision to help encourage settlements of fee disputes arising under the EAJA. Upon receiving a private party's fee application, the government could make an offer of judgment as to the fee award. If the private party rejects that offer and ultimately recovers no more than the offer, it could not recover any fees or expenses incurred for services rendered after the offer was rejected. The offer-of-judgment device should encourage settlement, thereby saving both parties the expense of litigating fee disputes; while the government party gains leverage by extending an offer of judgment, the private party benefits from the opportunity to obtain prompt payment of fees.

This offer of judgment recommendation and the four technical recommendations that precede it involve careful balancing of factors that may either increase or reduce the incentives for attorneys to accept EAJA

cases. The Conference presents them as a single package, rather than separate proposals, and emphasizes the interrelationship among the recommendations.

The Conference also recommends that Congress act to resolve problems involving implementation of the EAJA's requirement that parties seeking fees file applications within 30 days after final judgment (or final disposition in agency proceedings). Thirty days does not always provide adequate time for prevailing parties to prepare the necessary materials, and the jurisdictional nature of the requirement forecloses the option of a time extension. Extending the filing deadline to 60 days would reduce the pressure on fee applicants without undue prejudice to the government. More importantly, the Supreme Court's recent decision in *Melkonyan* v. *Sullivan*, 111 S. Ct. 2157 (1991), and *Sullivan* v. *Finkelstein*, 110 S. Ct. 2658 (1990), have spawned significant litigation about the timeliness of EAJA applications when the federal courts remand cases to agencies. Currently, some district court remands to agencies are considered final judgments, thus triggering the 30-day filing limit in the EAJA, even though claimants do not yet know whether they have "prevailed" in the underlying action. The uncertainty created by these cases could be avoided by making clear in the statute that the filing deadline is not triggered in a proceeding on remand until the party has prevailed in the remanded proceeding. Alternatively, Congress could resolve these problems by deleting the 30-day requirement. Most other attorney's fee statutes do not include any such deadline, and attorneys waiting to be paid for their services will have no incentive to delay filing.

Congress should also encourage private parties litigating against the United States to inform the court or administrative adjudicator before judgment if they intend to apply for EAJA fees should they prevail. This would permit such decision makers, in appropriate cases, to make a determination as to the substantial justification of the government's position at the same time they resolve the merits. That simultaneous finding may obviate the need for more extensive briefs at a later time.

Streamlining Fee Disputes in Individual Benefit Cases

Individual benefit claims brought directly under 42 U.S.C. 405(g) or under a provision cross-referencing 42 U.S.C. 405(g), which include social security disability, SSI, Medicare and similar claims, raise some unique issues deserving special consideration. Currently, the substantial justification issue is litigated in a high percentage of all EAJA disputes arising out of such benefit cases; from July 1989 to June 1990, the government prevailed in less than 15% of these disputes. The average EAJA award in such cases is less than $3,500. In light of these facts, the Conference concludes that the substantial justification standard should be eliminated for benefit cases involving individual claimants (but not for class actions). Although automatic fee shifting in these cases would increase the government's exposure to EAJA awards, that increase would be counterbalanced to some extent by the elimination of considerable government expense in litigating the substantial justification issue.

More importantly, elimination of the substantial justification standard should enable benefit claimants to find representation. Currently, parties seeking to press small disability claims and most SSI claims may have difficulty retaining counsel either through hourly rates or through a contingency fee arrangement; eliminating the substantial justification standard should help ensure the availability of counsel in these cases by making certain that a reasonable fee will be available for any successful claim. In addition, in cases—primarily disability cases—in which claimants can obtain counsel through contingency fee arrangements (restricted, in social security cases, to a reasonable fee not to exceed 25% of back benefits, 42 U.S.C. 406(b)), their counsel currently have little incentive to apply for fees under the EAJA. If counsel have a contingency fee arrangement and obtain an EAJA fee award, they must return the lesser award to the claimant. Public Law 96-481, Section 206, as amended by Public Law 99-80, Section 3, 99 Stat. 186 (August 5, 1985). Not surprisingly, many successful benefits claimants do not apply for EAJA fees (fewer than 40 percent did so from July 1989 to June 1990), even though private parties' success rate in EAJA litigation exceeds 80 percent.

Extending the EAJA's Coverage

Finally, the Conference recommends that Congress consider extending the Act's coverage, on a category-by-category basis, to particular agency and court proceedings that have the same characteristics as those adversary proceedings now covered by the Act. The Act covers only "adversarial adjudications" in agencies, which are defined as "adjudications under section 554 of [title 5]." The Supreme Court in *Ardestani* v. *INS*, 112 S. Ct. 515 (1991), construed that provision to exclude agency proceedings—such as deportation cases—which have virtually the identical attributes as proceedings under section 554 but are not technically covered by that provision. Similarly, it is unclear whether EAJA covers all litigation against the United States in Article I courts, even though such proceedings are often directly analogous to those covered by the Act in Article III courts. Congress has dealt explicitly with some of these courts; for example, the EAJA was amended in 1985 to include the United States Claims Court, and a separate statute, with somewhat different standards than the EAJA, provides for fee awards in Tax Court proceedings. 26 U.S.C. 7431. But other Article I bodies remain to be considered. The Court of Veterans Appeals, for example, recently decided that it does not have authority to award attorney's fees under the Act. *Jones* v. *Derwinski*, No. 90-56 (March 13, 1992).

Recommendation

1. Congress should amend the Equal Access to Justice Act, 5 U.S.C. 504, 28 U.S.C. 2412(d), as follows:

a. To reduce litigation over the dollar value of fee awards, (1) the provision in the Act allowing enhancement of fees when "a special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies a higher fee" should be stricken, (2) the Act should specify the precise method to be used in calculating future cost-of-living adjustments to the fee cap, (3) the Act should state that the rate to be used is the one that is applicable when the judge's (or administrative adjudicator's) order awarding EAJA fees is issued, and (4) the $75 per hour fee cap should be raised to approximate more closely the prevailing market rate for attorneys.

b. To encourage settlements, the Act should include an offer-of-judgment procedure: after an EAJA application is filed, the government may make an offer of judgment on the EAJA claim; if the private party rejects the government's offer and is ultimately awarded no more than that offer, that party forfeits the right to seek fees or expenses for the EAJA litigation from the time the offer of judgment is rejected.

c. To eliminate litigation on the question of when prevailing parties must file for fees, either the 30-day filing deadline in 5 U.S.C. 504 and 28 U.S.C. 2412(d) should be extended to 60 days, to run from the date of final disposition of the case,[1] or the filing deadline should be eliminated.

[1] "Final disposition" occurs when a party has prevailed in a proceeding and the disposition of the proceeding is final and unappealable; in proceedings involving a remand from a court to an agency, final disposition does not occur until the remanded proceeding is concluded and the resulting order is final and unappealable.

d. To promote judicial economy, the Act should encourage private parties litigating against the United States to notify the court or administrative adjudicator prior to judgment if they intend to file an EAJA application should they prevail, so as to enable the decisionmaker, in appropriate cases, to determine whether the government's position was substantially justified within the meaning of the Act of the same time that judgment is entered against the United States.

2. Congress should modify the provisions of 28 U.S.C. 2412(d) as they apply to individual benefit claims either brought directly under 42 U.S.C. 405(g) or under a provision cross-referencing 42 U.S.C. 405(g) in the federal courts. For those cases, the Act should provide for fee awards to prevailing claimants in individual actions without reference to whether the position of the United States was substantially justified.

3. Congress should consider whether to extend the Act's coverage, on a category-by-category basis, to:

a. Agency proceedings that, although not technically adjudications "under section 554 (of Title 5)," are required by statute to employ procedures equivalent to those of such formal adversary proceedings.

b. Proceedings before Article I courts that have the same attributes as covered proceedings in Article III courts and in agencies.

§ 305.92-6 Implementation of the Noise Control Act (Recommendation No. 92-6).

In 1981, Congress agreed to the Administration's proposal to cease funding for the Office of Noise Abatement and Control (ONAC) in the Environmental Protection Agency (EPA). Congress, however, did not repeal the Noise Control Act [2] when it eliminated ONAC's funding.

Before the elimination of ONAC, EPA engaged in a wide variety of activities to abate noise pollution under authority of the Noise Control Act and, after 1978, the Quiet Communities Act.[3] These included identifying sources of noise for regulation, promulgating noise emission standards, coordinating federal noise research and noise abatement, working with industry and international, state and local regulators to develop consensus standards, disseminating information and educational materials, and sponsoring research concerning the effects of noise and the methods by which it can be abated. The Quiet Communities Act authorized EPA to provide grants to state and local governments for noise abatement.

EPA ceased virtually all noise abatement activities after ONAC's funding was eliminated. However, the federal noise emission and labeling standards it had promulgated have remained in effect, thereby preempting state and local governments from adopting different standards. Thus, the standards remain frozen, as neither the EPA nor the state or local agencies have been in a position to amend or update possibly outmoded standards despite the technological developments of the last decade. Moreover, some private rights to bring tort or other actions may be affected by these EPA emission and labeling standards.

The Conference recognizes that the decision to end funding was substantive rather than procedural, but, in part, the impact has been procedural.[4] No procedure has been available for a decade to reexamine the existing preemptive standards to take into account developments in science and technology that may bear on implementation of the legislative intent. Elimination of funding for the agency's noise control program has had the additional procedural effect of leaving several proposed but unissued standards pending for a decade without final action by EPA.

EPA retains the statutory responsibility for enforcing the Noise Control Act, and has used minimal resources for engaging in limited enforcement and other related activities.[5] Pursuant to this authority, EPA has asked the Conference to assist it in reevaluating the current status of the Noise Control Act by recommending options that relate to procedural considerations. The Conference takes no position concerning what actions, if any, EPA should take regarding enforcement and implement of the Noise Control Act. If EPA wishes to assess the current situation, however, the Conference has identified considerations that should be part of such reassessment.

The Conference is unaware of any other instance where Congress has eliminated the funding for an ongoing program that preempts state and local actions without also ending the statutory authorization for that program or addressing the preemptive effect of existing regulations. If this situation does exist in other contexts, there may be procedural problems similar to those associated with the Noise Control Act.

Recommendation

1. In considering its authority and responsibility under the Noise Control Act, the Environmental Protection Agency (EPA) should analyze the preemptive impact of its existing and pending noise standards for the purpose of eliminating, where possible, any unintended impacts. EPA should then advise the appropriate congressional committees respecting the preemptive effects of EPA's possibly outmoded regulations under the Noise Control Act,[5] or any other implications of the cessation of funding respecting the agency's responsibilities under the Act.

2. In making the determinations called for under this recommendation, EPA should take into account, among other considerations:

(a) The scientific and technological developments that have occurred since 1981;

(b) Whether there is a need to update EPA's past methodology for measuring and assessing the effects of noise;

(c) The appropriate allocation of responsibility among federal agencies, and between the federal government and the states and localities, in accomplishing any goals determined by Congress respecting regulation of noise, educating the public on the dangers posed by noise, and sponsoring research into noise effects and abatement techniques;

(d) Whether there is a need for additional coordination of the noise abatement activities of federal agencies and the states and localities;

(e) The adequacy of current coordination between the United States and foreign government agencies concerning noise abatement standards and regulations impacting U.S. international trade;[7]

(f) Any appropriate federal government participation in the activities of private-sector standard-setting organizations concerning noise;[8] and

[2] 42 U.S.C. 4901-4918 (1988).

[3] 42 U.S.C. 4913 (1988).

[4] Although Congress eliminated funding for the Noise Control Act after ONAC had adopted some preemptive regulations and proposed others, it did not repeal the Noise Control Act. This situation is different from the more common circumstance where Congress passes legislation but does not fund its implementation.

[5] Since 1981, EPA has engaged only in very limited enforcement of existing noise regulations, disseminating information created during ONAC's existence, and commenting on environmental impact statements issued by the Federal Aviation Administration concerning airport noise. The FAA has independent authority to abate airport noise under the Noise Control Act and the Aviation Noise and Capacity Act, Public Law No. 101-508, sections 9301-09 (1990). Responsibility for the enforcement of EPA's railroad and motor carrier emission standards is located in the Department of Transportation, which has funding for this purpose. The Department, however, does not have authority to promulgate new or amended emission standards different from those adopted by EPA.

[6] See Conference Recommendation 84-5, "Preemption of State Regulation by Federal Agencies," 1 CFR 305.84-5.

[7] See Conference Recommendation 91-1, "Federal Agency Cooperation with Foreign Government Regulators," 1 CFR 305.91-1

[8] See Conference Recommendation 78-4, "Federal Agency Interaction with Private Standard-Setting Organizations in Health and Safety Regulations." 1 CFR 305.78-4.

(g) The relative advantages and disadvantages of utilizing public education, market incentives, emission standards, or other approaches for any abatement of noise that Congress may wish to pursue.

3. After reviewing whatever advice may be received from EPA under this recommendation, the appropriate congressional committees should review the issues raised by the foregoing recommendations, including whether the continuation of substantive regulatory requirements without funding, or EPA's inability to reexamine, modify, or rescind those requirements, creates undue procedural burdens upon industry, the states, and the public. Congress should then either repeal the Noise Control Act or fund whatever responsibilities under the Act Congress delegates to EPA.

Dated: June 30, 1992.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 92-15878 Filed 7-7-92; 8:45 am]

BILLING CODE 6110-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92-CE-02-AD; Amendment 39-8307; AD 92-15-13]

Airworthiness Directives; Beech 99 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes Airworthiness Directive (AD) 90-04-04, which currently requires inspection of the wing front spar lower cap and associated structure for fatigue cracking on certain Beech 99 series airplanes, and replacement if found cracked. AD 90-04-04 also establishes a service life limit on the wing front spar lower caps that have reinforcing straps installed. This action maintains the requirements of AD 90-04-04, but corrects the compliance times and other incorrect information contained in that AD. The actions specified by this AD are intended to prevent fatigue failure of the wing front spar lower cap and associated structure.

DATES: Effective August 24, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 24, 1992.

ADDRESSES: Service information that is applicable to this AD may be obtained from the Beech Aircraft Corporation, Commercial Service, Department 52, P.O. Box 85, Wichita, Kansas 67201-0085; Telephone (316) 676-7111; or Western Aircraft Maintenance, 4444 Aeronca Street, Boise, Idaho 83705. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington DC.

FOR FURTHER INFORMATION CONTACT: Mr. Don Campbell, Aerospace Engineer, Airframe Branch, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946-4128.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD that is applicable to certain Beech 99 series airplanes was published in the Federal Register on March 4, 1992 (57 FR 7562). The action proposed superseding AD 92-04-04, Amendment 39-6487 (55 FR 3581, February 2, 1990), with a new AD that would (1) retain the inspection and possible replacement requirements of the wing front spar lower cap and associated structure that is required by AD 90-04-04; (2) correct certain compliance times referenced in AD 90-04-04 and delete information included in this AD that is not pertinent; and (3) maintain the inspection intervals established by either superseded AD 77-05-01 R3 or AD 90-04-04, which will be superseded by this action.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public. After careful review, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD nor add any additional burden upon the public than was already proposed.

The FAA estimates that 85 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 4 workhours per airplane to accomplish the required action, and that the average labor rate is approximately $55 an hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $37,400. Since AD 90-04-04, which would be superseded by this action, required the same actions (except for a change in repetitive compliance times, the deletion of impertinent information, and the incorporation of established inspection intervals), there is no additional cost impact of this AD on U.S. operators. The $10,200 cost difference between this AD (estimated $37,400) and AD 90-04-04 (estimated $27,200) is a result of inflationary costs used in determining the cost of labor ($55 per hour as opposed to $40 per hour).

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing AD 90-04-04, Amendment 39-6487 (55 FR 3581, February 2, 1990), and adding the following new AD:

92-15-13 Beech: Amendment 39-8307; Docket No. 92-CE-02-AD. Supersedes AD 90-04-04; Amendment 39-6487.

Applicability: 99 series airplanes (serial numbers U-1 through U-49, and serial numbers U-51 through U-164) that have 3,000 hours or more time-in-service (TIS), except those airplanes that have Beech Wing Modification Kit No. 99-4023-1S installed, certificated in any category.

Compliance: Required as indicated, unless already accomplished.

To prevent fatigue failure of the wing front spar lower cap and associated structure, accomplish the following:

(a) For airplanes that do not have a spar reinforcing strap installed in accordance with the instructions in STC SA1178CE, accomplish the actions specified in paragraphs (a)(1) through (a)(4) of this AD using the criteria in the Beech Structural Inspection and Repair Manual (SIRM).

(1) Upon the accumulation of 3,000 hours TIS on the front spar lower cap or within the next 100 hours TIS after the effective date of this AD, whichever occurs later, unless already accomplished within the last 500 hours TIS (the inspection interval established by either superseded AD 77-05-01 R3 or superseded AD 90-04-04), and thereafter at intervals not to exceed 500 hours TIS, inspect the areas of structure defined by Index Number 1 (lower forward fitting only) and Index Numbers 2 through 7 on Page 202, Section 57-15-00, of the Beech SIRM, using the visual, fluorescent penetrant, and eddy current methods as specified in the Beech SIRM. If a crack, loose fastener, or corrosion is found, prior to further flight, repair or replace as specified in the Beech SIRM.

(2) Upon the accumulation of 10,000 hours TIS on the nacelle splice plates, or within the next 100 hours TIS after the effective date of this AD, whichever occurs later, unless already accomplished (superseded AD 90-04-04), and thereafter at intervals not to exceed 1,000 hours TIS, inspect the nacelle splice plates as defined by Index Number 9 on Page 202, Section 57-15-00, of the Beech SIRM, using visual methods as specified in the Beech SIRM. If a crack, loose fastener, or corrosion is found, prior to further flight, repair or replace as specified in the Beech SIRM.

(3) Upon the accumulation of 10,000 hours TIS on the wing structure or within the next 100 hours TIS after the effective date of this AD, whichever occurs later, unless already accomplished within the last 500 hours TIS (the inspection interval established by either superseded AD 77-05-01 R3 or superseded AD 90-04-04), and thereafter at intervals not to exceed 500 hours TIS, inspect the wing structure components defined in paragraph (d) of this AD using visual and dye penetrant methods as indicated. If a crack, loose fastener, or corrosion is found, prior to further flight, repair or replace as specified in the Beech SIRM.

(4) Upon the accumulation of 10,000 hours TIS on the front spar lower cap or within the next 100 hours TIS after the effective date of this AD, whichever occurs later, unless already accomplished (superseded AD 90-04-04), and thereafter at intervals not to exceed 10,000 hours TIS, replace the structural components set forth on Page 203, Section 57-15-00, of the Beech SIRM, and summarized below:

(i) Lower cap of the front spar, with attachment fitting, in each outer wing panel.

(ii) Lower cap of the front spar, with left and right attachment fittings, in the center section.

(b) For airplanes that have a spar reinforcing strap installed in accordance with Supplemental Type Certificate (STC) SA1178CE, accomplish the actions specified in paragraphs (b)(1) through (b)(5) using the Beech SIRM and Aerocon California, Inc., Engineering Order No. E.O. B-9975-02, dated November 14, 1975. Strap tension is to be adjusted in accordance with the instructions in Aerocon California Service Letter, dated May 25, 1976.

(1) If the strap was installed before 1,000 hours TIS on the front spar lower cap, within the next 2,000 hours TIS after the effective date of this AD, unless previously accomplished within the last 2,000 hours TIS (the inspection interval established by either superseded AD 77-05-01 R3 or superseded AD 90-04-04), and thereafter at intervals not to exceed 2,000 hours TIS:

(i) Remove and inspect the STC SA1178CE strap in accordance with the instructions in Aerocon California, Inc. Engineering Order No. E.O. B-9975-2, dated November 14, 1975. If a crack, loose fastener, or corrosion is found, prior to further flight, repair or replace in accordance with the instructions in Aerocon California, Inc. Engineering Order No. E.O. B-9975-2.

(ii) Inspect the following areas of structure using the visual, fluorescent penetrant, and eddy current methods as specified in the Beech SIRM. If a crack, loose fastener, or corrosion is found, prior to further flight, repair or replace as specified in the Beech SIRM.

(A) Areas defined by Index Number 1 (lower forward fitting only) and Index Numbers 2 through 7 on Page 202, Section 57-15-00, of the Beech SIRM.

(B) Areas defined by paragraphs (d)(5) and (d)(8) of this AD.

(iii) Reinstall the STC SA1178CE strap and adjust its tension in accordance with the instructions in Aerocon California Service Letter, dated May 25, 1976.

(2) If the strap was installed at or after 1,000 hours TIS on the front spar lower cap, within the next 1,000 hours TIS after the effective date of this AD, unless previously accomplished within the last 1,000 hours TIS (the inspection interval established by either superseded AD 77-05-01 R3 or superseded AD 90-04-04), and thereafter at intervals not to exceed 1,000 hours TIS, accomplish the following:

(i) Remove and inspect the STC SA1178CE strap in accordance with the instructions in Aerocon California, Inc. Engineering Order No. E.O. B-9975-2, dated November 14, 1975. If a crack, loose fastener, or corrosion is found, prior to further flight, repair or replace in accordance with the instructions in Aerocon California, Inc. Engineering Order No. E.O. B-9975-2.

(ii) Inspect the following areas of structure (specified in paragraphs (b)(2)(ii)(A) and (b)(2)(ii)(B) of this AD) using the visual, fluorescent penetrant, and eddy current methods as specified in the Beech SIRM. If a crack, loose fastener, or corrosion is found, prior to further flight, repair or replace as specified in the Beech SIRM.

(A) Areas defined by Index Number 1 (lower forward fitting only) and Index Numbers 2 through 7 on Page 202, Section 57-15-00, of the Beech SIRM.

(B) Areas defined by paragraphs (d)(5) and (d)(8) of this AD.

(iii) Reinstall the STC SA1178CE strap and adjust its tension in accordance with the instructions in Aerocon California Service Letter, dated May 25, 1976.

(3) Upon the accumulation of 10,000 hours TIS on the nacelle splice plates or within the next 100 hours TIS after the effective date of this AD, whichever occurs later, unless already accomplished (superseded AD 90-04-04), and thereafter at intervals not to exceed 1,000 hours TIS, inspect the nacelle splice plates as defined by Index Number 9 on Page 202, Section 57-15-00, of the Beech SIRM, using the visual methods as specified in the Beech SIRM. If a crack, loose fastener, or corrosion is found, prior to further flight, repair or replace as specified in the Beech SIRM.

(4) Upon the accumulation of 10,000 hours TIS on the wing structure or within the next 100 hours TIS after the effective date of this AD, whichever occurs later, unless already accomplished within the last 500 hours TIS (the inspection interval established by either superseded AD 77-05-01 R3 or superseded AD 90-04-04), and thereafter at intervals not to exceed 500 hours TIS, inspect the wing structure components defined in paragraph (d) of this AD using visual and dye penetrant methods as indicated; compliance is not required with paragraphs (d)(5), (d)(8), and that portion of paragraph (d)(12) of this AD that refers to the lower spar cap and hinge. If a crack, loose fastener, or corrosion is found, prior to further flight, repair or replace as specified in the Beech SIRM.

(5) Replace the structural components that are set forth on Page 203, Section 57-15-00, of the Beech SIRM (summarized in paragraphs (b)(5)(i) and (b)(5)(ii) of this AD) upon the accumulation of the front spar's allowable service life. Determine the allowable service life by subtracting the front spar lower cap hours TIS at which the strap was installed from 48,000 hours TIS.

Note 1: For example, if the spar cap had been in service 5,000 hours TIS when the strap was installed, then the spar cap's allowable service life becomes 43,000 hours TIS (48,000 minus 5,000).

(i) Lower cap of the front spar, with attachment fitting, in each outer wing panel.

(ii) Lower cap of the front spar, with left and right attachment fittings, in the center section.

(c) The inspection intervals established by superseded AD 77-05-01 R3 and superseded AD 90-04-04 may be substituted for the "unless already accomplished" statement in paragraphs (a)(1), (a)(3), (b)(1), (b)(2), and (b)(4) of this AD.

(d) The items specified in paragraphs (d)(1) through (d)(13) of this AD define the additional structural items to be inspected as

referenced by paragraphs (a)(3) and (b)(4) of this AD.

(1) Inspect the lower fuselage skin at the attachment to the main spar for possible cracks or loose rivets.

(2) Inspect the lower left hand (LH) and right hand (RH) nacelle skins for cracks or loose rivets.

(3) Remove the aft fabric covers in the wheel wells and inspect for possible cracks in the center section skin under the top nacelle fairing. Check around the nacelle attach flange on the top side for possible loose rivets or cracks in the top skin.

(4) Inspect the structure and attaching fasteners of both keel beam assemblies at Butt Line (BL) 68 inboard, BL 88 outboard, at the center section rear spar, Nacelle Station 160.50.

(5) Inspect for possible cracks or loose rivets in the LH and RH dimpled skin attachment holes on the forward side of the main spar at the four countersunk screws and at all rivets between the fuselage and the nacelles.

(6) Inspect for possible cracks or loose rivets along the top skin attachment to the aft spar.

(7) Inspect for possible loose fasteners in the lower aft spar cap and skin.

(8) Inspect for possible cracks or loose fasteners in the lower strap on the main spar at Wing Station 68.5.

(9) Inspect the lower stringers running forward and aft between the main spar and the aft spar for possible cracks or loose fasteners to the lower fuselage skin. This area is to be checked from the center aisle and through access panels inside of the airplane.

(10) Inspect for possible cracks or loose fasteners in frames and angle clips of the center wing/fuselage at Fuselage Stations 188, 197, and 207.

(11) Using dye penetrant procedures outlined in AC 43.13-1A, inspect the four upper forward wing to center section fittings and the eight aft wing to center section fittings for possible cracks. Do not remove the wing attachment bolts unless cracks are indicated.

(12) Inspect the outer wing upper and lower spar cap and hinge for possible cracks, loose rivets, or wear of hinge.

(13) Lower the flaps and remove the lower aft access covers of the outer and center wing to inspect the aft spar and ribs for possible cracks near the inboard flaps.

(e) Airplane maintenance record entries must be made and notification in writing sent to the Manager, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Room 100, Wichita, Kansas 67209, stating the location and length of any cracks found during inspections required by this AD and also the total hours TIS of the component at the time the crack was discovered. Reports may be submitted by letter or through M or D (Malfunction or Defect) or MRR (Maintenance Reliability Reports) procedures. (Reporting approved by the Office of Management and Budget under OMB No. 2120-0056).

(f) The eddy current inspections required by this AD must be performed by personnel who have received training and are qualified in the operation of eddy current equipment that has been calibrated using a specimen obtained from the airplane manufacturer and simulates cracking of the spar cap.

(g) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(h) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita Aircraft Certification Office.

(i) The strap inspection or modification required by this AD shall be done in accordance with Aerocon California, Inc., Engineering Order No. E.O. B-9975-02, dated November 14, 1975; and Aerocon California Service Letter, dated May 25, 1976. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Western Aircraft Maintenance, 4444 Aeronca Street, Boise, Idaho 83705. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 1100 L Street, NW.; room 8401, Washington, DC.

(j) This amendment (39-8307) supersedes AD 90-04-04, Amendment 39-6487.

(k) This amendment (39-8307) becomes effective on August 24, 1992.

Issued in Kansas City, Missouri, on June 26, 1992.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-15941 Filed 7-7-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-CE-98-AD; Amendment 39-8308; AD 92-15-14]

Airworthiness Directives; Piper Aircraft Corporation Models PA-46-310P and PA-46-350P Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Piper Aircraft Corporation (Piper) Models PA-46-310P (Malibu) and PA-46-350P (Mirage) airplanes. This action requires installing vacuum gauge markings and incorporating changes to the limitations section of the Airplane Flight Manual. One of the affected airplanes experienced an in-flight vacuum system failure, which went undetected because the low vacuum detector failed to sense a low vacuum and the vacuum gauge did not display a safe operating range. The actions specified by this AD are intended to prevent failure of the air-driven attitude gyro and autopilot systems caused by an undetected low vacuum.

DATES: Effective August 22, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 22, 1992.

ADDRESSES: Service information that is applicable to this AD may be obtained from the Piper Aircraft Corporation, Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington DC.

FOR FURTHER INFORMATION CONTACT: Mr. Robert L. Miller, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, suite 210C, Atlanta, Georgia 30349; telephone (404) 991-3020; facsimile (404) 991-3606.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD that is applicable to certain Piper Models PA-46-310P and PA-46-350P airplanes was published in the **Federal Register** on March 2, 1992 (57 FR 7331). The action proposed (1) the disconnection of the low vacuum annunciation switch; (2) the fabrication and installation of a placard that labels the low vacuum light as inoperative; (3) the installation of vacuum gauge markings; and (4) the incorporation of changes to the Airplane Flight Manual. The proposed disconnection, fabrication, and installations would be accomplished in accordance with Piper Service Bulletin No. 947A, dated October 29, 1991.

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

Forty commenters request that the proposed requirements of disabling the low vacuum pressure annunciator

switch and installing a placard with the words "VACUUM LOW LIGHT INOP" should be removed from the proposed AD. The following summarizes these commenters position:

• Although the annunciator may fail to warn of a lower than normal vacuum, it will detect a complete loss of vacuum or an extremely low vacuum; and

• Although possibly unreliable, the use of this annunciator is still better than no annunciator.

After examining all information related to the annunciator disablement and placard requirement, the FAA has determined that these requirements should be removed from the proposed AD.

In addition, several of these commenters proposed ideas to replace the disablement and placard requirements of the proposed AD. The following describes these ideas and presents the FAA's position:

• Five commenters feel that a placard that labels the low vacuum annunciator as "unreliable" would provide pilots with an improved warning. The FAA does not concur and has determined that a properly marked vacuum gauge is the primary indication of vacuum system condition. An "unreliable" annunciator placard could result in the pilot ignoring a warning of a system malfunction and result in a hazardous condition because of a lack of pilot response.

• Three commenters request changes to the airplane flight manual that warn the pilot that the low vacuum annunciator is unreliable, and to inform the pilot of the importance of the vacuum gauge as the primary source of vacuum system condition. Although the FAA agrees that the vacuum gauge is the primary source of vacuum system condition, the FAA does not concur that a flight manual change is required. The FAA believes the pilots are aware that the vacuum gauge is the primary vacuum system indication, and has determined that a change to the flight manual could result in the pilot ignoring a valid warning if the operator thought the annunciator was unreliable.

One other comment was received in regard to the vacuum gauge marking installation requirement of the proposed AD. The commenter states that this requirement should be eliminated because the markings would make the gauge more difficult to read and therefore less accurate. The FAA does not concur and has determined that, without these markings, the vacuum gauge is not in compliance with Federal Aviation Regulations and that these markings must be installed to provide a safe operating environment.

No comments were received on the FAA's determination of the cost impact of the proposed AD on the public.

After careful review, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for the deletion of the annunciator disablement and placard requirement and minor editorial corrections. The FAA has determined that (1) the minor editorial corrections will not change the meaning of the AD nor add any additional burden upon the public than was already proposed; and (2) the same level of safety will be obtained by eliminating the annunciator and disablement requirement of the AD.

The FAA estimates that 403 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 1 workhour per airplane to accomplish the required action, and that the average labor rate is approximately $55 an hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $22,165. This cost analysis is different than that which was originally proposed because the FAA has eliminated the disconnection of the low vacuum annunciation switch requirement, and the placard requirement to label the low vacuum light as inoperative. The FAA estimated that it would take approximately 2 workhours to accomplish the proposed AD. Therefore, the cost analysis for this AD has been reduced by 50 percent (from $44,330 to $22,165).

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

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

92-15-14 Piper Aircraft Corporation: Amendment 39-8308; Docket No. 91-CE-98-AD.

Applicability: Model PA-46-310P airplanes (serial numbers (S/N) 46-8408001 through 46-8608067 and S/N 4608001 through 4608140) and Model PA-46-350P airplanes (S/N 4622001 through 4622118), certificated in any category.

Compliance: Required within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent failure of the air-driven attitude gyro and autopilot systems caused by an undetected low vacuum, accomplish the following:

(a) Install vacuum gauge markings in accordance with the INSTRUCTIONS section in Part II of Piper Service Bulletin No. 947A, dated October 29, 1991.

(b) Incorporate whichever of the following reports that is applicable into the limitations section of the Airplane Flight Manual, and operate the airplane accordingly:

Model	Report
PA-46-310P	Report: VB-1200, page 2-4, Issued: January 11, 1984, Revised: October 14, 1991.
PA-46-310P	Report: VB-1300, page 2-4, Issued: July 1, 1986, Revised: October 14, 1991.
PA-46-350P	Report: VB-1332, page 2-4, Issued: June 15,1988, Revised: October 14, 1991.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, suite 210C, Atlanta, Georgia 30349. The request shall be forwarded through an

appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta Aircraft Certification Office.

(e) The installation required by this AD shall be done in accordance with Piper Service Bulletin No. 947A, dated October 29, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Piper Aircraft Corporation, 2926 Piper Drive, Vero Beach, Florida 32960. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 1100 L Street, NW.; room 8401, Washington, DC.

(f) This amendment (39-8308) becomes effective on August 22, 1992.

Issued in Kansas City, Missouri, on June 24, 1992.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-15786 Filed 7-7-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 91-AGL-11]

Transition Area Modification; Rice Lake Municipal Airport, Rice Lake, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this action is to modify the Rice Lake, WI transition area to accommodate VOR runway 36, VOR runway 18, and NDB runway 36 Standard Instrument Approach Procedures (SIAPs) to Rice Lake Municipal Airport, Rice Lake, WI. The intended effect of this action is to ensure segregation of the aircraft using approach procedures in instrument conditions from other aircraft operating under visual weather conditions in controlled airspace.

EFFECTIVE DATE: 0901 UTC, October 15, 1992.

FOR FURTHER INFORMATION CONTACT: Douglas F. Powers, Air Traffic Division, System Management Branch, AGL-530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL 60018, telephone (312) 694-7568.

SUPPLEMENTARY INFORMATION:

History

On Thursday, November 14, 1991, the Federal Aviation Administration (FAA) proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify the transition area airspace near Rice Lake, WI (56 FR 57867).

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

Except for editorial changes, this amendment is the same as that proposed in the notice. The airspace designation for the transition area listed in this document is published in § 71.181 of Handbook 7400.7, effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1.

The Rule

This amendment to part 71 of the Federal Aviation Regulations modifies the transition area airspace near Rice Lake, WI, to accommodate VOR runway 36, VOR runway 18, and NDB runway 36 SIAPs to Rice Lake Municipal Airport, Rice Lake, WI.

The SIAPs require the FAA to alter the designated airspace to ensure that the procedures will be contained within controlled airspace. The minimum descent altitudes for these procedures may be established below the floor of the 700-foot controlled airspace.

Aeronautical maps and charts will reflect the defined area which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(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) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, Transition areas.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follow:

Authority: 49 U.S.C. App. 1348(a), 1354(a), 1510; E.O. 10654, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

Section 71.181 Designation

* * * * *

AGL WI TA Rice Lake, WI [Revised]
Rice Lake, Rice Lake Municipal Airport, WI
(lat. 45° 28' 45"N, long. 91° 43' 20"W)

That airspace extending upward from 700 feet above the surface within a 7 mile radius of Rice Lake Municipal Airport; excluding that airspace within Cumberland, WI, Transition Area.

* * * * *

Issued in Des Plaines, Illinois on June 19, 1992.

John P. Cuprisin,

Manager, Air Traffic Division.

[FR Doc. 92-15675 Filed 7-7-92; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Office of the Secretary

15 CFR Part 6

[Docket No. 920525-2125]

Standardization of Data Elements and Representations

AGENCY: Office of the Secretary, Commerce.

ACTION: Final rule.

SUMMARY: The Department is removing from the Code of Federal Regulations regulations identifying responsibilities for management of data elements and representations by Federal agencies. These responsibilities have been superseded by the Computer Security Act of 1987; by Office of Management and Budget Circular A-130, Management of Federal Information Resources; by FIRMR Subchapter C, Management and Use of Federal Information Processing Resources; by the Paperwork Reduction Act of 1990; and by other statutes, Executive Orders, and policies

concerning general information policy, information technology, privacy, and maintenance of Federal records.

EFFECTIVE DATE: July 8, 1992.

FOR FURTHER INFORMATION CONTACT: Ms. Shirley M. Radack, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone (301) 975-2833.

SUPPLEMENTARY INFORMATION: The purpose of 15 CFR part 6 was to implement section 111(f)(2) of the Federal Property and Administrative Services Act of 1949, as amended (79 Stat. 1127) and Executive Order 11717 of May 9, 1973 (38 FR 12315), dated May 11, 1973. In addition, 15 CFR Part 6 replaced Office of Management and Budget Circular No. A-86 entitled "Standardization of Data Elements and Codes in Data Systems," dated September 30, 1967.

The Federal Property and Administrative Services Act of 1949 was amended by the Computer Security Act of 1987, Public Law 100-235, to provide for the promulgation of standards and guidelines for Federal computer systems. Executive Order 11717 was superseded by the Computer Security Act.

15 CFR part 6 identified responsibilities and provided guidance for the management of Executive Branch activities related to the development, implementation and maintenance of standards for data elements and representations. At the time that 15 CFR part 6 was issued, data elements and representations were a principal aspect of Federal information processing systems and required special emphasis to support cost effective information processing. Since that time, Public Law 100-235 has defined Federal computer system to mean "any equipment of interconnected system or subsystems of equipment that is used in the automated acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission or reception of data or information * * *" and includes computers, ancillary equipment, software, firmware, services and related resources.

In addition, the Office of Management and Budget issued Circular A-130, Management of Federal Information Resources in 1986, and the General Services Administration has issued Federal Information Resources Management Regulation (FIRMR) in 41 CFR ch. 201. The Paperwork Reduction Act of 1980 and other statutes, Executive Orders, and policies concerning general information policy, information technology, privacy, and maintenance of Federal records have been issued to reflect a broader view of information technology, and to provide policies and guidance on the management of Federal information technology resources. As a result, the policies and guidance promulgated in 15 CFR part 6 are obsolete and no longer needed.

The Department finds for good cause that notice and comment and a delayed effective date are unnecessary for this action because removing this rule relieves a restriction.

List of Subjects in 15 CFR Part 6

Computer Technology, Science and Technology.

PART 6—[REMOVED]

For the reasons set out in the preamble and under authority of 5 U.S.C. 301, part 6 is removed from title 15 of the Code of Federal Regulations.

Dated: June 29, 1992.

Robert M. White,

Under Secretary for Technology.

[FR Doc. 92-15857 Filed 7-7-92; 8:45 am]

BILLING CODE 3510-CN-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

[Regulations No. 4]

RIN 0960-AD20

Repeal of Special Disability Standard for Widows, Widowers, and Surviving Divorced Spouses

AGENCY: Social Security Administration, HHS.

ACTION: Final rules.

SUMMARY: These final rules reflect provisions of section 5103 of the Omnibus Budget Reconciliation Act of 1990, that change the definition of disability for widows, widowers, and surviving divorced spouses (hereinafter, collectively widows) from one based on the inability to do any "gainful activity" to the same definition used for all other claimants for disability benefits under title II of the Social Security Act (the Act), i.e., inability to engage in any "substantial gainful activity." The statutory change is applicable with respect to benefits payable for months after December 1990 based on applications filed on or after January 1, 1991, or pending on such date.

EFFECTIVE DATE: July 8, 1992.

FOR FURTHER INFORMATION CONTACT: Cassandra Bond, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (301) 965-1794.

SUPPLEMENTARY INFORMATION:

Background

These final rules reflect section 5103 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101-508) which changed, effective for monthly benefits payable for months after December 1990, the definition of disability in widows' claims to that used in all other claims for benefits based on disability under Title II of the Act. Section 5103 also contains several other, more limited, provisions applicable only to certain widow claimants.

A widow, generally, may be entitled to widow's insurance benefits based on the earnings of her deceased spouse if she has attained age 60. A widow who is under age 60, but at least age 50, may also be entitled to widow's benefits if she is disabled.

Generally, disability is defined in section 223(d) of the Act as the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. The impairment(s) must be of such severity that the claimant is not able to do her previous work and cannot, considering her age, education, and work experience, do any other kind of substantial gainful work which exists in the national economy.

Under section 223(d)(2) of the Act prior to its amendment by section 5103 of Public Law 101-508, claimants for widow's benefits based on disability had to meet a stricter definition of disability than other title II claimants based upon the inability to engage in any gainful activity. Under the statute, the Secretary was to prescribe regulations which deemed a level of severity of a person's impairment(s) that was sufficient to preclude any gainful activity. Our implementing regulations (see §§ 404.1577 and 404.1578) stated that a widow's impairment(s) must have specific clinical findings that are the same as those for any impairment in the Listing of Impairments in appendix 1 to subpart P of part 404 of the regulations or medically equivalent to those for any impairment shown there. Further, these regulations stated that the person's age, education, and work experience would

not be considered in determining whether she was disabled.

Section 5103 of Public Law 101-508 repealed the stricter definition of disability used in widows' claims. This change was effective with respect to monthly benefits payable for months after December 1990 based on applications filed on or after January 1, 1991, or pending on that date. Therefore, effective with respect to monthly benefits payable for months after December 1990, the standard of disability for widow's benefits is "inability to engage in any substantial gainful activity," and includes all the policies and practices used in determining disability in other title II claims under the sequential evaluation process set forth in § 404.1520. These policies and practices include, where applicable in a given claim, the severity assessment, residual functional capacity, consideration of age, education, and work experience, and use of the Medical-Vocational Guidelines in appendix 2 to subpart P of part 404 of the regulations.

One of the requirements for entitlement to disabled widow's, as well as other title II benefits, is that the person must file an application. This requirement has been modified as well by section 5103 in that certain persons shall be deemed to have filed an application for benefits payable for months after December 1990. In order for this provision to apply, the person must be entitled to disability insurance benefits under section 223 of the Act for December 1990, or eligible for supplemental security income (SSI) benefits or federally administered State supplementary payments under title XVI of the Act for January 1991. She also must have applied in 1990 for widow's benefits based on disability and must have been found not disabled under the narrower definition of disability for widows applicable at the time, but would have been entitled if the provisions of section 5103 had applied.

If it is determined that a widow meets all the other requirements for entitlement (i.e., is not married, has filed an application, is at least age 50, but not yet 60, is the "widow" of the insured worker, and is under a disability that began before the end of the prescribed statutory period), there is a 5-month waiting period before disabled widow's benefits can be paid, unless the person was previously entitled as a disabled widow. Section 5103(c)(2) now provides that each month in the period commencing with the first month for which the widow is first eligible for SSI benefits or federally administered State supplementary payments under title XVI of the Act shall be included as one of the months of the disability waiting period. Like the primary provision of section 5103, this more limited provision is effective for monthly benefits payable for months after December 1990 based on applications which were filed on or after January 1, 1991, or were pending on that date.

On May 22, 1991, SSA published Social Security Ruling (SSR) 91-3p at 56 FR 23589, which interprets 20 CFR 404.1577 through 404.1579, to be used in adjudicating cases involving widow's disability benefits for months prior to January 1991. It explains how residual functional capacity will be used in determining whether a widow is disabled without considering age, education, and work experience. The republication of §§ 404.1577 through 404.1579 does not affect the application of SSR 91-3p.

Regulatory Provisions

The following discussion outlines how these final rules reflect section 5103 of Public Law 101-508. Except for the revisions to §§ 404.335 and 404.336, which reflect the more limited provisions of section 5103 of Public Law 101-508, the revisions to the existing rules fall into two types. Under the first type of revision, the existing rules that discuss the policies and practices used in evaluating claims for disability insurance benefits by workers and claims for child's insurance benefits based on disability are changed by these final rules to show that they now also apply to widow's claims based on disability for monthly benefits payable for months after December 1990. Under the second type of revision, the existing rules that discuss special policies and practices applicable only to disabled widow's claims are changed to show that they now apply to these claims only for monthly benefits payable for months prior to January 1991.

We are retaining the rules that address special policies and practices applicable only to disabled widows' claims for monthly benefits payable for months prior to January 1991 because they are still applicable in new claims in which there are potential retroactive benefits payable for months prior to January 1991, in appeals of denials and cessations in those months, and in reopenings of prior decisions for such months. We will apply the rules as explained in SSR 91-3p.

Section 404.315 "Who is Entitled to Disability Benefits"

In paragraph (d), we have added the word "full" to the first sentence to conform the language of this section to the language in §§ 404.335(c)(2) and 404.336(c)(2). This is not a change in our policy, but only a clarification that the disability waiting period consists of 5 full consecutive months. We are also correcting two printer's errors in the last sentence of the paragraph: We have removed the italics from the phrase, "period of disability," and we have changed the single word "anytime" into two words, "any time."

Section 404.335 "Who is Entitled to Widow's or Widower's Benefits" and Section 404.336 "Who is Entitled to Widow's or Widower's Benefits as a Surviving Divorced Spouse"

We have changed the reference to the definition of disability used in widows' claims in both sections from § 404.1577, which is no longer applicable to monthly benefits for months after December 1990, to § 404.1505, which contains the definition of disability for all title II claims for months after December 1990 and which includes a cross-reference to § 404.1577 for months prior to January 1991.

We have added identical new paragraphs (b)(4) to both sections to reflect the provisions of section 5103 of Public Law 101-508 regarding deemed filing of new applications by certain widow claimants who filed applications for benefits in 1990.

We have also revised the first sentence of paragraphs (c)(2) of §§ 404.335 and 404.336 and added identical new paragraphs (c)(3) to both sections to reflect the provisions of section 5103 of Public Law 101-508 regarding the inclusion of months of SSI or federally administered State supplementary payment eligibility as months of the waiting period. The new paragraphs provide that a widow may be considered to have satisfied all or part of the 5-month waiting period ordinarily imposed on new claims, if she is receiving or has ever received SSI benefits or a federally administered State supplementary payment.

We are also making minor editorial corrections to both sections. We are changing the first word of §§ 404.335(c)(1) and 404.336(c)(1), "The," to "Your," to make the language of the paragraph consistent with the remaining paragraphs in the section. We are also correcting a typographical error in § 404.335(c)(1) to change the word "which" to "whichever" and adding the word "full" to the first sentence of § 404.336(c)(2). (See explanation under Section 404.315 "Who is entitled to disability benefits.") These revisions only correct errors or provide

clarification, and do not change the meaning of these rules.

Section 404.1501 "Scope of Subpart"

We have revised paragraph (i) to state that the special rules in §§ 404.1577 through 404.1579 are now applicable to disabled widow's claims only for monthly benefits payable for months prior to January 1991. We are also changing the phrase "surviving divorced wives" to "surviving divorced spouses" to be consistent with §§ 404.1577 and 404.1578. We are also deleting a reference to § 404.1580, as there is no such section.

Section 404.1505 "Basic Definition of Disability"

We have changed paragraph (a) to extend to disabled widows, for disability benefits payable for months after December 1990, the definition of disability that we use for other title II disability claimants. We have changed paragraph (b) to make it clear that the previous definition of disability for disabled widows applies only for months prior to January 1991.

Section 404.1511 "Definition of a Disabling Impairment"

We have changed paragraph (a) to include disabled widows entitled to monthly benefits payable for months after December 1990 in the category of beneficiaries for whom a disabling impairment(s) is one which, of itself, is so severe that it meets or equals a set of criteria in the Listing of Impairments in appendix 1 of this subpart or which, when considered with the person's age, education, and work experience, would result in a finding of disability under § 404.1594. Conversely, we revised the title and text of paragraph (b) to make it clear that the special definition of disabling impairment for disabled widow beneficiaries applies only for monthly benefits payable for months prior to January 1991.

Section 404.1520a "Evaluation of Mental Impairments"

We have removed from paragraph (c)(3) the provision that excludes consideration of residual functional capacity in disabled widows' claims.

Section 404.1560 "When Your Vocational Background will be Considered"

We have revised paragraph (a) to include applicants for disabled widow's benefits payable for months after December 1990 in the list of the categories of applicants whose residual functional capacities and vocational backgrounds will be considered when the issue of disability cannot be decided on medical considerations alone.

Section 404.1577 "Disability Defined for Widows, Widowers, and Surviving Divorced Spouses" and Section 404.1578 "How We Determine Disability for Widows, Widowers, and Surviving Divorced Spouses"

We have made minor changes to the title and the text of both rules, to show that they now apply only to widows claiming monthly disability benefits payable for months prior to January 1991. In § 404.1577, we have pluralized "impairment" to reflect that we consider all of an individual's physical or mental impairments, and added a cross-reference to the rules that pertain to claims for monthly benefits payable for months after December 1990.

Section 404.1579 "How We Will Decide Whether Your Disability Continues or Ends"

We have made minor revisions in this section. Paragraph (a), "General," has been broken down into two paragraphs. In paragraph (a)(1), we explain that we will follow the rules in §§ 404.1594 through 404.1598 for determining whether a widow beneficiary's disability continues or ends for benefits payable for months after December 1990; these are the same rules applicable to all other title II disability beneficiaries. We then provide that the rules for determining whether a widow's disability continues or ends for benefits payable for months prior to January 1991 are contained in the remainder of the section. Paragraph (a)(2) is the former paragraph (a) with minor revisions to show that it applies only to determinations for monthly benefits prior to January 1991. We then repeat the remainder of the current rules.

It should be noted that the rules for cessations in months prior to January 1991 will have very limited applicability. Since in the vast majority of cases disability is determined to have ceased no earlier than the month in which we mail the beneficiary a notice saying he or she is no longer disabled (see § 404.1594(g)(2)), virtually all current cessations based on a determination that a widow beneficiary is no longer disabled use the definition of disability in section 5103 of Public Law 101–508. Appeals or reopenings of cessation determinations for benefits payable for months prior to January 1991 will constitute nearly the only cases that will be considered under the rules in new paragraph (2). We will apply those rules as explained in SSR 91–3p.

Section 404.1594 "How We Will Decide Whether Your Disability Continues or Ends"

We have revised paragraph (a) to include disabled widow beneficiaries for months after December 1990.

Appendix 1 to Subpart P Section 12.00 "Mental Disorders"

We have removed from the seventh paragraph in subsection A the last two (parenthetical) sentences, which state that the residual functional capacity assessment does not apply to disabled widows' (or SSI children's) claims, and that the impairment must meet or equal a listed impairment for the individual to be eligible. (The deletion of the reference to SSI children also makes these rules consistent with our recent revisions to the title XVI childhood disability rules in Part 416 (56 FR 5534 (February 11, 1991)) and merely corrects an oversight that occurred when those childhood rules were promulgated.)

Regulatory Procedures

We are publishing these amendments without prior notice and public comment thereon. The Department, even when not required by statute, as a matter of policy, generally follows the Administrative Procedure Act (APA) notice of proposed rulemaking and public comment procedures specified in 5 U.S.C. 553 in the development of regulations. The APA provides exceptions to its notice and comment requirements when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that under 5 U.S.C. 553(b)(B) good cause exists for waiver of proposed rulemaking and public comment procedures in the case of these rules because we are only reflecting statutory changes and making nonsubstantive technical and editorial corrections. The revisions based on the statutory changes are not discretionary and do not involve the setting of policy. Therefore, opportunity for prior public comment is unnecessary and these changes to our regulations are being issued as final rules.

Executive Order 12291

The estimated increase in benefit payments resulting from these legislative changes is $110 million for fiscal year 1996, with an increase of 5000 title II beneficiaries and a decrease of 1200 title XVI recipients. This overall increase in benefits will exceed the threshold amount for a major rule under Executive Order 12291. The increase is,

however, largely a transfer with a negligible increase in administrative costs. Moreover, we do not anticipate that modifying the eligibility standard will create any marginal incentive that will adversely impact the program. Given these facts, and that we have identified the overall costs, and increase in beneficiaries, OMB has waived the requirement for a regulatory impact analysis for this rule.

Paperwork Reduction Act

These regulations impose no new reporting or recordkeeping requirements subject to Office of Management and Budget clearance.

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because these rules will affect only individuals. Therefore, a regulatory flexibility analysis as provided in Public Law 96-354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Program Nos. 93.802, Social Security Disability Insurance; 93.803, Social Security Retirement Insurance; and 93.805, Social Security Survivors Insurance)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Death benefits, Disability benefits, Old-Age, Survivors and Disability Insurance, Social Security.

Dated: October 4, 1991.

Gwendolyn S. King,

Commissioner of Social Security.

Approved: November 5, 1991.

Louis W. Sullivan,

Secretary of Health and Human Services.

Note: This document was received at the Office of the Federal Register on June 24, 1992.

Part 404 of chapter III of title 20 of the Code of Federal Regulations is amended as follows:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950-____)

1. The authority citation for subpart D of part 404 is revised to read as follows:

Authority: Secs. 202, 203 (a) and (b), 205(a), 216, 223, 228 (a)-(e), and 1102 of the Social Security Act; 42 U.S.C. 402, 403 (a) and (b), 405(a), 416, 423, 428 (a)-(e), and 1302.

2. Paragraph (d) of § 404.315 is revised to read as follows:

§ 404.315 Who is entitled to disability benefits.

* * * * *

(d) You have been disabled for 5 full consecutive months. This 5-month waiting period begins with a month in which you were both insured for disability and disabled. Your waiting period can begin no earlier than the 17th month before the month you apply—no matter how long you were disabled before then. No waiting period is required if you were previously entitled to disability benefits or to a period of disability under § 404.320 any time within 5 years of the month you again became disabled.

3. Section 404.335 is amended by removing the word "or" at the end of paragraph (b)(2); removing the period at the end of paragraph (b)(3) and adding in its place "; or"; adding a new paragraph (b)(4); revising the introductory text of paragraph (c), paragraph (c)(1) and the first sentence of paragraph (c)(2); adding the word "and" following the semicolon at the end of paragraph (c)(2); and adding a new paragraph (c)(3) to read as follows:

§ 404.335 Who is entitled to widow's or widower's benefits.

* * * * *

(b) * * *

(4) You applied in 1990 for widow's or widower's benefits based on disability, and:

(i) You were entitled to disability insurance benefits for December 1990, or eligible for supplemental security income or federally administered State supplementary payments, as specified in subparts B and T of part 416 of this chapter, respectively, for January 1991; and

(ii) You were found not disabled for any month based on the definition of disability in §§ 404.1577 and 404.1578, as in effect prior to January 1991, but would have been entitled if the standard in § 404.1505(a) had applied. (This exception to the requirement for filing an application is effective only with respect to benefits payable for months after December 1990.);

(c) You are at least 60 years old; or you are at least 50 years old and have a disability as defined in § 404.1505 and—

(1) Your disability started not later than 7 years after the insured died or 7 years after you were last entitled to mother's or father's benefits or to widow's or widower's benefits based upon a disability, whichever occurred last;

(2) Your disability continued during a waiting period of 5 full consecutive months, unless months beginning with the first month of eligibility for supplemental security income or federally administered State supplementary payments are counted, as explained in paragraph (c)(3) of this section. * * *

(3) For monthly benefits payable for months after December 1990, if you were or have been eligible for supplemental security income or federally administered State supplementary payments, as specified in subparts B and T of part 416 of this chapter, respectively, your disability does not have to have continued through a separate, full 5-month waiting period before you may begin receiving benefits. We will include as months of the 5-month waiting period the months in a period beginning with the first month you received supplemental security income or a federally administered State supplementary payment and continuing through all succeeding months, regardless of whether the months in the period coincide with the months in which your waiting period would have occurred, or whether you continued to be eligible for supplemental security income or a federally administered State supplementary payment after the period began, or whether you met the nondisability requirements for entitlement to widow's or widower's benefits. However, we will not pay you benefits under this provision for any month prior to January 1991;

* * * * *

4. Section 404.336 is amended by removing the word "or" at the end of paragraph (b)(2); removing the period at the end of paragraph (b)(3) and adding in its place "; or"; adding a new paragraph (b)(4); revising the introductory text of paragraph (c), paragraph (c)(1) and the first sentence of paragraph (c)(2); adding the words "; and" in place of the period at the end of paragraph (c)(2); and adding a new paragraph (c)(3) to read as follows:

§ 404.336 Who is entitled to widow's or widower's benefits as a surviving divorced spouse.

* * * * *

(b) * * *

(4) You applied in 1990 for widow's or widower's benefits based on disability, and:

(i) You were entitled to disability insurance benefits for December 1990, or eligible for supplemental security income or federally administered State supplementary payments, as specified in Subparts B and T of part 416 of this chapter, respectively, for January 1991; and

(ii) You were found not disabled for any month based on the definition of disability in §§ 404.1577 and 404.1578, as in effect prior to January 1991, but would have been entitled if the standard in § 404.1505(a) had applied. (This exception to the requirement for filing

an application is effective only with respect to benefits payable for months after December 1990.);

(c) You are at least 60 years old; or you are at least 50 years old and have a disability as defined in § 404.1505 and—

(1) Your disability started not later than 7 years after the insured died or 7 years after you were last entitled to mother's or father's benefits or to widow's or widower's benefits based upon a disability, whichever occurred last;

(2) Your disability continued during a waiting period of 5 full consecutive months, unless months beginning with the first month of eligibility for supplemental security income or federally administered State supplementary payments are counted, as explained in paragraph (c)(3) of this section. * * *

(3) For monthly benefits payable for months after December 1990, if you were or have been eligible for supplemental security income or a federally administered State supplementary payments, as specified in Subparts B and T of Part 416 of this chapter, respectively, your disability does not have to have continued through a separate, full 5-month waiting period before you may begin receiving benefits. We will include as months of the 5-month waiting period the months in a period beginning with the first month you received supplemental security income or a federally administered State supplementary payment and continuing through all succeeding months, regardless of whether the months in the period coincide with the months in which your waiting period would have occurred, or whether you continued to be eligible for supplemental security income or a federally administered State supplementary payment after the period began, or whether you met the nondisability requirements for entitlement to widow's or widower's benefits. However, we will not pay you benefits under this provision for any month prior to January 1991;

* * * * *

5. The authority citation for subpart P of part 404 is revised to read as follows:

Authority: Secs. 202, 205 (a), (b), and (d) through (h), 216(i), 221 (a) and (i), 222(c), 223, 225, and 1102 of the Social Security Act; 42 U.S.C. 402, 405 (a), (b), and (d) through (h), 416(i), 421 (a) and (i), 422(c), 423, 425, and 1302; sec. 505(a) of Pub. L. 96–265, 94 Stat. 473, secs. 2(d) (2), (5), (6) and (15) of Pub. L. 98–460, 98 Stat. 1797, 1801, 1802, and 1808.

6. In § 404.1501, paragraph (i) is revised to read as follows:

§ 404.1501 Scope of subpart.

* * * * *

(i) In §§ 404.1577, 404.1578, and 404.1579, we explain the special rules covering disability for widows, widowers, and surviving divorced spouses for monthly benefits payable for months prior to January 1991, and in §§ 404.1581 through 404.1587 we discuss disability due to blindness.

* * * * *

7. In § 404.1505, paragraph (a) is amended by revising the last sentence, and paragraph (b) is amended by revising the last two sentences to read as follows:

§ 404.1505 Basic definition of disability.

(a) * * * We will use this definition of disability if you are applying for a period of disability, or disability insurance benefits as a disabled worker, or child's insurance benefits based on disability before age 22 or, with respect to disability benefits payable for months after December 1990, as a widow, widower, or surviving divorced spouse.

(b) * * * There are also different rules for determining disability for widows, widowers, and surviving divorced spouses for monthly benefits for months prior to January 1991. We discuss these rules in §§ 404.1577, 404.1578, and 404.1579.

8. Section 404.1511 is revised to read as follows:

§ 404.1511 Definition of a disabling impairment.

(a) *Disabled workers, persons disabled since childhood and, for months after December 1990, disabled widows, widowers, and surviving divorced spouses.* If you are entitled to disability cash benefits as a disabled worker, or to child's insurance benefits, or, for monthly benefits payable after December 1990, to widow's, widower's, or surviving divorced spouse's monthly benefits, a disabling impairment is an impairment (or combination of impairments) which, of itself, is so severe that it meets or equals a set of criteria in the Listing of Impairments in appendix 1 of this subpart or which, when considered with your age, education, and work experience, would result in a finding that you are disabled under § 404.1594. In determining whether you have a disabling impairment, earnings are not considered.

(b) *Disabled widows, widowers, and surviving divorced spouses, for monthly benefits for months prior to January 1991.* If you have been entitled to disability benefits as a disabled widow, widower, or surviving divorced spouse and we must decide whether you had a disabling impairment for any time prior to January 1991, a disabling impairment is an impairment (or combination of impairments) which, of itself, was so severe that it met or equaled a set of criteria in the Listing of Impairments in appendix 1 of this subpart, or results in a finding that you were disabled under § 404.1579. In determining whether you had a disabling impairment, earnings are not considered.

9. In §§ 404.1520a, paragraph (c)(3) is revised to read as follows:

§ 404.1520a Evaluation of mental impairments.

* * * * *

(c) * * *

(3) If you have a severe impairment(s), but the impairment(s) neither meets nor equals the listings, we must then do a residual functional capacity assessment.

* * * * *

10. In § 404.1560, paragraph (a) is revised to read as follows:

§ 404.1560 When your vocational background will be considered.

(a) *General.* If you are applying for a period of disability, or disability insurance benefits as a disabled worker, or child's insurance benefits based on disability which began before age 22, or widow's or widower's benefits based on disability for months after December 1990, and we cannot decide whether you are disabled on medical evidence alone, we will consider your residual functional capacity together with your vocational background.

* * * * *

11. Section 404.1577 is revised to read as follows:

§ 404.1577 Disability defined for widows, widowers, and surviving divorced spouses for monthly benefits payable for months prior to January 1991.

For monthly benefits payable for months prior to January 1991, the law provides that to be entitled to a widow's or widower's benefit as a disabled widow, widower, or surviving divorced spouse, you must have a medically determinable physical or mental impairment which can be expected to result in death or has lasted or can be expected to last for a continuous period of not less than 12 months. The impairment(s) must have been of a level of severity to prevent a person from doing any gainful activity. To determine whether you were disabled, we consider only your physical or mental impairment(s). We do not consider your age, education, and work experience. We also do not consider certain felony-related and prison-related impairments, as explained in § 404.1506. (For monthly

benefits payable for months after December 1990, see § 404.1505(a).)

12. Section 404.1578 is revised to read as follows:

§ 404.1578 How we determine disability for widows, widowers, and surviving divorced spouses for monthly benefits payable for months prior to January 1991.

(a) For monthly benefits payable for months prior to January 1991, we will find that you were disabled and pay you widow's or widower's benefits as a widow, widower, or surviving divorced spouse if—

(1) Your impairment(s) had specific clinical findings that were the same as those for any impairment in the Listing of Impairments in appendix 1 of this subpart or were medically equivalent to those for any impairment shown there;

(2) Your impairment(s) met the duration requirement.

(b) However, even if you met the requirements in paragraphs (a) (1) and (2) of this section, we will not find you disabled if you were doing substantial gainful activity.

13. In § 404.1579, by designating the text of paragraph (a) following the paragraph heading as paragraph (a)(2) and revising the first sentence of newly designated (a)(2); and by adding a new paragraph (a)(1) to read as follows:

§ 404.1579 How we will decide whether your disability continues or ends.

(a) *General.* (1) The rules for determining whether disability continues for widow's or widower's monthly benefits for months after December 1990 are discussed in §§ 404.1594 through 404.1598. The rules for determining whether disability continues for monthly benefits for months prior to January 1991 are discussed in paragraph (a)(2) of this section and paragraphs (b) through (h) of this section.

(2) If you are entitled to disability benefits as a disabled widow, widower, or surviving divorced spouse, and we must decide whether your disability continued or ended for monthly benefits for months prior to January 1991, there are a number of factors we consider in deciding whether your disability continued. * * *

* * * * *

14. Paragraph (a) of § 404.1594 is revised to read as follows:

§ 404.1594 How we will decide whether your disability continues or ends.

(a) *General.* There is a statutory requirement that, if you are entitled to disability benefits, your continued entitlement to such benefits must be reviewed periodically. If you are entitled to disability benefits as a disabled worker or as a person disabled since childhood, or, for monthly benefits payable for months after December 1990, as a disabled widow, widower, or surviving divorced spouse, there are a number of factors we consider in deciding whether your disability continues. We must determine if there has been any medical improvement in your impairment(s) and, if so, whether this medical improvement is related to your ability to work. If your impairment(s) has not medically improved we must consider whether one or more of the exceptions to medical improvement applies. If medical improvement related to your ability to work has not occurred and no exception applies, your benefits will continue. Even where medical improvement related to your ability to work has occurred or an exception applies, in most cases (see paragraph (e) of this section for exceptions), we must also show that you are currently able to engage in substantial gainful activity before we can find that you are no longer disabled.

* * * * *

Appendix 1 to Subpart P of Part 404 [Amended]

15. In appendix 1 to subpart P of part 404, the seventh paragraph of section 12.00A is amended by removing the two sentences in the parenthetical at the end of the paragraph.

[FR Doc. 92-15248 Filed 7-7-92; 8:45 am]

BILLING CODE 4190-29-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 950

Wyoming Permanent Regulatory Program

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

ACTION: Final rule; approval of amendment with exceptions and required amendments.

SUMMARY: OSM is announcing the approval, with exceptions and required amendments, of a proposed amendment to the Wyoming permanent regulatory program (hereinafter, the "Wyoming program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment would revise or add new statutory provisions pertaining to the review of mine permit applications, land use definitions, and the requirement for the Wyoming Game and Fish Commission to provide approval of revegetation standards only for fish and wildlife habitat on surface mined land. The amendment revises the State program to improve operational efficiency.

EFFECTIVE DATE: July 8, 1992.

FOR FURTHER INFORMATION CONTACT: Guy Padgett, Telephone: (307) 261-5776.

SUPPLEMENTARY INFORMATION:

I. Background on the Wyoming Program

On November 26, 1980, the Secretary of the Interior conditionally approved the Wyoming program. General background information on the Wyoming program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the November 26, 1980, **Federal Register** (45 FR 78637). Subsequent actions concerning Wyoming's program and program amendments can be found at 30 CFR 950.12, 950.15, 950.16, and 950.20.

II. Submission of Amendment

By letter dated March 21, 1991 (administrative record No. WY-15-1), Wyoming submitted enacted legislation which amends the following provisions of the Wyoming Environmental Quality Act: Article 4, Subsection (Subsec.) 35-11-406(h) (new language has been proposed for insertion that would preclude the Administrator from raising as issues any items not previously identified as deficient at the close of the first 150-day review period, unless the applicant in subsequent revisions significantly modifies the application); Article 1, Subsection 35-11-103(e) (definitions for fish and wildlife habitat and grazingland have been proposed); and Article 4, Subsection 35-11-402(b) (new language has been proposed to specify that, where consultation and approval by State wildlife agencies is required for reclamation of fish and wildlife habitat on surface mined lands, the Wyoming Game and Fish Commission shall consider fish and wildlife habitat to mean these lands defined in W.S. 35-11-103(e)(xxvi), excluding grazingland as defined in W.S. 35-11-103(e)(xxvii)).

OSM published a notice in the April 5, 1991, **Federal Register** (56 FR 14041) announcing receipt of the amendment and inviting public comment on the adequacy of the proposed amendment (administrative record No. WY-15-7). The public comment period closed May 6, 1991. A public meeting was requested and held on June 14, 1991. The summary notes for that meeting are available for public review (administrative record No. WY-15-18).

During its review of the amendment, OSM identified some concerns relating to the proposed statutory changes at Subsections 35-11-406(h), 35-11-103(e), and 35-11-402(b). OSM notified Wyoming of the concerns by letters dated July 1, 1991 (administrative record No. WY-15-19). Wyoming responded by submitting, in a letter dated July 30, 1991, additional explanatory information (administrative record No. WY-15-20).

OSM announced receipt of the explanatory information in a notice in the August 9, 1991, **Federal Register** (56 FR 37873) and reopened the public comment on the adequacy of the proposed amendment (administrative record No. WY-15-24). The reopened public comment period closed on August 26, 1991.

By letter dated August 14, 1991, the Wyoming and National Wildlife Federations requested an extension of time, until September 23, 1991, in which to review and possibly provide additional comments on the additional explanatory information (administrative record No. WY-15-25). Since Wyoming's response was reflective, in part, of comments it made at the June 14, 1991, public meeting, and in order to maintain timeliness in the rulemaking process, OSM published, on August 29, 1991, a notice extending the comment period until September 10, 1991 (56 FR 42712); administrative record No. WY-15-29).

By letter dated May 18, 1992 (administrative record No. WY-15-30 , Wyoming submitted clarification of its July 30, 1991, response to OSM's issue letter.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings for the proposed amendment to Chapter 11, Title 35, of the Wyoming Environmental Quality Act, as submitted by Wyoming on March 21, 1991.

1. Article 4, Subsection 35-11-406(h), Land Quality; Application for Permit; Generally; Denial; Limitations

Wyoming proposed to revise subsection 35-11-406(h) to specify that after a 150-day technical review period, "* * * the administrator shall not raise any item not previously specified as being deficient unless the applicant in subsequent revisions significantly modifies the application." This language is inserted after an existing sentence which reads, "[a]ll items not specified as being deficient at the end of the first one hundred fifty (150) day period shall be deemed complete for the purposes of this subsection."

Sections 510(b)(1) and (2) of SMCRA provide that no permit or revision application shall be approved unless the application affirmatively demonstrates and the regulatory authority finds in writing on the basis of the information set forth in the application or from information otherwise available which will be documented in the approval * * * that (1) the application is accurate and complete, and that all requirements of the Act and the State program have been complied with, and (2) the applicant has demonstrated that reclamation as required by the Act and the State program can be accomplished under the reclamation plan contained in the permit application. Wyoming's Act contains substantively identical requirements at subsection 35-11-406(n).

Wyoming defines "complete application," for the purpose of the assessment of completeness and suitability for publication required in subsection 35-11-406(h) and (j), at chapter I, section 2(s) in its regulations, as meaning that the application contains all the information required by the regulatory program that is needed to make a decision on the permit. This definition of "complete application" is substantively identical to the Federal definition of "complete and accurate application" at 30 CFR 701.5.

Based on the requirements of section 510(b) of SMCRA and subsection 35-11-406(n) of the State Act, Wyoming must retain the authority to require, at any time prior to permit approval, that the applicant correct any deficiencies identified by the regulatory authority or the public and supply any information needed to support the required findings.

Wyoming's proposed language would have the effect of providing a "cut-off" point in time during the technical review period, after which the Administrator would not be able to raise new issues and request additional information from an applicant regarding the content of a permit application. Since the public comment period would be opened after the application was determined to be "complete," the proposed language would limit the Administrator's ability to raise new issues that might result from the public review after the technical review period. Additionally, the proposed language would set a preemptive standard that could void the Administrator's ability to revoke permits.

Therefore, Wyoming's proposed language at subsection 35-11-406(h) would limit its ability to meet the requirements of section 510(b) of SMCRA and subsections 35-11-406(n) and 35-11-409(a) of Wyoming's Act.

Wyoming, in its July 30, 1991, response to OSM's July 1, 1991, issue letter, argued that OSM is obligated to approve the proposed language because (1) it does not substantively alter the meaning of subsection 35-11-406(h), which the Secretary specifically approved in 1983, (2) any deficiencies identified after the 150-day period expires could still be corrected by the imposition of permit conditions under subsection 35-11-801(a) or denial of the permit under subsection 35-11-406(n)(i), and (3) the plain language of subsection 35-11-409(a) gives the Director the right to revoke a mining permit if "at any time" the permit holder failed to provide any fact that would have resulted in denial of the permit (administrative record No. WY-15-20).

OSM disagrees with Wyoming's assertion that the revision approved by OSM on November 9, 1983, had the same effect as would Wyoming's currently proposed language. The Secretary did previously approve a revised version of subsection 35-11-406(h) providing, among other things, that "[a]ll items not specified as being deficient at the end of the first one hundred fifty (150) day period shall be deemed complete *for the purposes of this subsection*" (emphasis added). However, the approval of this language (Finding B.4, 48 FR 51465, 51466, November 9, 1983) was based on a comparison of the language to the provisions of the Federal regulation at 30 CFR 771.21(b)(1), a regulation which no longer exists, having been removed as unnecessary. This regulation required that a person intending to conduct surface coal mining operations file a complete application for a permit within a timeframe established by the regulatory authority as sufficient to allow for review of the application.

There is nothing in either the finding or the superseded Federal regulation which suggests that the Secretary interpreted the 1983 revision of subsection 35-11-406(h) as establishing a cutoff date beyond which the State regulatory authority could not raise or recognize deficiencies. Rather, because the 1983 revision specified that the application would automatically be deemed complete after 150 days only "for the purposes of this subsection," the Secretary viewed the 1983 revision as merely allowing the operator to proceed with the requirement to advertise the application after passage of a certain length of time (150 days) and initiate public review. Hence, Wyoming still retained the authority under subsection 35-11-406(n) to (1) require that the applicant correct any deficiencies

identified by the regulatory authority or the public and supply any information needed to support the required findings or (2) deny the permit if the Administrator subsequently was unable to find, based on an affirmative demonstration by the applicant, that the application was accurate and complete or that reclamation could be accomplished as required by the State program.

Unlike the 1983 revision, the proposed revision of subsection 35-11-406(h) being considered in this rulemaking does not restrict its reach to the subsection in which it appears. Instead, it flatly prohibits the Administrator from raising any item not previously specified as being deficient, unless significantly revised. Thus, when determining (1) whether the application is complete and accurate, (2) whether it makes the other demonstrations required by section 510(b) of SMCRA and subsection 35-11-406(n) of Wyoming's statute, and (3) whether the applicant failed to provide any fact that would have resulted in the denial of the permit, the Administrator would be prevented from considering new deficiencies identified either as a result of a delayed or prolonged technical review, or during the public review process. Therefore, the plain language proposed in this revision of subsection 35-11-406(h) appears to nullify Wyoming's contention that it could still remedy any deficiencies by denying the application as incomplete under subsection 35-11-406(n)(i) or revoking the permit under subsection 35-11-409(a).

Wyoming's additional argument that deficiencies could be corrected by imposing permit conditions under subsection 35-11-801(a) appears similarly invalid. This statutory provision allows imposition of conditions only if they are not inconsistent with existing rules, regulations, and standards. Since the standards established in this proposed revision would prohibit the Administrator from raising new deficiencies (other than for significant revisions to an application) after the 150-day period expires, it would be difficult to find imposition of a permit condition to be consistent with the proposed language.

Even if the Administrator's authority to impose conditions under subsection 35-11-801(a) were to be sustained, there would still be insufficient grounds to approve this amendment. At subsection 35-11-103(e)(xxiii), Wyoming defines a "deficiency" as "an omission or lack of sufficient information serious enough to preclude correction or compliance by stipulation in the approved permit to be issued by the Administrator." Hence, a deficiency is by definition a defect of such significance that it cannot be remedied by imposition of a permit condition.

Therefore, based on the above discussion, the Director finds that the proposed language at subsection 35-11-406(h) is less stringent than section 510(b) of SMCRA. The Director is not approving the proposed revision of subsection 35-11-406(h), and he is requiring that Wyoming either repeal this provision or modify this paragraph to specify that it does not apply to applications for coal mining operations.

2. Article 1, Subsection 35-11-103(e), General Provisions; Definitions; and Article 4, Subsection 35-11-402(B), Land Quality; Establishment of Standards

Wyoming proposes to add definitions of "fish and wildlife habitat" and "grazingland" at subsections 35-11-103(e) (xxvi) and (xxvii). The proposed definition of "fish and wildlife habitat" as "land dedicated wholly or partially to the production, protection or management of species of fish or wildlife" is identical to the one provided in the Federal regulations at 30 CFR 701.5. The proposed definition of "grazingland" includes "rangelands and forestlands where the indigenous native vegetation is actively managed for grazing, browsing, occasional hay production, *and occasional use by wildlife*." The counterpart Federal definition of "grazingland" at 30 CFR 701.5 lacks the italicized language.

Wyoming also proposes to modify subsection 35-11-402(b) to specify that,

> To the extent federal law or regulations require consultation and approval by state wildlife agencies regarding surface mining lands to be reclaimed for fish and wildlife habitat, the Wyoming Game and Fish Commission shall consider fish and wildlife habitat to mean as defined in W.S. 35-11-103(e)(xxvi) and does not include grazingland as defined in W.S. 35-11-103(e)(xxvii).

This provision has no Federal counterpart.

By letter dated July 1, 1991, OSM requested that Wyoming "clarify how it would interpret land managed for 'occasional use by wildlife,' showing how this differs from 'fish and wildlife habitat' " (administrative record No. WY-15-19). By letter dated July 30, 1991 (administrative record No. WY-15-20), Wyoming responded that the phrase—

> Was inserted into the definition of grazingland precisely to ensure that these lands would receive consideration for wildlife also, proportional to their use by wildlife. We [Wyoming] view the Legislature's intent as one of limiting only the scope of the State Game and Fish Department's approval required by 30 CFR 816.116(b)(3)(i) on these lands. * * * The proposed language will not abrogate the operator's responsibility to return grazinglands to an equal or better use, nor even to replace shrubs and other habitat components for wildlife. Specifically, coal mine operators will be required to (1) restore the land affected to a condition capable of supporting the premining land use in accordance with section 515(b)(24) of SMCRA, (2) establish a permanent vegetation cover to achieve the approved postmining land use in accordance with section 515(b)(19) of SMCRA, and (3) use the best technology currently available (BTCA) to minimize disturbance and adverse impacts of their operations on fish, wildlife, and related environmental values, and to enhance those values where practicable in accordance with section 515(b)(24) of SMCRA. The proposed change will continue the State Game and Fish Department's consultation role as it is now for fish and wildlife values on grazingland. And of course, the Game and Fish Department would have an approval role in determining the stocking rates for trees and shrubs on lands dedicated to fish and wildlife habitat. Grazinglands would not be considered among those lands that would be dedicated to fish and wildlife habitat.

By letter dated May 18, 1992 (administrative record No. WY-15-30), Wyoming clarified its July 30, 1991, response and stated,

> [t]o manage is to 'alter by manipulation'; to use is to '* * * avail oneself of * * * employ * * * consume or take regularly (Webster). Grazingland is altered by the manipulation of the landowner usually for the purpose of raising livestock. Wildlife avail themselves of grazingland by consuming its products. Unless it is public land, grazingland is not usually managed for wildlife by the surface owner. The State recognizes, however, that private land that is mined must be reclaimed to standards that ensure its use by wildlife.
>
> As it is in the federal regulations, 'wildlife habitat' is now defined in the EQA [Wyoming Environmental Quality Act] as '* * * land dedicated wholly or partially to the production, protection, or management of species of fish or wildlife.' Private grazinglands in Wyoming are not so dedicated and thus are not managed as wildlife habitat. They are used by wildlife (as are most of the land-use categories in the LQD [Land Quality Division] Rules and Regulations), but they are not managed for wildlife.
>
> Any lands that were managed for fish and wildlife habitat prior to mining will be returned specifically to fish and wildlife habitat after mining, with the additional requirement (30 CFR 816.116(b)(3)(i)) that the State Game and Fish Department must approve the stocking rate for shrubs and trees on those lands. Fish and wildlife resources on grazingland, even if not managed as such, will be reclaimed to State Program fish and wildlife protection and enhancement standards. DEQ [Wyoming] will continue to consult with the State Game

and Fish Department on the establishment of, and compliance with, these standards, including any stocking rate standard.

If public grazingland is mined in Wyoming and the surface management agency agrees that such land has been "* * * dedicated wholly or partially to the production, protection, or management of * * * fish and wildlife' resources, then the Game and Fish Department must approve the stocking rate for shrubs and trees on such lands.

In amending the Wyoming EQA at sections W.S. 35-11-103 and 402, the Legislature and the Governor sought to balance wildlife and agricultural interests on mined lands within the requirements of the federal coal program. Those changes made that were not direct counterparts of the federal regulations were: (1) The addition of language to the federal grazingland definition that was intended to recognize the presence of wildlife, and (2) a directive to the Game and Fish Department to not consider grazingland to be managed as fish and wildlife habitat.

OSM's review of the added phrase "and occasional use by wildlife" identified a concern that Wyoming's proposed land use category for grazingland could overlap the land use category for fish and wildlife habitat. To the degree that it is not entirely clear whether particular land should be classified as grazingland or fish and wildlife habitat for purposes of the differing requirements for the two categories, the State's May 18, 1992 letter provided sufficient assurance that the State will carefully monitor proposed uses and impose applicable requirements.

As expressed in OSM's 1979 and 1983 **Federal Register** preambles accompanying the promulgation and repromulgation of the land use categories, the primary use of the land use categories, in practice, will be to determine whether the post mining land use has changed from the premining land use (See (44 FR 14933) and (48 FR 39893)). In such circumstances, regulatory authority approval is required. Under the proposed definition, the State will be required to approve the use of the land for grazingland, and thus satisfies the chief purpose of the land use categories.

Occasional or incidental use by wildlife, regardless of the postmining land use designation, was recognized by the authors of SMCRA and its implementing regulations. As acknowledged by Wyoming, section 515(b)(24) of SMCRA requires operators, on grazingland as on any mined land, to minimize disturbances and adverse impacts of the operation on fish, wildlife, and related environmental values to the extent possible using BTCA, and achieve enhancement of such resources where practicable.

OSM's implementing regulations at 30 CFR 780.16(a) and 784.21(a) require all applications to contain fish and wildlife resource information sufficient to design a protection and enhancement plan. The scope and level of such resource information is to be determined by the regulatory authority in consultation with State and Federal fish and wildlife agencies. These requirements apply regardless of the postmining land use designation.

The Federal regulations at 30 CFR 780.16(b) and 784.21(b) repeat the requirement of section 515(b)(24) of SMCRA regarding plans to minimize disturbance and provide enhancement of fish and wildlife resources in applications. Furthermore, these Federal regulations require that where enhancement measures are not included in the permit application, the applicant must provide a statement explaining why such measures are not practicable.

Also, the performance standards at 30 CFR 816.97 and 817.97, require, among other things, irrespective of the postmining land use designation, that operators minimize disturbance of, and where practicable, enhance fish and wildlife values, and protect endangered and threatened species, wetlands, and habitats of unusually high value for fish and wildlife.

In addition, the Federal regulations at 30 CFR 780.16(c) and 784.16(c) require that, within 10 days of a request, the regulatory authority provide the resource information submitted by permit applicants under paragraphs (a) and (b) to the U.S. Department of Interior, Fish and Wildlife Service (FWS) Regional or Field Office for review. In its final rule for these regulations (see 52 FR 47352, 47357, December 11, 1987), OSM noted that—

[r]egulatory authorities that are provided comments by fish and wildlife agencies must consider all comments in their decisions to issue permits. To be defensible, these decisions must be well-reasoned and consistent with the State regulatory program.

OSM, in combining the requirements at 30 CFR 780.16 and 784.21 for the resource information and the protection plan for fish and wildlife, acknowledged the logical link between baseline information pertaining to the resource and the protection and enhancement of that resource. These requirements implement not only section 515(b)(24) of SMCRA (discussed above), but also section 515(b)(2) of SMCRA, which requires operators to restore mined land to a condition capable of supporting the uses which it was capable of supporting prior to any mining, or to higher or better uses. In promulgating the regulations at 30 CFR 780.16, 784.21, and 816.97, OSM concluded that they were needed to define Federal standards regarding the permit application information needed to assure minimum standards of protection for fish and wildlife resources (see 52 FR 47352, December 11, 1987).

Only the requirement at 30 CFR 816.116(b)(3)(i) (for consultation and approval of minimum stocking and planting arrangements for trees and shrubs by State fish and wildlife or forestry agencies) is tied to the postmining land use designations for "fish and wildlife habitat," "recreation," "shelter belts," and "forest lands."

The purpose of requiring other State agencies to approve minimum stocking and planting arrangements is to ensure the establishment of adequate and appropriate standards for revegetation success for these specific land uses. In recognition of local diversity, OSM did not set national standards, but required the regulatory authority to work with the expert State agencies in determination of (1) what is an adequate number of trees and shrubs necessary to start and carry on a wildlife habitat or forest, and (2) what is a normal husbandry practice to the extent that the planting arrangements describe the practices to be used in conducting planting (see *National Wildlife Federation* v. *Lujan*, June 8, 1990, 31 ERC 1617, 1627-1628).

Wyoming's regulations at chapter II, sections 2(b), 3(a), and 3(b), and chapter IV, section 2(a) include similar requirements for the protection and enhancement of wildlife resources, with one exception. Wyoming's regulations do not require an applicant, when enhancement measures are *not* included in a permit application, to provide a statement explaining why such measures are not practicable, as required at 30 CFR 780.16(b)(3)(ii). In addition, unlike the Federal regulations, the State regulation concerning enhancement at chapter II, section 3(b)(iv)(A) limits the scope of enhancement measures to revegetation. OSM is taking this opportunity to notify Wyoming of these deficiencies in its regulatory program and to require, in accordance with 30 CFR 732.17(e), that Wyoming amend its program to correct them.

Since the State's proposed definition of "fish and wildlife habitat" at subsection 35-11-103(e)(xxvi) is substantively identical to the Federal definition of this term at 30 CFR 701.5, the Director finds it to be no less effective than the Federal definition.

Because Wyoming has clarified that it interprets the phrase "and occasional

use by wildlife" in the definition of "grazingland" as meaning that land managed for grazing must also receive consideration for wildlife use, not that the land used solely for occasional use by wildlife would also qualify as "grazingland" in the absence of other grazing uses, the Director finds the proposed definition of "grazingland" at subsection 35-11-103(e)(xxvii) to be no less effective than the Federal definition of "grazingland" at 30 CFR 701.5, and he is approving it.

However, because of the level of interest in this amendment and to avoid confusion, the Director is requiring that Wyoming revise the existing definition of "grazinglands" in the Wyoming regulations at chapter I, section 2(ba)(iii), to eliminate ambiguity and reflect this interpretation.

In approving this definition the Director notes that other provisions of Wyoming's approved program continue to require identification, protection, and enhancement of fish and wildlife resources and consultation with fish and wildlife agencies regarding protection and enhancement of these resources, regardless of the postmining land use designation.

Based on Wyoming's clarification, Wyoming's proposed language at subsection 35-11-402(b) means that, although land may receive occasional use by wildlife when "grazingland" is the postmining land use, the required approval (at 30 CFR 816.116(b)(3)(i) of stocking and planting arrangements) by the Wyoming Game and Fish Department (WGFD) does not apply to the "grazingland" designation, but does apply when "fish and wildlife habitat" is a declared postmining land use. Nothing in the proposed language precludes the possibility of multiple postmining land use designations (i.e., joint designation of both "grazingland" and "fish and wildlife habitat" postmining land uses). Although there is no Federal counterpart to Wyoming's proposed language at subsection 35-11-402(b), the Director finds that it does not conflict with the requirements for fish and wildlife protection in either SMCRA or the implementing Federal regulations discussed above. However, this finding shall not be interpreted as in any way relieving the regulatory authority of its obligation to accord good-faith consideration to all recommendations of the WGFD regarding protection, restoration, and enhancement of wildlife resources, regardless of the approved postmining land use.

Specifically, both the WGFD and the FWS noted that measures designed to enhance wildlife habitat, such as water sources, rock piles, topographic diversity, and shrubs (including sagebrush), are either neutral or beneficial to lifestock. Therefore, given the socioeconomic importance of wildlife in Wyoming, the Director expects the regulatory authority to require such measures when recommended by WGFD unless the applicant can demonstrate that the measures are impracticable.

IV. Summary and Disposition of Comments

Following are summaries of all substantive oral and written comments received by OSM and the Director's responses to them. Where similar comments were received from more than one commenter, only one response is provided.

A. Public Comments

1. Proposed Revision of Subsection 35-11-406(h)

a. *"Administratively Complete Application" versus "Accurate and Complete Application".* Several commenters interpreted subsection 35-11-406(h) as pertaining to the determination of when an application is administratively complete. Specifically, one commenter, responding to OSM's July 1, 1991, issue letter to Wyoming, said that

> * * * you have said that the reference to complete applications in subsection 406(h) corresponds with the use of the term 'accurate and complete application' at subsection 510(b)(1) of SMCRA. I do not agree. The purpose of subsection 406(h) is to determine whether the application is complete for purposes of commencing the public review process. Thus the correct cross-reference with the federal law is to the definition of 'administratively complete application' at 30 CFR 701.5.

The Director disagrees with the conclusion that the term "complete" as used in subsection 35-11-406(h) refers to an "administratively complete application." Rather the Director has found that the term "complete" refers to a "complete and accurate application."

Subsection 35-11-406(e) of Wyoming's Act requires the Administrator to notify an applicant within 60 days of submission whether or not the application is complete. When the Administrator finds that the application is complete, subsection 35-11-406(g) requires the applicant to publish a notice of the filing of the application. As defined at subsection 35-11-103(e)(xxii),

> '[c]omplete application' under W.S. 35-11-406(e) means that the application contains all the essential and necessary elements and is acceptable for further review for substance and compliance with the provisions of this chapter.

This definition is substantively identical to the Federal definition of "administratively complete application" at 30 CFR 701.5. The public notification required under subsection 35-11-406(g) corresponds to the requirement of the Federal regulation at 30 CFR 773.13(a)(1) for public notification of the submission of an administratively complete application.

As discussed in Finding No. 1 in part III of this notice, "complete application" as used in subsection 35-11-406(h) and (j) is defined by Wyoming at chapter I, section 2(s) of the Land Quality Division (LQD) regulations. This definition ("* * * an application for a permit which contains all the information required by the Act and the land quality division regulations that is necessary to make a decision on permit issuance") is substantively identical to the Federal definition of "complete and accurate application" at 30 CFR 701.5. Although not required under SMCRA or the Federal regulations, subsection 35-11-406(j) requires the applicant to again publish notice of the application once this determination is made, thus providing the public with a second opportunity to comment.

b. *Need for determination of completeness prior to public review; lack of opportunity to comment.* Several commenters said that the amendment would allow for a completeness determination when in fact the application may not be complete prior to commencement of public review. Therefore, the amendment would deny the public an opportunity to comment on a complete application.

Specifically, one commenter said that subsection 35-11-406(h), in its current form, seemingly allows public comment to commence on an application whether or not Wyoming has made its completeness determination, and therefore it is inconsistent with the Federal law because it may deprive the public of the opportunity to comment on a complete application.

As discussed in the response to the preceding comment, Wyoming's program, like the Federal regulation at 30 CFR 773.13(a)(1), requires that an application be administratively complete before it is advertised for public review. Since SMCRA and the Federal regulations do not require that the application be complete and accurate at the time of public review commences, the Director cannot agree with the commenters' assertion that the proposed amendment, which would impact only the second opportunity for comment provided under the Wyoming program (a provision for which there is

no Federal counterpart), is inconsistent with Federal law for the reasons expressed above.

c. *No course for remedy after public review.* Several commenters said that the amendment would severely limit or deny the significance and effectiveness of any public comment, since any deficiency identified during the public review period would be raised after the 150-day period and the Administrator of the Wyoming program would be prevented from requiring that the deficiency be remedied. One commenter disagreed with Wyoming's claim, presented in its July 30, 1991, response to OSM's July 1, 1991, issue letter, that other provisions aside from subsection 35.11.406(h) would allow the Administrator to address permit application deficiencies after the 150-day time limit. The commenter said that (1) Wyoming gives no assurance that the Director's ability to impose conditions, afforded by subsection 35–11–801, would not be preempted by the proposed language at subsection 35–11–406(h) that imposes the 150-day cut-off for raising deficient items; (2) the Administrator's ability to extend the review period for 30 days, afforded by subsection 35–11–406(h), is based on the assumption that all deficiencies are identified within the 150-day time frame; (3) the Administrator's ability under subsection 35–11–406(k) to take action based on an informal conference would also be preempted by the proposed revision because subsection 35–11–406(k) requires that any action taken by the Administrator be "in accordance with the department's rules of practice;" and (4) a hearing before the Department of Environmental Quality Council must be initiated by a citizen taking an appeal to the Council, and that citizen must be prepared to engage in a trial de novo, which is an unfair burden to place on a citizen for remedy of issues that would otherwise be the mandated responsibility of the Administrator.

Another commenter also expressed the opinion that the opportunity for formal hearings is not a mechanism that is intended to correct problems with completeness determinations, and relying on the hearing process to restore integrity to the public comment process is improper and an unfair burden to place on the average citizen.

The Director agrees with these commenters. The effectiveness of any technical review and the public comment process lies in the ability of the regulatory authority to respond either to technical staff comment or to public comment by requiring further information from the applicant if necessary to determine that an application is indeed accurate and complete. As discussed in Finding No. 1 in part III of this notice, the Director has found that the proposed revision of subsection 35–11–406(h) is less stringent than section 510(b) of SMCRA, and is not approving it.

d. *Ability to revoke a permit.* One commenter expressed concern that the ability of the Director, afforded by subsection 35–11–409(a), to revoke a mining permit (if it is determined at any time that a permit holder intentionally misstated or failed to provide any fact that would have resulted in denial of the permit) would be preempted by the proposed revision of subsection 35–11–406(h). The commenter further reasoned that even if the proposed revision does not preempt the ability to revoke a permit, its practical effect would be to constrain the Director from enforcing his power.

The Director does not agree that the amendment would necessarily result in the effects feared by the commenter. However, as discussed in Finding No. 1 in part III of this notice, he is not approving this proposal on other grounds.

2. Proposed Subsections 35–11–103(e) and 35–11–402(b)

a. *Shrub restoration standard.* Several commenters said that the intent of Wyoming's proposed revisions at subsections 35–11–103(e) and 35–11–402(b) is to circumvent the shrub restoration standard in Wyoming's regulations at chapter IV, section 3(d)(vi)(A), approved by OSM pursuant to 30 CFR 816.116(b)(3)(i) (see Finding No. 3(c), 51 FR 42209, 42212, November 24, 1986). Specifically, one commenter said that the proposed legislation altered the land use provisions of the approved program to eliminate the WGFD's role in establishing discretionary species stocking and shrub restoration standards.

In response, the Director notes that Wyoming's regulations at chapter II, section 2(b)(iii)(C), require that the WGFD be consulted regarding revegetation procedures for wildlife habitat and critical habitat. This consultation requirement, like the shrub restoration standard at chapter IV, section 3(d)(vi)(A), would be unaffected by the amendment. Furthermore, the Director has no authority to require that Wyoming extend the role of the WGFD beyond that specified in the Federal rules at 30 CFR 816.116(b)(3)(i).

b. *Restoration to the highest previous use.* Several commenters noted that Wyoming's Act requires, at subsection 35–11–402(a)(i), that mined lands be restored to the highest previous use, and stated that if the affected land was used for fish and wildlife habitat before mining, even if only occasionally, it should be restored to a condition that will support that use. Furthermore, they said that "fish and wildlife habitat" would be the most appropriate land use distinction to ensure restoration to the highest previous use. One commenter further stated that the Federal regulation at 30 CFR 816.133, that requires restoration of lands to their premining potential, seemed more stringent than Wyoming's requirement to restore lands to whatever the premining use happened to be.

The Director does not agree that fish and wildlife habitat is always the highest previous use, and he does not concur with the assessment that the Wyoming postmining land use requirements are less effective than the Federal regulations. The Federal regulations at 30 CFR 816.133(a) require that areas disturbed by mining be restored to conditions that are capable of supporting either (1) the uses they were capable of supporting before mining, which, as further defined in 30 CFR 816.133(b), essentially means the uses they were supporting prior to mining, if properly managed, or (2) higher or better uses, if approved in accordance with the criteria for approval of alternative postmining land uses set forth at 30 CFR 816.133(c). As defined at 30 CFR 701.5, "higher or better uses" means "postmining land uses that have a higher economic value or nonmonetary benefit to the landowner or the community than the premining land uses." There is nothing in this definition or the alternative postmining land use approval criteria at 30 CFR 816.133(c) that suggests that "fish and wildlife habitat" is always the highest and best use. Nor is there any suggestion that, where several land uses (including wildlife habitat) coexisted prior to mining, fish and wildlife habitat would have to be considered higher than the other uses. Indeed, the preamble to the Federal definition of "land use" at 30 CFR 701.5 notes that the various land use categories are not listed in hierarchical form. Furthermore, in citing on the alleged shortcomings of the Wyoming statute at subsection 35–11–402(a)(i), the commenters failed to consider the rules and regulations implementing this statutory provision, i.e., the LQD regulations. These regulations are substantively identical to and therefore no less effective than the corresponding Federal regulations at 30 CFR 816.133 cited by the commenters.

c. *Joint or multiple postmining land use designations.* Several commenters said that the inclusion of "lands managed for occasional use by wildlife" in the proposed definition of "grazingland" would preclude the designation or joint or multiple land uses in Wyoming. Specifically, one commenter noted that both OSM and Wyoming define "land use" as "management-related activities" and specify that land uses may be identified in combination when joint or seasonal uses occur. The commenter reasoned that when land receives management for two purposes, the two management goals would be declared as joint land uses. The commenter concluded that (1) under the Federal program, when land is managed for grazing and for occasional use by wildlife, two management goals would be recognized and joint land uses of "grazingland" and "fish and wildlife habitat" would be declared; and (2) because Wyoming's proposed definition of "grazingland" defines two different management goals to be only one land use, i.e., grazing, Wyoming's program would preclude a joint land use declaration.

The Director disagrees with the commenters' equation of "land managed for occasional use by wildlife" in Wyoming's definition of "grazingland" as subsection 35–11–103(e) with a "management-related activity" in the context of the Federal definition of "land use" at 30 CFR 701.5. As stated in Finding No. 2 in part III of this notice, Wyoming clarified that grazingland is managed for the purpose of raising livestock, and unless it is public land, is not usually managed for wildlife.

Even if the commenters were correct, there is nothing in the Federal regulations that requires land used for more than one purpose prior to mining be restored to the same multiplicity of uses following mining. However, 30 CFR 780.16 does not require the protection and enhancement of wildlife resources, regardless of the postmining land use designation.

As discussed in Finding No. 2 in part III of this notice, Wyoming, in its July 31, 1991, response to OSM's July 1, 1991, issue letter, and May 18, 1992, clarification, committed to implementing the requirements for consultation, protection, and enhancement regarding wildlife resources regardless of postmining land use.

d. *Implementation.* Several commenters said that Wyoming failed to explain the meaning and impact of "occasional use by wildlife" as opposed to "fish and wildlife habitat," and because of this OSM cannot make a determination of whether the amendment is consistent with Federal law. Specifically reacting to Wyoming's response to OSM's issue letter, one commenter stated

> [t]here is no discussion of what, if any, scientific data would be used to set parameters for 'occasional use by wildlife' or how the LQD [Wyoming] intends to determine what level of consideration for wildlife would be consistent with reclamation of lands 'proportional to their use by wildlife.'

One commenter said that both OSM and Wyoming define "fish and wildlife habitat" as land dedicated wholly or partially to the production, protection, or management of species of fish and wildlife, and that "land managed for occasional use by wildlife" appears to be the same as "land dedicated partially to the management of fish and wildlife." Because these definitions are indistinct, any declaration of a land use could be attacked as arbitrary and capricious and this may be sufficient procedural ground to reject the proposed definition of "grazingland."

In its May 18, 1992, letter, Wyoming clarified that private grazinglands in Wyoming are not dedicated to the production, protection, or management of species of fish or wildlife, and are therefore not managed as wildlife habitat. Wyoming further states that any lands that were managed for fish and wildlife habitat prior to mining will be returned specifically to fish and wildlife habitat after mining and that if on mined public grazingland, the surface management agency agrees that such land has been so dedicated, then the State Game and Fish Department would approve the stocking rate for shrubs and trees.

As discussed in Finding No. 2 in part III of this notice, the Director has found the land use categories and definitions proposed by Wyoming to be consistent with those established in the Federal definition of "land use" at 30 CFR 701.5. Furthermore, the State program, at chapter II, section 2(a)(i)(A) and section 3(b)(xii) of the LQD regulations, includes land use determination requirements and procedures substantively identical to those contained in the Federal rules at 30 CFR 779.22 and 816.133. Therefore, there is no basis for requiring guidelines in Wyoming.

e. *Reclamation standards.* Several commenters said that if there exists occasional use by wildlife, and if reclamation to only "grazingland" postmining land use standards is required (rather than to the standards at 30 CFR 816.116(a)(3) and 816.97(g) for "fish and wildlife habitat"), then reclamation to lower standards will occur and the land will not adequately support use by wildlife.

Several commenters said that without a "fish and wildlife habitat" postmining land use designation, there will be no provision for consultation with WGFD regarding reclamation standards, nor any legal requirement to restore habitat values.

The Director disagrees with the commenters' conclusions. As discussed in Finding No. 2 in part III of this notice, Wyoming's program does provide for protection and enhancement of wildlife resources regardless of the postmining land use designation. Wyoming's regulations at chapter II, section 2(b)(iii)(C) and chapter IV, section 2(a)(ii) require, respectively, that (1) the WGFD be consulted regarding revegetation procedures for wildlife habitat and (2) operators restore wildlife habitat on affected lands commensurate with or superior to habitat conditions which existed before the land became affected. These regulations apply regardless of the postmining land use designation, as do the fish and wildlife protection and enhancement requirements of (1) chapter II, section 3(a)(vi)(E), which requires consultation with WGFD in determining the nature and extent of premining fish and wildlife studies, (2) chapter II, section 3(b)(iv), which further requires that each permit include a fish and wildlife protection and enhancement plan, and (3) chapter IV, section 3(o), which requires implementation of this plan. Furthermore, the regulatory authority remains obligated to accord good-faith consideration to all recommendations of WGFD regarding protection, restoration, and enhancement of wildlife resources. Furthermore, in its May 18, 1992, letter, Wyoming clarified that fish and wildlife resources on grazingland will be reclaimed to the State Program fish and wildlife protection and enhancement standards.

f. *Oversight.* One commenter stated,

> furthermore you [OSM] ultimately decide to approve this provision, I urge you to make clear to the State that any lands previously used for both fish and wildlife and grazing purposes, cannot be restored simply to grazingland standards, and that, accordingly, the reclamation plans for these lands must be reviewed and approved by [the Wyoming] Game and Fish [Department]. Furthermore, I urge you [OSM] to monitor the implementation of this provision closely to insure that it is not being abused.

As discussed in Finding No. 2 in part III of this notice, the approved program requirements for protection and enhancement (where practicable) of wildlife resources apply regardless of postmining land use designation. However, the Federal regulations do not

require that land used by fish and wildlife prior to mining be designated as fish and wildlife habitat after mining. The Federal regulation at 30 CFR 701.5 define "fish and wildlife habitat" as "land dedicated wholly or partially to the production, protection or management of species of fish or wildlife." Mere usage of land by wildlife does not imply that the land is dedicated to their production, protection or management. Since the Federal requirement for State fish and wildlife agency approval of revegetation success standards applies only to lands with a designated "fish and wildlife habitat" postmining land use, the Director cannot concur with the commenter's suggestion that he require such approval for all lands used by fish and wildlife prior to mining regardless of their designated postmining use. Both Federal and State regulations (at 30 CFR 816.133 and chapter II, section 3(b)(xii)) allow land to be restored either to its premining use (if properly managed prior to mining) or to a higher or better use.

However, as urged by the commenter, the Director will, in accordance with his oversight responsibilities under 30 CFR 733.12(a)(1), evaluate the State's implementation of subsections 35–11–103(e) and 35–11–402(b) to ensure that they are not interpreted and applied as providing an exemption from the fish and wildlife protection and enhancement requirements of the State rules at chapter IV, section (3)(o).

g. *Improper exclusion of shrub standard on grazinglands managed for occasional use by wildlife.* One commenter noted that in its July 30, 1991, response to OSM's issue letter, Wyoming stated,

> [W]e view the Legislature's intent as one of limiting only the scope of the State Game and Fish Department's approval required by 30 CFR 816.116(b)(3)(i) on these [grazinglands].

The commenter contended that 30 CFR 816.116(b) (1) and (2), which establish revegetation success standards for grazingland, pasture land, and cropland, do not support the avoidance of consultation with WGFD, since they excuse such consultation only because it is assumed that the lands involved do not contain wildlife. By contrast, the State amendment would, by defining lands with occasional use by wildlife as grazingland, transform lands with occasional use into lands without wildlife. The commenter further argues that *National Wildlife Federation* v. *Lujan* (31 ERC 1617, 1627; June 8, 1990), which upheld the revegetation rules at 30 CFR 816.116, "never concedes that approval by an 'expert agency' is not required where wildlife is an existing use of the land. Rather, the court limits its holding to cropland and grazingland as defined in the federal regulations."

The Director agrees that consultation and approval for woody species stocking and planting arrangement standards are required where "fish and wildlife habitat" is the designated postmining land use. However, as discussed in response to a similar comment at A.2.b. above, he does not agree that any use of land by wildlife prior to mining means that the postmining land use must be "fish and wildlife habitat." And, as discussed in Finding No. 2 in part II of this notice, he does not agree that Wyoming's definition of "grazingland" significantly differs from the corresponding Federal definition, nor can he find any justification for the commenter's argument that Wyoming's definition of "grazingland" implies that "grazingland" will be reclaimed without consideration of wildlife values. Both the State and Federal programs require protection and enhancement (where practicable) of wildlife resources regardless of land use designation. Since the Wyoming program, as amended, would allow the regulatory authority to adopt regulations that fully comply with the Federal requirements upheld in *NWF* v. *Lujan*, the commenter's argument that the amendment is inconsistent with *NWF* v. *Lujan* is without basis.

(h) *Scope of definition.* One commenter said that OSM, in determining whether Wyoming's proposed revisions at subsections 35–11–103(e) and 35–11–402(b) are no less stringent than SMCRA, must consider the language proposed at subsection 35–11–402(b) to be an extension of the proposed definition of "fish and wildlife habitat" at subsection 35–11–103(e), and in doing so find that the proposed definition is not consistent with the Federal definition.

Since subsection 35–11–402(b) only provides clarification and direction as to when the regulatory authority must obtain the approval of WGFD, the Director does not agree that it should be considered an extension of the proposed definition of "fish and wildlife habitat" at subsection 35–11–103(e). Furthermore, as discussed in Finding No. 2 in part II of this notice, subsection 35–11–402(b) does not conflict with the Federal regulations at 30 CFR 816.116(b)(3).

i. *Rangelands versus grasslands.* One commenter objected to Wyoming's proposed definition of "grazingland" because, when compared to the Federal definition, it substitutes the term "rangelands" for "grasslands." The commenter reasoned that since, under the Federal regulations, "rangeland" management may be accomplished solely through the regulation of grazing intensity, which is a less stringent standard than that specified for "grazingland," Wyoming must be asked to provide assurance that "grazinglands," by virtue of encompassing "rangelands," will not somehow become subject to the less stringent management practices intended for "rangelands" under Federal law.

The Director does not agree that the Federal regulations recognize "rangeland" and "grazingland" as distinct land use categories with differing reclamation requirements. "Rangeland" is defined at 30 CFR 701.5 only for the purposes of determining when the requirements for the protection of alluvial valley floors apply. It is not recognized as a separate "land use," as that term is defined at 30 CFR 701.5. The commenter's concern that grasslands could be reclaimed to a lesser standard if Wyoming defines "grazingland" as "rangeland" rather than "grassland" as in the Federal regulation is misplaced. In common usage, the term "rangeland" includes all lands with indigenous vegetation used for grazing, regardless of whether that vegetation is herbaceous or woody in nature. This lack of distinction is important since both the State and Federal regulations require that all grazinglands, regardless of their nature, be returned to their premining productivity. (See chapter IV, section 2(d)(vi) of the LQD regulations.)

j. *Best technology currently available (BTCA).* One commenter said that the preclusion of the approval of reclamation standards for wildlife habitat by WGFD under the proposed definition of "grazingland" is inconsistent with section 515(b)(24) of SMCRA and the Federal regulations at 30 CFR 780.16(b) which require the use of BTCA to minimize disturbances and adverse impacts on fish and wildlife and other environmental values.

The Director does not agree. As discussed in Finding No. 2 in part III of this notice and in response to previous comments, the State regulations requiring use of BTCA with respect to fish, wildlife, and related environmental values apply to all operations regardless of the postmining land use. The proposed amendment will in no way alter this situation.

k. *Difference between statutory and regulatory definitions of "grazingland."* One commenter pointed out that Wyoming's regulations contain a definition of "grazinglands" that differs from the proposed statutory definition,

and questions which would be implemented in the Wyoming program. The commenter said that even if statutory provisions take legal precedence over regulatory provisions, Wyoming should be required to delete one or the other.

As discussed in Finding No. 2 in part III of this notice, the Director has required that Wyoming submit a program amendment to revise the regulatory definition of "grazingland" to reflect the statutory definition as interpreted by Wyoming in its response to OSM's issue letter, and as approved in this amendment.

B. Agency Comments

Pursuant to section 503(b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(4) and (h)(11)(i), by letter dated March 27, 1991 (administrative record No. WY-15-2), OSM solicited comments from the State Historic Preservation Officer, the Advisory Council on Historic Preservation, the Administrator of the Environmental Protection Agency (EPA), the U.S. Soil Conservation Service, the U.S. Forest Service, and various other Federal and State agencies with an actual or potential interest in the Wyoming program. Responses received from these agencies, if any, are summarized and discussed below.

1. U.S. Geological Survey (GS)

By letter dated April 5, 1991, GS stated that it had no comments on the proposed amendment (administrative record No. WY-15-3).

2. U.S. Army Corps of Engineers (COE)

By letter dated April 9, 1991, COE responded that the changes were satisfactory (administrative record No. WY-15-5).

3. U.S. Bureau of Reclamation (BOR)

By letter dated April 12, 1991, BOR concluded that the proposed amendment would have no significant effect upon its program (administrative record No. WY-15-4).

4. U.S. Mine Safety and Health Administrative (MSHA)

By letter dated April 17, 1991, MSHA stated that it had no comments (administrative record No. WY-15-6).

5. U.S. Bureau of Land Management (BLM)

By letter dated April 26, 1991, BLM's Wyoming State Office, provided the following comments (administrative record No. WY-15-8).

a. *Intent of 150-day time limit.* BLM expressed concern that the intent of the proposed revision of subsection 35-11-406(h) is to circumvent or preempt some requirements of SMCRA, and questioned whether Wyoming could impose such a limitation.

As discussed in Finding No. 1 in part III of this notice, the Director has found the proposed revision of subsection 35-11-406(h) to be less stringent than SMCRA and he is not approving it.

b. *Land use definitions.* BLM commented that the proposed definitions of "fish and wildlife habitat" and "grazingland" at subsection 35-11-103(e) were vague and their purpose obscure. BLM stated that

> [a] clearer, more precise definition of what exactly constitutes 'lands dedicated wholly' and 'lands dedicated partially' is in order. We wonder if these definitions could be interpreted to include any surface areas where wildlife have been seen or observed, rather than areas which produce or contain actual habitat. These definitions appear to restrict Wyoming Game and Fish's imposition of mine land rehabilitation requirements to 'fish and wildlife habitat' while precluding their imposition on 'grazingland.' Most, if not all, of the Federal, State, and private lands in Wyoming could easily meet the criteria for both definitions. If this distinction is important (or necessary), then OSM or DEQ [Wyoming] could and should further clarify the distinction by regulation. If it is intended that these definitions be applied only to state or privately-owned land surface, they would have some understandable utility. However, they have no utility for application to BLM administered public land surface. With the exception of the reference to 'hay production,' both definitions apply to BLM administered public land surface, in general, or as appropriate.

BLM further stated that the proposed revision to subsection 35-11-402(b) has no application to BLM-administered public land surfaces.

As discussed above under "Public Comments" in part IV.A.2.d of this notice, the Director is not requiring Wyoming to provide more specific guidelines regarding interpretation of its proposed land use definitions because the proposed definitions, as subsequently clarified in Wyoming's July 30, 1991, and May 18, 1992, letters, are substantively identical to and therefore no less effective than the corresponding Federal definitions. Although the proposed definitions and other statutory revisions would apply to all land surfaces permitted under Wyoming's approved program, regardless of ownership, the Federal land management agency, such as BLM, has the authority to require that the permits include such stipulations and conditions (including revegetation standards) as it deems necessary to ensure that land under its control is reclaimed to the desired use or uses. The Director believes this authority will adequately address BLM's concerns.

6. Wyoming Game and Fish Department (WGFD)

By letter dated April 30, 1991 (administrative record No. WY-15-11), WGFD submitted a series of interagency memoranda and technical studies, dated from June 13, 1983, through September 10, 1990, between itself and the Wyoming Department of Environmental Quality, documenting the negotiated development of the program-wide 'shrub standard,' which is applicable to lands with a postmining land use designation of "fish and wildlife habitat." Also included was an intra-agency memorandum, dated March 1, 1991, summarizing the perceived impacts of Wyoming's proposed revisions of subsections 35-11-103(e) and 35-11-402(b). WGFD requested that OSM consider these documents when evaluating the proposed amendment. Since the shrub standard is not affected by the amendment, none of the documents submitted by WGFD is germane to this rulemaking except the March 1, 1991, memorandum, which is sumarized below.

a. *Scope of "Fish and Wildlife Habitat" definition.* WGFD stated that the revised definition of "fish and wildlife habitat" must be evaluated in the context of the limitations contained in subsection 35-11-402(b) and that it therefore is less effective than the corresponding Federal definition in 30 CFR 701.5 because it would not permit consideration or restoration of wildlife values when reclaiming land to a "grazingland" postmining land use.

The Director cannot agree with this analysis. As discussed in Finding No. 2 in part III of this notice, subsection 35-11-402(b) does not place limitations on the role of WGFD beyond those allowed under 30 CFR 816.116(b)(3)(i). Nor does he agree that the amendment would prohibit restoration of wildlife values on land with a designated postmining land use of "grazingland" as discussed in the same finding. See also the discussion at part IV.A.2.h. of this notice, under "Public Comments."

b. *Consultation.* WGFD argues that since 30 CFR 780.16(b)(3)(ii) requires consultation with State wildlife agencies regarding habitat reclamation procedures whether wildlife is a declared posting land use or not, the revisions proposed by Wyoming can not exclude WGFD from the permit review process.

As discussed in Finding No. 2 in part III of this notice, the Director agrees that the Wyoming program requires

consultation with WGFD regardless of land use. However, under both State and Federal regulations, WGFD approval of proposed fish and wildlife protection and enhancement plans is not required.

c. *Meaning of "Fish and Wildlife Habitat" definition.* WGFD stated that use of the term "dedicated" in the revised definition of "fish and wildlife habitat" does not limit the applicability of this land use category since all land surfaces in Wyoming are dedicated in part to the production, protection, or management of fish and wildlife species. Several examples of such dedication were provided, e.g., State management of big game herd units, which encompass virtually all surfaces of the State; Federal resource management plans which specifically include wildlife as a multiple use component; and private lands on which the owner charges hunter access fees, collects harvest coupons, or permits wildlife oriented recreation in exchange for monetary or other consideration. The existence of wildlife is sufficient documentation that wildlife habitat is part of the land use. The amendment has not established the source or naturel of dedication in its definition and fails to specify the necessary formality of the dedication.

As discussed in part IV.A.2.c., d., and f. of this notice, under "Public Comments" and in Finding No. 2 in part III of this notice, the Director does not agree that use by wildlife prior to mining mandates a postmining land use designation of "fish and wildlife habitat." Since the Federal regulations do not define "dedicated," States have considerable latitude in interpreting this term.

d. *Mandatory designation as "Fish and Wildlife Habitat".* WGFD argues that to assure reestablishment of conditions necessary to support both grazingland and wildlife habitat, "fish and wildlife habitat" must be declared the sole land use on all surfaces in Wyoming. The agency expressed concern that, while the grazingland performance standards would remain effective under the revised wildlife habitat definition, the wildlife habitat performance standards would not be mandatory under a sole grazingland designation. Therefore, WGFD reasons, a "fish and wildlife habitat" designation would ensure restoration of both components of the land use that are of interest to society and would constitute the higher or better land use.

As discussed in part IV.A.2 of this notice, the Director does not agree that designation as "fish and wildlife habitat" is necessary to require that land be restored to conditions capable of supporting both grazing and wildlife resources, nor does he necessarily agree that fish and wildlife habitat is a higher or better land use than grazingland. Furthermore, as discussed in Finding No. 2 in part III of this notice, protection and enhancement of wildlife resources is required regardless of postmining land use designation.

e. *Joint land use designations.* WGFD argues that the amendment is inconsistent with 30 CFR 816.133(a), which the commenter believes requires operators to restore the land to conditions that are capable of supporting all uses the land was capable of supporting prior to mining including wildlife habitat. WGFD explains that this inconsistency exists because the amendment would preclude a joint wildlife habitat/grazingland land use designation, thereby preempting the requirement that land reclaimed as grazingland also be returned to conditions capable of supporting wildlife habitat.

As discussed in part IV.A.2.c. and Finding No. 2 in part III of this notice, the Director does not agree that the proposed revisions will preclude joint wildlife habitat/grazingland land use designations, inhibit compliance with the land use regulations, or preempt the requirement to restore conditions capable of supporting wildlife. Furthermore, the commenter has somewhat misrepresented the substance of 30 CFR 816.133(a), which allows operators to restore lands to a higher or better use or uses in lieu of the requirement cited by the commenter.

7. U.S. Fish and Wildlife Service (FWS)

By memorandum dated May 7, 1991 (administrative record No. WY-15-14), the FWS reiterated a number of the WGFD comments and provided the following additional comments.

a. *No course for remedy after 150 days.* The FWS expressed concern that protection of endangered species could be circumvented by the revision of subsection 35-11-406(h) in that the amendment would preclude the regulatory authority from complying with the Endangered Species Act if new information on endangered or threatened species resulted in the need to re-initiate consultation with the FWS after the 150-day review period.

As discussed in Finding No. 1 in part III of this notice, the Director is not approving the proposed revision of subsection 35-11-406(h).

b. *Limiting consultation role.* The FWS argues that the proposed revisions at subsections 35-11-103(e) and 35-11-402(b) appear to be an effort to limit the consultation role of WGFD in the mine plan review process and to significantly reduce any legal requirement to reclaim wildlife habitat on most private land surfaces.

The Director does not agree that the proposed revisions limit or inhibit compliance with those provisions of the Wyoming program consultation with WGFD during the permit application review process. It restricts only the extent to which WGFD approval of revegetation standards can be required, a restriction which is not inconsistent with the Federal rules at 30 CFR 816.116(b)(3)(i).

c. *Scope of definition.* The FWS states that the revised definition of "fish and wildlife habitat" does not conform with the Federal definition at 30 CFR 701.5 for "fish and wildlife habitat" and the additional limitations of subsection 35-11-402(b) on State wildlife agencies' input into mine plan review would preclude meaningful review.

For reasons set forth at length in Finding No. 2 in part III of this notice and in the response to a public comment in part IV.A.2.e. of this notice, the Director cannot agree with any aspect of this comment.

State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP) Comments. Pursuant to 30 CFR 732.17(h)(4), the Director is required to solicit comments from SHPO and ACHP for all amendments that may have an effect on historic properties. This was done by letter dated March 27, 1991 (administrative record No. WY-15-2). Neither SHPO nor ACHP responded to OSM's request.

EPA concurrence. Pursuant to 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the U.S. EPA with respect to any provisions of a State program amendment which relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*)

None of the changes that Wyoming proposes to its statute pertain to air or water quality standards. Nevertheless, by letter dated March 27, 1991, OSM requested EPA's concurrence on the proposed amendment (administrative record No. WY-15-2). By letter dated April 29, 1991, and May 15, 1991 (administrative record Nos. WY-15-9 and WY-15-16), EPA's Region VIII and Washington DC offices provided the requested concurrence.

V. Director's Decision

Based on the findings in part III of this notice, the Director is partially approving the proposed amendment submitted by Wyoming on March 21, 1991, and clarified by letter dated July 31, 1991. However, as discussed in Finding No. 1, he is not approving the proposed statutory revision of article 4, subsection 35–11–406(h) because it is less stringent than SMCRA and less effective than the implementing Federal regulations.

Also as discussed in Findings Nos. 1 and 2, respectively, the Director is requiring Wyoming to (1) either repeal the proposed revision of Article 4, subsection 35–11–406(h) of the Wyoming Statutes or revise it to specify that it does not apply to coal mining operations, and (2) revise the regulations of the Land Quality Division to require that, when fish and wildlife enhancement measures are not included in a permit application, the applicant must provide a statement explaining why such measures are not practicable.

The Federal regulations at 30 CFR part 950 codifying decisions concerning the Wyoming program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

Effect of director's decision. Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to the State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approve State programs. In oversight of the Wyoming program, the Director will recognize only the statutes, regulations and other materials approved by OSM, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Wyoming of only such provisions.

VII. Procedural Determinations

1. Compliance With the National Environmental Policy Act

Pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Compliance With the Executive Order No. 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order No. 12291 for actions directly related to approval or conditional approval of State regulatory programs. Accordingly, for this action, OSM is exempt from the requirement to prepare a regulatory impact analysis, and this action does not require regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rule will be met by the State.

3. Executive Order 12778

This rule has been reviewed under the principles set forth in section 2 of Executive Order 12778 (56 FR 55195, October 25, 1991) on Civil Justice Reform. The Department of the Interior has determined, to the extent allowed by law, that this rule meets the applicable standards of sections 2(a) and 2(b) of Executive Order 12778. Under SMCRA section 405 and 30 CFR 884 and section 503(a) and 30 CFR 732.15 and 732.17(h)(10), the agency decision on State program submittals must be based solely on a determination of whether the submittal is consistent with SMCRA and the Federal regulations. The only decision allowed under the law is approval, disapproval, or conditional approval of State program amendments.

4. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by OMB under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 950

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 8, 1992.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

For reasons set out in the preamble, title 30, chapter VII, subchapter T, of the Code of Federal Regulations is amended as set forth below:

PART 950—WYOMING

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

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

2. Section 950.15 is amended by adding paragraph (m) to read as follows:

§ 950.15 Approval of regulatory program amendments.

* * * * *

(m) With the exception of the proposed revision of Article 4, Subsection 35–11–406(h) of the Wyoming Statutes (W.S.), which would limit the Administrator's ability to raise deficiencies in the permit application during the technical review period, the revisions to the Wyoming permanent regulatory program, submitted to OSM on March 21, 1991, as clarified by Wyoming on July 31, 1991, are approved effective July 8, 1992. The approved provisions include the following revision of W.S.:

(1) Article 1, subsection 35–11–103(e) (xxvi) and (xxvii), definitions of "fish and wildlife habitat" and "grazingland," and

(2) Article 4, subsection 35–11–402(b), specifying that "to the extent federal law or regulations require consultation and approval by state wildlife agencies regarding surface mining lands to be reclaimed for fish and wildlife habitat, the Wyoming Game and Fish Commission shall consider fish and wildlife habitat to mean as defined in W.S. 35–11–103(e)(xxvi) and does not include grazingland as defined in W.S. 35–11–1–3(e)(xxvii)."

3. Section 950.16 is amended by adding paragraphs (o), (p), and (q) to read as follows:

§ 950.16 Required program amendments.

* * * * *

(o) By November 5, 1992, Wyoming shall submit documentation that the enacted revision of Article 4, subsection 35–11–406(h) of the Wyoming Statutes as submitted to OSM on March 21, 1991 has either been repealed or revised to specify that the provisions of paragraph (h) do not apply to applications for coal mining operations.

(p) By September 8, 1992, Wyoming shall submit a proposed revision to chapter II, section 3(b)(iv)(A) of the Rules and Regulations of the Land Quality Division of the Department of Environmental Quality, or otherwise propose to amend its program, to specify that, when fish and wildlife enhancement measures are not included in a proposed permit application, the applicant must provide a statement explaining why such measures are not practicable. In addition, this rule must be revised to clarify that fish and wildlife enhancement measures are not limited to revegetation efforts.

(q) By September 8, 1992, Wyoming shall submit a proposed revision of the definition of "grazinglands" at chapter I, section 2(ba)(iii), of the Rules and Regulations of the Land Quality Division of the Department of Environmental Quality, or otherwise propose to amend its program, to clarify that it interprets the phrase "managed for * * * occasional use by wildlife" in the statutory definition of "grazingland" as meaning that land dedicated to grazing must also receive consideration for wildlife use, not that the land managed solely for occasional use by wildlife would also qualify as "grazingland" in the absence of other grazing uses.

[FR Doc. 92-15792 Filed 7-7-92; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-300169B; FRL-3939-5]

Terbuthylazine; Revocation of Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule revokes the tolerances listed in 40 CFR 180.333 for residues of the herbicide terbuthylazine (2-tert-butyl-amino-4-chloro-6-ethylamino-s-triazine) in or on the raw agricultural commodities corn fodder and forage, corn grain (including popcorn grain), and sorghum forage and grain. EPA is taking this action to remove tolerances for residues of a pesticide which was never registered for the related food uses after the tolerances were established.

EFFECTIVE DATE: This regulation becomes effective July 8, 1992.

ADDRESSES: Written objections, identified by the document control number, [OPP-300169B], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Patricia Critchlow, Registration Division (H7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-305-5226.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the **Federal Register** of February 18, 1988 (53 FR 4860), which proposed the revocation of tolerances for residues of eight pesticide chemicals, including terbuthylazine, which had no current food use registrations. EPA subsequently issued a final rule, published in the **Federal Register** of April 10, 1991 (56 FR 14472), which revoked the tolerance regulations for all of those pesticides except terbuthylazine. Because of a comment received from a pesticide producer in response to the February 18, 1988 proposed rule, requesting that EPA not revoke the tolerances for terbuthylazine, but also not committing to provide the data necessary to support the continuation of those tolerances, the Agency announced its decision to delay final action on the terbuthylazine tolerances to give an additional period of 30 days for any interested person to commit to providing the Agency with the data needed to support the continuation of these tolerances. Since no commitment to provide the necessary data was received during the additional 30-day comment period, EPA is hereby revoking the existing tolerances listed in 40 CFR 180.333 for residues of terbuthylazine in or on the raw agricultural commodities corn fodder and forage, corn grain (including popcorn grain), and sorghum forage and grain.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or a request for a hearing with the Hearing Clerk, at the address given above. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested and the requestor's contentions on each such issue. A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested.

This document has been reviewed by the Office of Management and Budget as required by section 3 of Executive Order 12291. As explained in the proposal published February 18, 1988, the Agency has determined, pursuant to the requirements of Executive Order 12291, that the removal of these tolerances will not cause adverse economic impact on significant portions of U.S. enterprises.

This rulemaking has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96-354, 94 Stat 1164; 5 U.S.C. 601 et seq.), and it has been determined that it will not have a significant economic impact on a substantial number of small businesses, small governments, or small organizations. The reasons for this conclusion are discussed in the February 18, 1988 proposal.

List of Subjects in 40 CFR Part 180

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

Dated: January 31, 1992.

Linda J. Fisher,

Assistant Administrator for Pesticides and Toxic Substances.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

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

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

§ 180.333 [Removed]

2. By removing *§ 180.333 Terbuthylazine; tolerances for residues.*

[FR Doc. 92-15612 Filed 7-7-92; 8:45 am]

BILLING CODE 6560-50-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Parts 205, 206, 232, 233, 234, and 237

RIN 0970-AA06

Aid to Families With Dependent Children Deficit Reduction Act (DEFRA) Final Rules

AGENCY: Administration for Children and Families (ACF).

ACTION: Final rule.

SUMMARY: These final regulations implement changes in the Aid to Families with Dependent Children (AFDC) program required by the Deficit Reduction Act of 1984 (DEFRA), Public Law No. 98-369 as clarified by the Tax Reform Act of 1986 (TRA), Public Law No. 99-514. The statutory changes were

effective October 1, 1984, unless otherwise specified.

Changes made by these final regulations do not affect the adult financial assistance programs in Guam, Puerto Rico, and the Virgin Islands.

EFFECTIVE DATE: July 8, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Mack A. Storrs, Administration for Children and Families, Office of Family Assistance, Fifth Floor, 370 L'Enfant Promenade SW., Washington, DC 20447, telephone (202) 401-9289.

SUPPLEMENTARY INFORMATION:

Timing of Regulation

On September 10, 1984, interim final regulations implementing changes required by DEFRA to the Aid to Families with Dependent Children program were published. (See 49 FR 35586-35604.) In accordance with section 2646 of Public Law No. 98-369, the interim final rules were effective on October 1, 1984 except for those provisions for which the statute established an earlier effective date. The interim rules are adopted as final with the changes discussed below.

Background

These final regulations implement changes to the regulations governing the AFDC program required by DEFRA, as clarified by the Tax Reform Act of 1986. They do not implement any other statutory changes made to the Social Security Act. Since their sole purpose is to express as final regulations Federal policies implementing DEFRA, as clarified by the Tax Reform Act, they must be construed in light of any subsequently enacted statutes that require regulatory changes. The Medicaid provisions of DEFRA are being issued in a separate rulemaking.

Although certain provisions of DEFRA were either changed or repealed by the Family Support Act of 1988, Public Law No. 100-485, and the Omnibus Budget Reconciliation Act of 1990 (OBRA '90), Public Law No. 101-508, these DEFRA provisions are still included in this final rule. The only purpose of these regulations is to express as final regulations Federal policies implementing DEFRA, as clarified by the Tax Reform Act. The provisions affected by the Family Support Act and OBRA '90 are listed in the section on Legislative Clarifications subsequent to the publication of the Interim Final Rules. They will be revised in a separate rulemaking.

The DEFRA statutory changes implemented by these regulations fall within three basic categories. The following is a summary of the changes implemented by the regulations.

(1) *Eligibility:*

—Permits States to recalculate the period of ineligibility due to receipt of a lump sum under certain circumstances;

—Increases the gross income limit to 185 percent of the State's standard of need;

—Provides States greater flexibility in disregarding the earned income of a dependent child who is a full-time student; and

—Makes aliens sponsored by an agency or organization ineligible for assistance for three years from the date of entry into the United States, unless the sponsoring agency is no longer in existence or has become unable to meet the alien's needs.

(2) *Countable income and resources:*

—Specifies that certain individuals living in the same household with the dependent child are considered to have filed for assistance and that their income and resources must be considered;

—Requires States to consider the income of a parent or legal guardian living with a minor parent as available to the minor and the dependent child on whose behalf the minor files for assistance;

—Requires States to disregard the first $50 per month of the current monthly support obligation of any child support collected on the family's behalf in determining AFDC eligibility and payment amounts;

—Continues a $30 earned income disregard after expiration of the $30 and one-third earned income disregard for an additional 8 months (for a total of 12 months);

—Exempts burial plots and funeral agreements from countable resources for members of the assistance unit. Also, for a limited time, exempts real property which the family is making a good-faith effort to sell, provided the family agrees to repay the AFDC benefits received during that time;

—Requires States to count the earned income credit (EITC) only when actually received;

—Extends the $75 standard work expense disregard to part-time workers;

—Clarifies and reaffirms that the $75 standard work expense disregard is applied against gross earnings.

(3) *Program administration:*

—Requires monthly reporting and retrospective budgeting only for recipients with earned income or a recent work history; permits States to use prospective budgeting for non-monthly reporting cases; allows the Secretary to grant no-cost waivers of these requirements for States to enable them to conform AFDC monthly reporting and retrospective budgeting requirements to those of the Food Stamp program;

—Permits States to continue to make payments on behalf of the remaining members of the assistance unit to a parent or other caretaker who fails to comply with certain work or child support requirements if, after reasonable efforts have been made, the State is unable to identify a suitable protective payee;

—Allows States to not undertake the recovery of overpayments based on cost-effective criteria and dollar limitations as established by the Secretary; and

—Permits States to disclose to State and local law enforcement officers the current address of AFDC recipients who are fugitive felons.

In the interim final rules, we referenced four categories. However, we have made no changes to the interim rules in the category pertaining to title IV-A work programs because section 202 of the Family Support Act repealed the statutory provisions governing those regulations. Accordingly, we are not responding to the comments we received on work programs as they are no longer relevant and the regulations as published in the interim final are adopted as final (although no longer operative).

Legislative Clarifications Subsequent to Publication of the Interim Final Rules

Subsequent to the publication of the interim final rules on September 10, 1984, Congress passed and the President signed Public Law No. 99-514, the Tax Reform Act of 1986. The Tax Reform Act includes clarifying and technical amendments to certain sections of the Social Security Act previously amended by the Deficit Reduction Act of 1984. These amendments are effective October 1, 1984.

The AFDC provisions of the Tax Reform Act:

—Standardize at $75 per month the earned income disregard in counting the income of a stepparent;

—Specify that the requirement that certain household members file for AFDC as a unit applies to children eligible for assistance under the AFDC-UP (Unemployed Parent) program, as well as under the AFDC program;

—Specify that, in considering the income of a parent or legal guardian

of a minor parent, the provision at section 402(a)(39) applies only to a minor under age 18; and

—Specify that a child receiving foster care maintenance payments under title IV-E of the Social Security Act is not considered a member of the family when determining AFDC eligibility and benefits.

The Tax Reform Act makes these amendments effective October 1, 1984. However, the Tax Reform Act also specifies that no State shall be considered to have failed to comply with the law or regulations or to have made overpayments or underpayments by reason of its compliance or noncompliance with these amendments for the period October 1, 1984, through October 22, 1986. This hold-harmless provision applied only to the specific provisions clarified by the Tax Reform Act.

The Family Support Act of 1988 either changed or repealed certain provisions of DEFRA. Regulations implementing the relevant provisions of the Family Support Act are not reflected in the final rule, as the only purpose of these final regulations is to implement the DEFRA provisions. The DEFRA provisions affected by the Family Support Act are listed below, for information and reference purposes only:

—Section 202(a) of the Family Support Act repeals part C of title IV of the Social Security Act—Work Incentive Program for Recipients of Aid Under State Plan Approved Under Part A.

—Section 402(a) of the Family Support Act amends section 402(a)(8)(A)(ii) of the Social Security Act by increasing the limit on the dependent care disregard from $160 to $175 for children age two or above and for incapacitated adults, and to $200 for children under age two. In addition, the order of the earned income disregards is changed so that the dependent care disregard is applied last;

—Section 402(b) of the Family Support Act amends section 402(a)(8)(A)(ii) of the Social Security Act by increasing the amount of the standard work expense from $75 to $90 for applicants and recipients. (The disregard for stepparents was not increased, and remains at $75.)

—Section 402(c)(1) of the Family Support Act amends section 402(a)(8)(A) of the Social Security Act by adding a new clause (viii) which provides that earned income tax credit (EITC) payments shall be disregarded in the determination of need and the amount of AFDC benefits. (The disregard does not apply to the 185 percent gross income limitation.) This disregard applies to any advance EITC payment made to a family by an employer and any EITC payment made as a refund of Federal income taxes;

—Section 402(c)(2) of the Family Support Act repeals section 402(d) of the Social Security Act which required States to count EITC payments as earned income; and

—Section 102 of the Family Support Act amends section 402(a)(8)(A)(vi) and section 457(b)(1) of the Social Security Act to provide for the disregard of the first $50 of any child support payments for such month received in that month, and the first $50 of child support payments for each prior month received in that month if such payments were made by the absent parent in the month when due.

These final regulations do not implement the Family Support Act of 1988. Final regulations implementing the changes made by the Family Support Act described above are being issued separately. Accordingly, the statutory changes made by the Family Support Act will take precedence over these DEFRA regulations.

Section 11115 of the Omnibus Budget Reconciliation Act of 1990 (OBRA '90) includes technical changes to the Social Security Act which clarify the amendments made by the Family Support Act. The OBRA '90 changes specify that, effective January 1, 1991, EITC payments are excluded from consideration as income when determining eligibility under the 185 percent gross income limitation and are also excluded from consideration as a resource for the month of receipt and the following month. Additionally, at State option, overpayments may be waived when they occurred because receipt of EITC payments during the period January 1 to December 31, 1990, caused ineligibility under the 185 percent gross income limitation.

Section 5051 of OBRA '90 makes monthly reporting and retrospective budgeting optional effective October 1, 1990, and section 5053 makes a technical amendment removing the term "legal guardian" from section 402(a)(39) of the Social Security Act effective November 5, 1990. These final regulations also do not implement changes to the Social Security Act made by OBRA '90. Although regulations implementing these changes have not yet been issued, OBRA '90 statutory changes take precedence over these DEFRA regulations.

Justification for Dispensing With a Notice of Proposed Rulemaking Regarding Amendments Made to the Regulations To Implement the Tax Reform Act of 1986

Regulations implementing all of the DEFRA provisions governing the AFDC program were published in the interim final rules on September 10, 1984. The provisions included in the Tax Reform Act of 1986 were merely technical amendments designed to clarify the intent of Congress and were not viewed by Congress as constituting changes in the previous law. Accordingly, the regulations implementing these provisions are not based on administrative discretion.

Since regulatory changes related to the Tax Reform Act of 1986 do not involve administrative discretion but simply implement statutory requirements, we believe that, under 5 U.S.C. 553(b)(3)(B), good cause exists for waiver of a notice of proposed rulemaking (NPRM) on the ground that it is not necessary.

Discussion of Major Provisions and Responses to Comments

A discussion of the AFDC provisions contained in Public Law No. 98-369 and Public Law No. 99-514 and the options considered in developing these final regulations follow. For ease of reference, we are including, where appropriate, the discussion of each provision and the options as they appeared in the published interim final rules. We have highlighted the areas where there are substantive changes followed by a comment and response section based on comments received in response to the interim final rules.

In all, 33 letters were received from State agencies, organizations and private citizens. Responses to these comments, as well as a discussion of any significant changes from the preamble or regulations in the interim rules are discussed below. Also addressed are issues raised by States at operational and Regional training sessions between July and November 1984. Some of the suggestions received, such as allowing actual child care costs for part-time workers, would conflict with the statute. We do not provide a rebuttal to criticisms of the statute itself, but do address any comments on regulatory areas of concern.

A number of commenters requested that, where appropriate, policy which appeared only in the preamble to the interim final regulations be incorporated into the text of the regulations. The commenters felt that this would ensure

ease of reference once the regulations are codified. We agree and have, to the extent possible, incorporated these policies into the regulations. In this process, no change has been made in the policy as stated in the interim preamble unless specifically stated in this final preamble.

Disclosure by State Agencies of Information Regarding Fugitive Felons (Section 205.50 of the Final Regulations)

Under prior law, section 402(a)(9) of the Act prohibited disclosure by a State of information concerning applicants or recipients except under limited circumstances. Section 2636 of DEFRA adds a new provision to section 402(a)(9) of the Act to permit the State or local agency responsible for the administration of the State plan in the locality to disclose the current address of any recipient to a State or local law enforcement officer if such officer so requests and furnishes the agency with the recipient's name and social security number and demonstrates that: (1) Such recipient is a fugitive felon; (2) the location or apprehension of such felon is within the officer's official duties; and (3) the request is made in the proper exercise of those duties. For purposes of implementing this provision, a State must define a fugitive felon. The State may use the definition under State law or under Federal law (for example, the Fugitive Felon Act, 18 U.S.C. 1073) or a combination of both. This provision applies only to current AFDC recipients. A State need not enact legislation in order for this provision to be effective, as is required under section 618 of the Revenue Act of 1951 (also known as the Jenner amendment), which also is codified in § 205.50. A conforming change to § 205.50(a)(2)(v), which did not appear in the interim regulation, is included in the final regulation. This section now provides that the policies applied to requests for information from certain governmental entities (including law enforcement officers) include an exception in the case of fugitive felons.

There were no comments on this provision. Therefore, the regulations published in the interim final rules are otherwise unchanged.

Individuals Who Must File for Assistance as a Unit (Sections 233.10, 233.20, and 237.50 of the Final Regulations)

Under prior law, family members who lived together were not required to file for AFDC benefits as a unit; a parent filing for a dependent child could choose to include or exclude himself or herself and other potentially eligible children from the assistance unit. This allowed the family to maximize the AFDC benefit and family income. States were not able to count either income or resources of excluded individuals in determining need and payment for the eligible child, except that income of a parent was considered available to children under 21 and income of a spouse was considered available to the other spouse.

Section 2640 of DEFRA, which adds section 402(a)(38) to the Act, requires that an application on behalf of a dependent child must include as applicants certain potentially eligible relatives living in the same household as the dependent child. (Certain exceptions required by other statutory provisions are noted below.) Any income and resources of these relatives is counted in determining need under section 402(a)(7) of the Act.

These "certain potentially eligible relatives" include:

- The parent(s) of a dependent child;
- Brothers and sisters of the dependent child (including half brothers and sisters) who are themselves dependent children within the age limit set by the State.

In order to provide States flexibility, and to allow the regional variation in domestic arrangements, the concept of "living in the same household" will continue to be defined by each State. As stated at page 13 of SSA AT-86-1, "The Filing Unit Provision at Section 2640 of the Deficit Reduction Act of 1984" (January 13, 1986):

> The definition must, however, clearly indicate the presumption that family members living in common quarters must be treated as a single household for purposes of the provisions listed above. Exceptions should be limited to situations such as clear landlord/tenant relationships as verified by tax returns or other evidence.

This concept is to be used solely for the purpose of determining household composition. For example, a mother submits an AFDC application for herself and one dependent child. During the initial interview, the State learns that two additional siblings of the dependent child are living in the household. The State must then determine whether these additional siblings also meet the applicable dependent child requirements set forth in sections 406(a) (1) and (2) or 407(a) of the Act (i.e., meet the requirements concerning age, deprivation, and living with a specified relative of proper degree). If so, then they must be included in the AFDC application.

As explained above, section 402(a)(38) of the Act requires that the following potentially eligible individuals, if living in the same household as the dependent child, must be included in the dependent child's application:

- The parent(s) of a dependent child;
- The brothers and sisters of the dependent child (including half brothers and sisters) who are themselves dependent children within the age limit set by the State.

Notwithstanding the preceding, certain parents and siblings must be excluded from the assistance unit because they are not eligible for assistance due to other provisions of the Act. For example:

- Individuals who receive SSI benefits or on whose behalf SSI benefits are paid (e.g., a child who receives benefits through a representative payee);
- Aliens who fail to meet the citizenship and alienage requirements at § 233.50;
- Aliens who are ineligible due to the deemed income or resources of their sponsors, or due to sponsorship by an agency or organization pursuant to § 233.51;
- Individuals ineligible due to receipt of lump sum income; and
- Individuals on whose behalf Federal foster care maintenance payments are made under title IV-E of the Social Security Act or whose costs in a foster family home or child care institution are included in the Federal foster care maintenance payments made with respect to his or her minor parent.

We received numerous questions and comments concerning this provision. As a result, we made some changes in the regulations, reworded some sections of the preamble language, and added five new sections: consolidating multiple assistance unit households; treatment of sanctioned persons who are required to be included in the assistance unit; treatment of persons who fail to cooperate; implementation of the provision; and clarifications due to the Tax Reform Act of 1986.

Individuals Who Must Be Included in the Assistance Unit

First, any parent who is living in the same household as the dependent child must be included in the unit. "Parent," as defined in § 233.90(a)(1), includes a natural or adoptive parent and a stepparent in States with laws of general applicability holding a stepparent legally responsible to the same extent as a natural or adoptive parent. In cases of eligibility due to incapacity or unemployment of the principal earner, both parents must be included in the assistance unit if otherwise eligible under the Act.

Second, blood-related or adoptive brothers and sisters (including half brothers and sisters) who are living in the same household as the dependent child and who meet the eligibility requirements for AFDC must also be included in the unit. Those whose only relationship to a dependent child is as a stepbrother or stepsister are not required to be included because the conference report clearly indicates an intent to exclude them from this provision. Moreover, in States without laws of general applicability, the income of a stepparent living in the household is counted as available to the assistance unit, after applying the disregards at section 402(a)(31) of the Social Security Act and § 233.20(a)(3)(xiv) of the regulations, which include amounts to meet the needs of his dependents living with him. Thus, the Act and regulations already account for the needs of the stepbrothers and stepsisters of an AFDC child whenever the stepparent's income is counted. Finally, if stepbrothers and stepsisters were required to be included, it would also require the inclusion of the stepparent since section 402(a)(38) of the Act requires parents of dependent children to be included. Such a result would circumvent section 402(a)(31) of the Act which specifies a particular method of counting a stepparent's income.

For example, in States without laws of general applicability, if a dependent child and his mother (caretaker relative), stepfather, and stepbrother are living in the same household, DEFRA requires that the assistance unit must include only the dependent child and his mother. His stepfather's income would be considered available to the assistance unit after application of the stepparent income disregards (at § 233.20(a)(3)(xiv)), which would include an amount for the support of his child. If application is made on the stepbrother's behalf, depending on State policy, he and his natural parent could receive benefits as part of the same assistance unit, or in a separate unit. Accordingly, we have reworded this example from the preamble to the interim final regulation to indicate that there may be one or two assistance units in such cases, depending on State policy.

In States with laws of general applicability, the stepparent must be included in the assistance unit, since he or she is considered the same as a natural parent; however, stepbrothers and stepsisters of the dependent child need not be included in the assistance unit.

All of the income and resources of the individuals required to be included in the assistance unit must be considered in determining eligibility and payment for the assistance unit. In this connection, the statute specifically provides for the inclusion of title II benefits. When title II benefits are paid to a representative payee under section 205(j) of the Social Security Act on behalf of a member of the assistance unit and the payee lives in the same household as the assistance unit, the title II benefits must also be counted as income. When the representative payee does not live in the household, the title II benefits are included only to the extent that the payee makes them available for the support of the beneficiary. AFDC policy, as set forth in State Letter 1088, which permits the exclusion of a child receiving title II benefits and his title II income, was revoked in the preamble to the interim final regulations (49 FR 35589).

Consolidating multiple assistance unit households

Many comments to the interim final regulations involved questions about the effect of the assistance unit provision on multiple assistance unit households. Rather than attempt to describe all possible family arrangements, we believe that a description of the underlying principle and the following examples will provide a basis for determining when to consolidate assistance units.

The underlying principle is that when an individual is required to be in two or more assistance units, these units must be consolidated. With regard to three-generation households (e.g., a mother, a minor mother and baby), the determination as to whether the minor parent is treated as a dependent child in her mother's unit or as an adult caretaker with her own unit depends on whether the minor meets the factors of age, deprivation, and living with a specified relative as required by sections 406(a) and 407(a) of the Act and the implementing Federal regulations at §§ 233.39(b)(1)(ii), 233.90, and 233.100(a)(2).

The resolution of issues involving a minor parent's responsibility for the day-to-day care, control, and supervision of a dependent child under § 233.90(c)(1)(v)(B) must be based on criteria and procedures developed by each State. Our longstanding position is that States be given maximum flexibility in this area, within general Federal statutory and regulatory guidelines, because they are in a better position to evaluate conditions in their respective areas and to develop practices which are realistic and responsive to the goal of strengthening the family.

The following examples illustrate the application of the consolidation principles:

—An AFDC caretaker mother and her three dependent children are living in the same household. One of these children then has a baby. If an application is filed on the baby's behalf, and the minor mother continues as a dependent child (i.e., she continues to satisfy the factors of age, deprivation, and living with a specified relative—i.e., her mother), then this baby, together with his minor mother, must be treated as members of the mother's unit. Section 402(a)(38) of the Act requires that the baby and his minor mother be included in the caretaker mother's unit because: (1) an application was filed for the baby, (2) both the baby and his minor mother reside in the caretaker mother's household, and (3) the minor mother is a dependent child of the caretaker mother. (It should be noted that there is no requirement that an application be filed for the baby.)

—An AFDC caretaker mother and one son are living together in the same household. A daughter who is a minor and her baby, who have been residing in a different household and receiving AFDC on their own, move to the caretaker mother's household; the daughter continues to maintain care and control over her baby. In applying the assistance unit provision, the State determines that the minor mother does not meet the definition of a dependent child since she is not under the care and control of the caretaker mother (45 CFR 233.90(c)(1)(v)(B)). Accordingly, the State determines that section 402(a)(38) of the Act does not require that the units (mother and son, minor mother and baby) be consolidated. Thus, two assistance units are permitted under Federal policy.

(Note: Questions concerning the treatment of the minor mother as a parent or child for need and payment purposes are addressed in a subsequent comment/response)

—A mother, her child, her second husband (who is disabled) and his child live in the same household. Neither parent has adopted the other parent's child or is viewed as a parent of the other parent's child under State law of general applicability. There may be two separate AFDC units—the mother and her child and the husband and his child. (In this situation, section 402(a)(38) does not require the consolidation of assistance units, though the State may choose to do so.) They then have a child. Since this

child is eligible for AFDC due to the father's incapacity, the child is required to be included in the assistance units of both siblings. As a consequence, all five household members must be consolidated in a single assistance unit. A new section has been added to the regulation at § 233.20(a)(1)(iii) to reflect this policy.

In summary, DEFRA only requires consolidation of multiple assistance units when the same individual is required to be included in each unit pursuant to section 402(a)(38). Accordingly, in the absence of such an individual, there is no Federal requirement that assistance units be consolidated.

As the result of comments received on the interim final rule, we have revised the recipient count provision at § 237.50 of the regulation to reflect changes due to the assistance unit provision. These changes provide for the additional individuals now required to be included in assistance units.

Parents and Siblings Who Must Not Be Included in the Assistance Unit

Under DEFRA, parents and siblings must be included in the assistance unit unless they are individually ineligible to receive AFDC under another provision of the Act. These are individuals whose ineligibility is based on a specific statutory provision regarding an individual's eligibility which does not involve a failure to cooperate. Some examples of individuals in this group are the following:

- Parents and siblings who receive SSI benefits. Section 402(a)(24) of the Act provides that an individual who is receiving benefits under title XVI cannot be considered as a member of the assistance unit nor is his income or resources considered for purposes of determining need or payment;
- Parents and siblings who are aliens and are ineligible for AFDC because they have been sponsored by an agency or organization or because of the application of the sponsor-to-alien deeming provisions in accordance with section 415 of the Act and § 233.51 of the regulations;
- Parents and siblings who are aliens and are ineligible for AFDC because they do not meet the citizenship and alienage requirements at section 402(a)(33) or section 402(f) of the Act and § 233.50;
- Parents and siblings previously entitled to AFDC who are ineligible due to prior receipt of lump sum income; and
- A child with respect to whom Federal foster care maintenance payments are made under title IV-E or whose costs in a foster family home or child care institution are covered in the Federal foster care maintenance payment made with respect to his or her minor parent. Sections 478 and 402(a)(24) provide that these individuals may not be regarded as a member of an AFDC family and their income and resources may not be regarded in the determination of eligibility or payment.

When any of the individuals listed above are no longer ineligible to receive AFDC (e.g., SSI eligibility ends), the State must include them in the assistance unit in accordance with the methods described in the section below entitled "Implementation of this provision." Regulations implementing these requirements are contained in § 206.10(a)(1)(vii) of these final regulations.

Treatment of Sanctioned Persons Who Are Required To Be Included in the Assistance Unit

We received numerous comments and questions on the interim final rule concerning the treatment of income and resources of "sanctioned persons." A sanctioned individual is one who must be in an assistance unit under section 402(a)(38) of the Act but who (1) does not meet a condition of his or her eligibility for assistance (e.g., assigning support rights to the State), or (2) is required by law to have his needs excluded from his family's AFDC grant calculation due to the failure to perform some action (e.g., the JOBS sanction for failure to participate under section 402(a)(19)(G)).

Excluding the needs of sanctioned individuals from the assistance unit follows directly from their status either as ineligible for assistance ((1) above) or specific statutory provisions mandating the exclusion of their needs ((2) above). However, in order to preserve the meaningfulness of the assistance unit provision, the sanctioned individual's income must continue to be counted as available to the assistance unit. For example, an individual whose income exceeds his need could always avoid reduction of total family benefits by becoming sanctioned. This clearly conflicts with congressional intent in establishing the assistance unit provision, which requires that the income of parents and siblings be included in determining eligibility. Therefore, the income and resources of a sanctioned individual must be counted in determining the unit's eligibility and payment amount in the same way that they would be counted if the needs of the individual were included.

Thus, for example, the earned income of these individuals will be counted after application of the appropriate disregards in § 233.20(a)(11). Similarly, the other income disregards, such as the $50 child support disregard at § 233.20(a)(3)(iv)(G) of the final regulation, also continue to be available to the assistance unit, even if the income is received by the sanctioned individual.

A new § 233.20(a)(1)(v) has been added to implement this procedure.

Persons Who Fail To Cooperate

In the preamble to the interim final rules, we stated that "failure to include an individual who is required to be in the assistance unit * * * makes the entire assistance unit ineligible for assistance." (49 FR 35589 (1984)). Some commenters misinterpreted this statement as a requirement to terminate an entire family's benefits any time an individual who should have been included had not been included or any time a member refused to cooperate. In order to determine how such individuals must be treated, the State must first determine the effect of the failure to cooperate.

If the caretaker relative does not notify the State concerning an individual required to be in the unit, the State will normally include that individual in the assistance unit as described below under "Implementation of this provision."

In certain situations, however, failure to cooperate will have an effect on the eligibility of the entire assistance unit. When a caretaker relative refuses to provide information about an individual required to be included in the assistance unit, it may not be possible for the State to determine that unit's eligibility or payment. For example, a State learns of a sibling's presence in a household and requires that the caretaker provide necessary information concerning this sibling. The caretaker relative refuses. In this situation, because it does not have information concerning the child's income or resources, the State is unable to determine the family's eligibility or payment amount and would deny benefits to the entire family.

However, if an individual does not meet a condition of eligibility due to a failure to cooperate, then that individual alone is treated as a sanctioned individual, as described above. For example, a 17-year-old sibling, who is required to be included in an assistance unit, returns home. Although the caretaker promptly notifies the State of his return, he refuses to provide a social security number. Rather than make the entire family ineligible, the sibling's income and resources are counted, as required by section 402(a)(38) of the

Social Security Act, but his needs are excluded.

This approach is taken so long as the State has sufficient information to make a proper determination of eligibility. As explained in § 206.10(a)(8), each determination of eligibility must be supported by facts in the case record. Where the facts in the case record are insufficient to support a finding of eligibility, assistance must be denied. For example, if that 17-year-old refuses to furnish his social security number, the State would count his income and resources and exclude his need. If, in addition, the State believes that the social security number is essential to verify unreported income or resources, assistance to the remaining unit members must be terminated.

Failure to meet certain eligibility requirements results in broader penalties. An individual's failure to meet eligibility requirements which by statute affect the entire assistance unit results in ineligibility for the entire assistance unit of which he is or should have been a part. Examples include:

- For cases subject to monthly reporting, the failure to file a required monthly report. No matter who is required to file the report, the entire assistance unit is ineligible if a completed report is not filed on time (§ 233.36); and
- Participation in a strike. If the caretaker relative is on strike as of the last day of a month, the unit is ineligible for that month (§ 233.106(a)(2)(i)).

Discussion of Other Changes Related to This Provision

The final regulations regarding inclusion of family members require several revisions to past policy and procedures. Section 402(a)(10) of the Act, which provides that all individuals wishing to make application for AFDC shall have the opportunity to do so, had also been interpreted as granting caretaker relatives the right to include or exclude family members from the assistance unit as they chose. This interpretation, to the extent it conflicts with the statutory provision on who must be included in the assistance unit, is no longer valid. With respect to persons not required to be included in the assistance unit under section 402(a)(38), the caretaker relative retains the right to choose whether or not to include them in the unit. Section 402(a)(10) also continues to be interpreted to mean that State agencies may not deprive any individual of the opportunity to apply for assistance, for example, by establishing waiting lists or by setting up other barriers to application.

Implementation of This Provision

Before DEFRA, there was no reason to include an individual in an assistance unit until an application was filed on his or her behalf. Beginning October 1, 1984, the statute requires inclusion of certain individuals. However, under some circumstances, a State may not be aware of such individuals until some time after the date that they are required to be included.

After careful consideration of the comments and the legislative history of this provision, we adopted the following procedure. When a State learns of an individual who is required to be included in an assistance unit, the State must:

—Redetermine eligibility and the amount of payment considering the needs, income, and resources of the additional individual retroactive to the date that the individual was required to be included in the unit;
—Follow established procedures to recover or collect an overpayment if the redetermination results in an overpayment for the assistance unit; and
—Provide retroactive payment if the redetermination identifies an underpayment; however, the State can provide assistance only for those months in which the individual satisfies all conditions of eligibility and payment.

We have added a new paragraph at § 233.20(a)(1)(iv) to reflect this policy. Please refer to the subsequent comment and response which discusses the date an individual must be added to the assistance unit and the treatment of eligibility conditions such as enumeration or the assignment of support.

Clarifications Due to the Tax Reform Act of 1986

Since the enactment of DEFRA, a question has arisen as to whether section 402(a)(38) applies to children deprived by reason of the unemployment of a parent under the AFDC-UP program. The actual wording of the assistance unit provision made reference only to section 406(a), with no reference to dependent children deprived due to the unemployment of a parent as set forth in section 407(a). With the enactment of Public Law No. 99-514, the Tax Reform Act of 1986, this question was resolved. Section 1883(b)(2)(A) of the Tax Reform Act amended section 402(a)(38) to include a reference to 407(a). In addition, section 1883(b)(2)(C) provided that the amendment was effective beginning October 1, 1984. Because we have previously interpreted the statute as applying to a child eligible under either program, we have made no change in § 206.10(a)(1)(vii).

Section 1883(b)(10) of the Tax Reform Act also added section 478 to title IV-E of the Social Security Act, which clarifies congressional intent concerning certain children with respect to whom Federal foster care maintenance payments are made under that title. Prior to DEFRA, such cash assistance under title IV-E (which also includes adoption assistance) to an AFDC recipient would have been considered income to the assistance unit. With the enactment of DEFRA, it became unclear whether such individuals should be excluded from assistance units or whether their foster care payments should be counted for the purposes of AFDC. Section 478 of the Act specifies that a child with respect to whom foster care maintenance payments are made under title IV-E is not eligible for AFDC and his or her income and resources are not considered for AFDC purposes. This provision does not extend to individuals receiving adoption assistance or State-only foster care payments.

Subsequently, section 9133 of the Omnibus Budget Reconciliation Act of 1987 (OBRA '87), Public Law No. 100-203, added a similar provision for a son or daughter of a minor parent with respect to whom foster care maintenance payments are made. Effective April 1, 1988, the Federal foster care maintenance payment paid on behalf of the minor parent must include an amount necessary to cover the maintenance costs for the child. For the period that such costs are covered, the child is not eligible for AFDC and his income or resources may not be counted as the income or resources of an AFDC family. A more detailed discussion of these provisions may be found in the Notice of Proposed Rulemaking for OBRA '87 which was published on May 7, 1990 (See 55 FR 18212-18918).

Comment: We received many questions concerning inclusion of siblings. The most frequent comment involved a sibling who is supported by an absent parent. For example, a mother and child receive AFDC. A 16-year-old sibling, who lives in their household, is receiving court-ordered support from his absent father. This support exceeds his increment of the need standard. Must this child be included?

Response: Yes. The statutory change introduces the concept that certain family members must file for AFDC as a unit. The congressional conference committee report for this provision clearly indicates that Congress intended

to eliminate the family's option of excluding certain family members in order to maximize family benefits. This new provision is similar to the current practice in the Food Stamp program where the entire household is treated as a unit in determining eligibility for food stamps.

Now, in the AFDC program, the State must include in the assistance unit of the child, if living in the same household as the child, all parents, and all brothers and sisters who meet the provisions set forth in sections 406(a) (1) and (2) or 407(a) of the Act. (Individuals discussed above in the section entitled "Parents and siblings who must not be included in the assistance unit" are not subject to this requirement.)

Only after the State has determined the members of the assistance unit does the State determine need. The need determination for the assistance unit is made considering all income and resources of all individuals in the unit. This is a two-step process. First, the composition of the assistance unit must be determined. Second, income is considered in relation to the determination of need.

Accordingly, the 16-year-old child receiving court-ordered support payments must be included, since he is a sibling who meets all factors of entitlement. His income would then be considered in determining need for the entire assistance unit.

Comment: Many commenters requested clarification of the words "otherwise eligible" as used in § 206.10(a)(1)(vii) of the interim final regulation.

Response: "Otherwise eligible" means that the individual is not individually ineligible to receive AFDC under the Social Security Act (see "Parents and siblings who must not be included in the assistance unit" above) and, with respect to children, means that the individual meets the requirements of sections 406(a) (1), (2) or 407(a) of the Act. This does not include those who are ineligible solely due to some action or inaction on their part, such as failure to cooperate with work program requirements under the Job Opportunities and Basic Skills Training Program set forth in title IV-F of the Social Security Act.

Comment: Another comment concerned inclusion of both parents of an AFDC child when the parents are not married.

Response: The statute requires that both parents must be included in the assistance unit where the basis for deprivation is either incapacity or unemployment. There is no indication in the legislative history that Congress intended to include only married parents.

Comment: Must a parent who is not exercising parental responsibility (for example, a mentally incapacitated parent) be included in an assistance unit?

Response: Yes. In this situation, another individual would usually be the caretaker relative, but the parent would be included in the unit. She must be included in the unit because she meets the requirements of the assistance unit provision, i.e., she is a parent of the dependent child, and she and the dependent child are living in the same household. There is no requirement that she be the caretaker relative.

Comment: States are currently permitted to include in the grant children who are away at school. How does the assistance unit provision affect this policy?

Response: All siblings (including half siblings) who live in the household of an eligible child and meet the AFDC eligibility requirements must be included in the unit. If the State determines that a child away at school is living in the household, that child must be included in the assistance unit.

Comment: Must individuals who receive other needs-based benefits, such as State aid to the disabled, be included?

Response: Yes. The assistance unit provision affects all eligible parents and siblings unless specifically excluded by statute.

Comment: We received many questions concerning the need to file an application for individuals who are required to be included in an existing assistance unit. Must such an individual actually file, or does the original application include all individuals required to be included, even those who join the unit later?

Response: The original application includes all individuals required to be included by the assistance unit provision as of October 1, 1984. Individuals required to be included who join an existing assistance unit thereafter are included in that application as of the date they join the unit. This applies to all individuals who begin living with the existing unit, whether due to birth, adoption, or establishment of a new residence. The regulation has been amended at §§ 206.10(a)(1)(ii) and (b)(2) to reflect this requirement. To reduce overpayments, States must provide information regarding this requirement during the initial application process.

Comment: Occasionally, it may be advantageous for an expectant mother with children to apply for AFDC as a pregnant woman on her own behalf under section 406(b), rather than for AFDC for the entire family. This will occur when the children have income which exceeds their need and makes the assistance unit ineligible for AFDC. How does the assistance unit provision affect the payment of benefits to pregnant women in such cases?

Response: The expectant mother is free to apply for benefits, but current regulations at 45 CFR 233.90(c)(2)(iv) require that eligibility must be determined as "if such child had been born and was living with her * * * ." In making this special determination of eligibility, the State must consider the needs, income (including deemed income, such as parent-to-minor-parent or spouse-to-spouse deemed income), and resources of all individuals in the household who would be required to be included in the unit had the child been born and aid requested for it. If eligibility exists for this fictional unit, the pregnant woman is eligible. The State then determines payment amount based solely on the pregnant woman's needs, income (including deemed income) and resources.

The siblings would not be required to be included in the mother's AFDC grant until the child was born since no application on behalf of a dependent child has been filed. If benefits are desired once the child is born, the newborn child and other household members required to be in the unit may be added to the original application filed by the pregnant mother in a manner prescribed by the State agency, effective with the child's date of birth, provided that the mother requests such assistance.

Comment; What action must a State take in the following situation? A mother and her child receive AFDC. She remarries and has a second child. Although the father appears to be disabled, he is not receiving a disability-related benefit and has never filed for such benefits. The new child is a sibling of the eligible child and is potentially eligible for AFDC if the father meets the State's definition of incapacity. What should the State do?

Response: The statute requires that the sibling must be included unless he is ineligible. Because the sibling may be eligible based on incapacity of his parent, the agency must determine the father's eligibility. The father would also be required to be included if he is eligible. (NOTE: If the State has a law of general applicability that requires a stepparent to support his stepchildren to the same extent as a natural or adoptive parent, then the unit would only be

eligible, after the marriage, if either the parent or the stepparent is incapacitated or unemployed.)

Comment: What effect does the statutory change have on the "prisoner parent" provision at § 233.90(c)(1)(iii) of the regulations?

Response: Current regulations at § 233.90(c)(1)(iii) provide that a parent who is a convicted offender, but who is permitted to live at home while serving a court-imposed sentence performing unpaid public work or unpaid community service during the workday, is considered absent from the home for purposes of deprivation. Since the assistance unit provision pertains only to a parent who is "living in the same home as the dependent child," it does not apply to the prisoner parent who is considered absent for deprivation purposes.

Comment: A woman, her minor daughter, and the daughter's child live together. If the grandmother seeks assistance for her grandchild, who must be included in the unit? If the minor mother is included, is she treated as a parent mother or as a child for the purposes of need and payment?

Response: In a previous response to this question in SSA-AT-86-1, "The Filing Unit Provision at § 2640 of the Deficit Reduction Act of 1984" (January 13, 1986), p. 12, we stated that the minor mother must be included in the unit. To resolve the issue of whether the minor mother would be treated as a parent or a child, we instructed the State to determine whether the grandmother herself sought to be included in the unit and whether the grandmother or mother was actually responsible for the day-to-day care and control of each child. Some States complained that such special determinations tended to be time-consuming and complex, especially in that the actual responsibility of each person in the household may not be clearly defined. Frequently, such determinations lead to disparate treatment of individuals in similar circumstances. As a consequence, States requested that we reconsider our previous reply.

Accordingly, we reviewed the legislative history of section 402(a)(38), including the relevant conference report (H. Rep. No. 98-861, 98th Cong., 2d Sess. 1407) to determine whether this issue was addressed. We have concluded that Congress did not specifically address this issue, and, therefore, we believe that it would be appropriate to provide States with flexibility. Thus, a State may develop its own policy with respect to the treatment of a mandatory unit member who is eligible both as a minor parent and as a dependent child. A State may decide, for need and payment purposes, to treat such individuals as dependent children or adults, or may develop specific criteria for case-by-case determinations. However, the State must apply this policy consistently—an individual could not, for example, be considered as an adult for the purpose of the earnings disregards and as a child for the purpose of the need standard.

Comment: One commenter asked if the resources of a stepparent are counted when his or her spouse is required to be included in an assistance unit as the natural or adoptive parent of a dependent child.

Response: No. The State must count only those resources owned by the natural or adoptive parent. This may include resources owned jointly with the stepparent. However, in States with laws of general applicability, stepparents are considered to be parents (§ 233.90(a)(1)). Accordingly, they must be included in the unit, and their resources must be taken into account.

Comment: Is allocation for the needs of dependents outside the unit permitted in counting the income of a parent?

Response: Yes. States are permitted to allocate income of a parent to dependents outside the unit before counting such income. As set forth in § 233.20(a)(3)(ii)(C), the amount allocated for dependents living in the household but outside the unit must not exceed an amount equal to the State's need standard for a family of the same composition, while the amount allocated for dependents not living in the household must not exceed the amount actually paid.

Comment: How does the assistance unit provision affect families of children who are in joint custody of each of their parents during a month? Must siblings in both families file?

Response: If deprivation exists, the State must establish one household for purposes of determining AFDC eligibility. The child is considered to be living in this household when applying the assistance unit provision. Accordingly, only the needs and income of the parent and siblings living in that household must be taken into account.

Comment: Another commenter presented the following situation. A household consists solely of a mother, her daughter, and her daughter's child. The grandmother adopts the grandchild, and then files for AFDC for that grandchild (now her child). Who must be included in the unit?

Response: The unit would consist of at least the adoptive parent and the adopted child. If the natural mother is under the age limit selected by the State at § 233.90(b) and is otherwise eligible, she would be included as an AFDC child, since she would be an adoptive sister.

Comment: Many commenters asked which caretaker relative should receive the AFDC payment in an assistance unit that included multiple caretaker relatives due to the requirement to consolidate assistance units. This was seen as a particular problem where one caretaker relative had no responsibility for children of another caretaker relative.

Response: There is no Federal requirement regarding the determination of which caretaker relative in an assistance unit should receive the assistance payment(s). This determination is left to the State.

Comment: An individual receives adoption assistance on behalf of a niece as well as AFDC for herself and her child. How does the State treat the adoption assistance grant if the adoption has not yet become final?

Response: In view of the statutory changes contained in section 5052 of OBRA '90 which excludes from the AFDC unit a child for whom foster care maintenance or adoption assistance payments are made, we are not addressing this comment.

Comment: Two siblings reside with their aunt. She receives foster care payments on behalf of one child and AFDC for herself and the other child. How should the State treat this case?

Response: In view of the statutory changes contained in section 5052 of OBRA '90 which excludes from the AFDC unit a child for whom foster care maintenance or adoption assistance payments are made, we are not addressing this comment.

Comment: What is the earliest date that an individual who is added through the assistance unit provision is considered to meet conditions of eligibility such as enumeration or the assignment of child support?

Response: An individual required to be added to the assistance unit is "deemed" to be included in the application already on file as of the date he/she joins the unit either by birth/adoption or by moving into the household of the existing assistance unit. Correspondingly, certain technical factors of eligibility (e.g., enumeration, assignment of support, or the declaration of citizenship or satisfactory immigration status) will likewise be "deemed" (for underpayment calculation purposes) to be met retroactive to the date the individual was required to be included in the unit. However, the retroactive "deeming" of these technical factors of eligibility will

not apply if: (1) the individual fails to cooperate with the State agency in meeting these technical requirements; or (2) the caretaker relative fails to fulfill his/her responsibilities with respect to making timely and accurate reports of changes pertaining to unit composition.

In summary, States must adhere to the following procedure when adding an individual to an assistance unit when his/her inclusion is retroactive:

—The State will use the individual's needs, income, and resources to redetermine eligibility for the assistance unit retroactive to the date that the individual should have been included in the unit;

—If the payment calculation results in an overpayment, the State must recover or collect the overpayment; and

—If the payment calculation results in an underpayment, the State will provide assistance only for those months in which all eligibility requirements were met.

In this connection, we note that for individuals whose presence in the household was reported to the State on a timely basis, and who then cooperate with the State in satisfying the technical factors of eligibility concerning enumeration, assignment of support, or declaration of citizenship, such individuals are "deemed" to have satisfied these factors retroactive to the date that they should have been included in the unit.

Disregard of Child Support Payments (Sections 233.20 and 233.20(a)(3)(iv)(G) of the Final Regulations)

Under prior law, all support collected periodically on the monthly support obligation was reported to the IV-A agency by the IV-D agency for the purpose of determining eligibility. Under section 2640 of DEFRA, section 457(b) of the Act is amended to require that the first $50 collected which represents monthly support payments is paid to the assistance unit. In addition, section 402(a)(8)(A) of the Act is amended to provide that this amount, not to exceed $50, be disregarded in determining need and the amount of the assistance payment.

The final regulations published on June 9, 1988 (53 FR 21642), amended § 302.51(b)(1) to provide that the first $50 of any amount collected in a month which represents payment on the required support obligation for that month shall be paid to the family. Section 232.20 was amended to provide for payment of this amount to the family by the IV-A agency. The interim final rules added § 232.20(a) to define the terms "support collection", "monthly collections", and "support amounts for a month" as used in that regulation. These three terms all mean the assigned amount that the support enforcement agency collects on behalf of an AFDC family as payment on the required support obligation for the month in which the support was collected, less the sum paid to the assistance unit under § 302.51(b)(1). Under this definition, the IV-A agency cannot count the sum paid under § 302.51(b)(1) in the determination of eligibility under § 232.20(b)(1) (formerly § 232.20(a)(1)). The interim final rules added § 232.20(d) to require the IV-A agency to promptly pay the family the sum under § 302.51(b)(1). However, under the authority of the Family Support Act of 1988, the Department published final rules on August 4, 1989 (54 FR 32308) which provide specified time frames in which the IV-A agency has to pay this sum. (The regulation was effective October 1, 1990.) The IV-A agency may either issue this payment as part of the monthly assistance payment, or separately, in accordance with timeframes under § 302.32 for paying the $50 to the family. In either case, the notice and hearing requirements at § 205.10 do not apply to this payment since it merely represents a pass-through of support collected by the IV-D agency.

For example, if the State makes these payments as part of the monthly assistance payment and the amount of that combined payment is reduced solely because the IV-A agency did not receive notice of any amount collected by the IV-D agency, then the notice and hearing requirements do not apply. On the other hand, if the amount of the combined payment includes a reduction in the monthly assistance payment, the notice and hearing requirements at § 205.10 apply to that reduction. Any question from an assistance unit regarding the amount of child support collected on its behalf by the IV-D agency is to be referred to the IV-D agency.

In addition, the cost of issuing these pass-through payments aids the proper and efficient administration of the IV-A program and therefore is a IV-A administrative cost subject to Federal matching under section 403(a)(3)(D) of the Act.

In the interim final regulations implementing section 2640 of DEFRA, the disregard requirements of that section were inadvertently placed in § 233.20(a)(4)(ii)(*j*). That section pertains to disregards of income and resources in determining eligibility and payment amount. Following review of the comments, we realized this was an incorrect placement of the $50 disregard provision because it created a broader resource disregard than the statute provides.

Specifically, section 2640 of DEFRA requires that the pass-through amount, not in excess of $50, paid to the AFDC family shall not affect the family's eligibility for assistance or decrease the amount otherwise payable to the family in the month the family receives the pass-through. Since the disregards in § 233.20(a)(4)(ii) are applied in every month as long as the funds are retained, placement of the $50 disregard in this section is inconsistent with the statutory language which limits application of the disregard to the month in which the pass-through is paid to the family.

Subsequent to publication of the DEFRA interim final rules, a regulation implementing a disregard of income received under the Job Training Partnership Act (JTPA) was published (see § 233.20(a)(3)(xvii)); we had originally anticipated publication prior to the DEFRA interim final rules. In the JTPA regulation, we had planned to reserve paragraph 233.20(a)(4)(ii)(*j*). As a consequence of the sequence of publication, the latter regulation inadvertently removed paragraph (a)(4)(ii)(*j*) and replaced it with the term "reserved". As a result, the October 1985 through the October 1991 editions of title 45 of the CFR show § 233.20(a)(4)(ii)(*j*) as reserved. Therefore, the $50 pass-through disregard provision has been restored to the regulations, but has been placed in § 233.20(a)(3)(iv)(G) because this section limits the disregard to income only. When the pass-through is retained beyond the month of receipt, it is counted as an available resource.

The new § 233.20(a)(3)(iv)(G) specifically provides that the amount, not in excess of $50, that the IV-A agency sends to the AFDC recipient be disregarded as income for purposes of determining eligibility and payment amount. This section also provides that, in States that count support received directly and retained by the family as income (rather than make these payments subject to recovery by IV-D), the IV-A agency must disregard the first $50 which represents monthly support paid by the absent parent in the determination of eligibility and the amount of the assistance payment. This policy also applies to voluntary support payments. However, the total amount of support that is disregarded cannot exceed $50 per month per assistance unit.

As mentioned earlier, the interim final rules redesignated paragraph (a) as (b)

in § 232.20 and added a new paragraph (a). However, the reference in § 232.20(b)(2) to paragraph (a)(1) should have been changed to paragraph (b)(1). We are making this technical correction now.

Comment: Several commenters expressed concern that the interim final regulations implementing the $50 disregard are too restrictive in requiring that the IV-A agency make the payment.

Response: Because IV-A agencies already have a system in place for making assistance payments each month to individuals receiving AFDC, we determined that the IV-A agencies were in the best position to issue the $50 payment. However, there may be some circumstances where the State may want to contract out the issuance of the $50 payment to the IV-D or other appropriate State agency. Such a procedure is acceptable. If the State contracts out issuance of the $50 payment to the IV-D agency, the IV-A agency must reimburse the IV-D agency for any administrative costs incurred. The IV-A agency is authorized by Federal statute to claim Federal financial participation for the reimbursement of the IV-D agency at the IV-A rate for administrative costs.

Comment: One commenter asked the meaning of "voluntary support payment" as was used in § 233.20(a)(4)(ii)(*j*) (now § 233.20(a)(3)(iv)(G)).

Response: Voluntary support payments, as used in § 233.20(a)(3)(iv)(G), are payments which are made by a putative father or an absent parent and acknowledged by him or the mother to be for the support of their child.

Comment: Several States commented that they were not able to implement the $50 pass-through provision effective October 1, 1984. They asked whether recipients that are paid an accumulation of pass-through payments at one time are entitled to the disregard for each month of the accumulation. For example, if a IV-A agency could not begin issuing the pass-through amounts until December 1, assuming at least $50 per month in child support was received in October, November, and December, a check for $150 would be issued. Is the entire sum to be disregarded?

Response: Yes, recipients that receive an accumulation of pass-through payments for reason of State delays or bookkeeping errors are entitled to the $50 disregard for each month of accumulation.

However, an agency may not permit payments to accumulate merely for the purpose of making them periodically, such as quarterly.

Comment: Several commenters asked whether support that is paid to an individual in the month of application (but prior to the date of application) is subject to the $50 disregard.

Response: Support that is paid to an individual in the month of application but prior to the date of application is subject to the $50 disregard. This policy is consistent with other policy on the treatment of income in the month of application.

Comment: Several commenters asked whether errors such as issuing an incorrect amount or issuing a payment to the wrong person should be corrected by the IV-A or the IV-D agency. They also asked who would be responsible for lost or stolen checks.

Response: The IV-A agency is responsible for correcting errors related to the pass-through. However, if the IV-A agency has contracted the payment issuance to the IV-D agency, recovery may also be contracted to the agency. In the case of an overpayment of the pass-through, the IV-A agency must attempt to recover the money from the recipient. If a recipient refuses to return the overpaid pass-through amount, the overpaid amount is considered income and should be taken into account in computing the need for and the amount of the AFDC assistance payment. The IV-A agency must follow the necessary notice and hearing provisions.

The agency that issues a pass-through check that is lost or stolen is responsible for following the same procedure for handling lost or stolen pass-through checks that it uses to handle any other State-issued checks that are lost or stolen.

Comment: One State asked how the $50 disregard is to be treated when the individuals in the court order live in separate households.

Response: When the children and/or spouse who are covered by a court order reside in separate households, the individuals in each household are entitled to their pro-rata share of the amount collected if the court order does not specify an amount per individual or group. An amount up to the first $50 of the total pro-rata share of support for each household must be passed through to that household and disregarded in determining need and amount of assistance.

Example: Assume a support collection of $100, five children subject to the court order, two in one AFDC household and three in another. The support for the household with two children is $40. The support for the household with three children is $60. Each household is entitled to have up to the first $50 of support disregarded. The household with two children would receive $40 and the household with three children would receive $50. If the total support collection were $120, the pro-rated support for the first household would be $48, and for the second household, $72. The first household would receive and have the entire $48 disregarded, but the second household would receive only $50 of the $72 and that $50 would be disregarded.

Comment: Several commenters asked whether the IV-A agency may retain the $50 pass-through amount as payment on an overpayment of assistance.

Response: The IV-A agency may not retain the $50 pass-through as partial or total payment of a previous overpayment of assistance. However, if recovery is being made from the AFDC grant, the amount of the pass-through is included in determining the combined amount of the aid, income, and liquid resources for purposes of determining the maximum amount by which the grant may be reduced under § 233.20(a)(13)(i)(A)(*2*).

Exclusion of Burial Plots, Funeral Agreements, and Certain Real Property From Resource Test (Section 233.20(a)(3) of the Final Regulations)

Under prior law, a family was considered ineligible for any month it had resources over $1000 (or such lower amount set by the State.) Excluded from consideration were only: the equity value of a car up to $1500 (or a lower amount set by the State); a home owned and occupied by the family; and, at State option, basic items essential to day-to-day living, such as clothing, furniture, and other essential items of limited value.

Section 2626 of DEFRA amended section 402(a)(7)(B) to require States to exclude from consideration as a resource, in accordance with regulations prescribed by the Secretary, funeral agreements covering family members, and one burial plot for each family member. To allow States flexibility to establish definitions and limits which conform to State laws and regulations, the Secretary has placed few limits on the type of funeral agreements to be excluded as discussed in a comment below. Consistent with the policy in the SSI program, we have established a maximum equity value of $1500 per family member for bona fide funeral agreements. States may set a lower amount, just as they may with the basic resource limit or the equity value of a car as described above. In addition, the Secretary has authorized States to define the term "burial plots" for purposes of this exclusion. Such

definitions and limits must be specified in the State plan. For purposes of this discussion, "family member" means a member of the assistance unit.

Section 2626 of DEFRA also provides for the exclusion, for a period of time prescribed by the Secretary, of otherwise non-excludable real property which the family is making a good faith effort to sell. Eligibility for assistance during this period is conditioned on disposal of such property. Any payments made during the period are considered overpayments at the time of disposal, to the extent that payments would not have been made had disposal occurred at the beginning of the period.

In determining the time period for disposal of non-excludable real property, we considered the committee report for this provision, which indicates that Congress intended AFDC policy to be similar to SSI policy (the SSI time limit is nine months). For this reason, we have provided States the option to be consistent by extending the six-month time period by an additional three months. In addition, we have required that, as in SSI, the applicant must agree, in writing, to dispose of the property, and to make repayment of any AFDC benefits that would not have been received had disposal occurred at the beginning of the period.

At the time of disposal, any payments made since the agreement was entered into are overpayments to the extent they would not have been paid had disposal occurred at the beginning of the period. The amount to be recovered cannot exceed the amount of the net proceeds from the disposition of the property. However, if the net proceeds from the sale of the property, together with all other resources at the beginning of the disposal period, are under the State's resource limit, no overpayment would exist.

The interim final rule also provides that if a recipient family becomes ineligible for other reasons during the disposal period, or if disposal is not completed by the end of the period, then: (1) Eligibility for continuing benefits ceases; and (2) all payments made during the period are overpayments which the State must begin to recover. There have been a number of successful legal challenges to the policy set forth in (2). The courts in these cases have concluded that, so long as a recipient is continuing to make a good faith effort to sell the property, neither may an amount of overpaid assistance be computed, nor may any assistance be recovered. Accordingly, we have decided to provide in the final rule that, if a recipient (1) becomes ineligible for AFDC due to other reasons during the disposal period while making a good faith effort to sell the property or (2) fails to sell the property by the end of the period despite a continuing good faith effort, then no overpayment attributable to the real property may be calculated nor may recovery be made until the property is, in fact, sold. Finally, we are retaining the provisions of the interim final rule that each State will define the concept of a "good faith effort" and that a recipient will not be eligible for continued AFDC at the end of the six or nine month conditional payment period if the property remains unsold.

This provision applies to both applicants and current recipients. It does not change the longstanding policy to permit States to establish provisions governing transfer of assets prior to application and placement of liens on real property.

Comment: Several commenters suggested that for ease of administration and consistency with SSI, the AFDC program use the SSI definition of "immediate family" for purposes of the burial plot/funeral agreement exclusion, i.e., "an individual's minor and adult children, including adopted children and stepchildren, and individual's brothers, sisters, parents, adopted parents and the spouse of these individuals." Commenters argued that limiting the exclusion to members of the assistance unit is too restrictive, e.g., an AFDC mother who owns burial plots for children who left home. Another commenter expressed concern specifically about SSI children and requested exclusion of burial plots for such children.

Response: Section 402(a)(7) of the Social Security Act speaks specifically to the exclusion of resources in relation to the child or relative claiming aid, or "other individual (living in the same home as such child and relative) whose needs the State determines should be considered in determining the need of the child or relative claiming such aid * * *." Excluding burial plots/funeral agreements for individuals other than these is beyond the scope of the statutory provision. The reference to the legislative history regarding consistency with SSI applies only to the provision concerning real property.

Comment: One commenter asked whether a savings account established and designated to be used for funeral expenses can be excluded from consideration as a resource under the provisions exempting funeral agreements.

Response: While States are permitted the flexibility to establish definitions and limits which conform to State law and regulations, this exclusion does not apply to passbook bank accounts, simple set asides of savings, cash surrender value of life insurance policies, etc. The provision only addresses formal agreements for funeral and burial expenses such as burial contracts, burial trusts and other funeral arrangements (generally with licensed funeral directors.) The regulations have been clarified accordingly.

Comment: One commenter asked how funds in a funeral agreement which exceed the $1500 limit are to be treated.

Response: Funds in excess of the $1500 limit (or a lower amount established by the State) are applied against the general resource limit. Language has been added to the regulation at § 233.20(a)(3)(i)(A)(*4*) to clarify this policy

Comment: One commenter asked when the six-month period of conditional eligibility begins. Is it the (a) date of application, (b) date on which the conditional payment agreement is signed, (c) date of authorization, (d) date of payment, or (e) some other date?

Response: For applicants, the period begins with the first payment month for which eligibility has been determined and assistance authorized. For recipients who acquire property while on the rolls, the period begins with the payment month in which the recipient receives the property. We have made this clarification in the regulation.

Comment: One State asked what happens if a case is closed before the six-month disposal period ends and the property remains unsold when the family later reapplies. Is the family entitled to the balance of the six-month disposal period?

Response: If the case is closed before the six-month disposal period ends and the family reapplies within that period, the family is entitled to a continuation of the disposal period for the balance of the original six months. However, if the family reapplies after the six-month period expires, they are not entitled to any further disposal period for that property. In other words, the six-month period (or nine months, at the option of the State) runs for six (or nine) consecutive months regardless of whether assistance is received during that period.

Comment: Several commenters believe that if, under the real property conditional payment exclusion, the property is not sold by the expiration of the six-month disposal period (or nine months, at the option of the State), assistance received during this period should not be considered an overpayment. The commenters argue

that the statutory language provides that any payments of aid received during the six (or nine) month disposal period are considered overpayments at the time of disposal and the property has not in fact been disposed of by the family.

Response: As discussed above, we have reconsidered the position taken in the interim final rule with respect to the consequences when excess property has not been sold at the expiration of the disposal period. In light of recent court decisions, we have changed the policy to provide that no amount of overpayment will be calculated or collected until the property is sold so long as the recipient is making a good faith effort to sell the property. However, if at the end of the disposal period, the recipient is not making a good faith effort, then the amount of the overpayment is to be calculated and collected. An overpayment results to the extent that AFDC payments would not have been made if the property had been disposed of at the established fair market value at the beginning of the period.

Comment: One commenter asked whether the real property exclusion applies to real property which causes the countable resources to exceed the limit when combined with other countable resources, or only real property which alone is in excess of the resource limit.

Response: Regardless of whether the equity value of the real property alone exceeds the resource limit or only in combination with the equity value of personal property, the State would exclude the real property which the family is making a good faith effort to sell and condition eligibility on the disposal of the real property.

Comment: Another commenter asked whether under the conditional payment agreement, non-excludable real property must be disposed of at fair market value? What consequence would result from a "convenience" transfer of property, for example, conveying it to a family member?

Response: Once the family enters into the conditional payment agreement, any disposal of the non-excludable real property must be a bona fide arms-length transaction at fair market value. A "convenience" transfer at less than the established fair market value would circumvent the statutory requirement that there be a good faith effort to dispose of the property. In that event, an overpayment results to the extent that AFDC payments would not have been made if the property had been disposed of at the established fair market value at the beginning of the period. Overpayment recovery would be made pursuant to § 233.20(a)(13).

Comment: Two commenters suggest that the amount of net proceeds from the sale plus the value of other countable resources held at the time of the agreement be reduced by the $1000 resource limit (or lower limit set by the State) to determine the net proceeds available to repay the assistance received during the conditional payment period.

Response: The statute states that aid paid during this period is an overpayment to the extent it would not have been paid at the beginning of the period. There is no provision for reducing the amount of the proceeds by the amount of the resource limit. However, encumbrances and expenses related to the sale of the property must be excluded in determining the net proceeds of the sale and therefore must be excluded in determining whether aid would have been paid at the beginning of the period.

Comment: One commenter expressed concern about the seeming inequity in the following two situations. In the first, a recipient signs an agreement under the conditional payment provision, receives assistance within the specified conditional payment period, sells the property, but fails to honor the agreement, spending the proceeds of the sale rather than reporting receipt and making repayment. In this instance, AFDC could continue, as the individual no longer owns property exceeding the limit. In the second, the individual signs the agreement, receives AFDC but has not sold the property at the expiration of the disposal period. When the period expires, the case is closed and this individual is expected to repay benefits received when the property is sold, and is ineligible for continued assistance as he still owns property exceeding the limit.

Response: While inequities like this could occur in that the recipient who fails to honor the agreement can continue to receive assistance (although recovery of the overpayment must be initiated) while the other recipient remains ineligible, the State agency may avoid this inequity by placing a lien on the property as part of the agreement. That is, with a lien in place, the State would receive the amount it was owed directly from the proceeds of the sale when the property was sold.

Comment: One commenter asked how the proceeds are treated and eligibility determined between the sale of property and repayment.

Response: Consistent with SSI policy, once the excess real property is sold, the recipient has five working days from the date he or she realizes cash from the sale to repay the overpayment; failure to make repayment within this period results in the cash retained being considered to be an available resource.

Comment: One commenter asked if the property is sold after the expiration of the specified time under the conditional payment agreement, and the proceeds are less than the amount of the assistance paid, whether the State should still collect the total amount of assistance paid or only an amount up to the proceeds of the sale.

Response: Assuming a good faith effort was made to dispose of the property, the overpayment to be recovered under the conditional payment agreement cannot exceed the net proceeds from the disposal of the property regardless of whether the property is sold after the expiration of the disposal period or sometime during the disposal period. However, if the property was intentionally sold at less than fair market value so that a good faith effort to sell was not made, an overpayment results to the extent that AFDC payments would not have been made if the property had been disposed of at the established fair market value at the beginning of the period.

Comment: One commenter asked how to treat assigned child support that is collected by the IV-D agency during the six-month disposal period.

Response: Such support which was used to reimburse the State for AFDC payments made for those six months reduces the assistance unit's indebtedness.

Earned Income of Full-Time Students (Section 233.20(a) (3) and (11) of the Final Regulations)

This regulation implements section 2642 of DEFRA which amended sections 402(a) (8) and (18) of the Act. Section 2642(a) amended section 402(a)(18) to permit States to exclude for up to six months all or any part of the earned income of a dependent child who is a full-time student in the determination of whether the family's income exceeds 185 percent of the State's standard of need. Section 2642(b) of DEFRA amended section 402(a)(8)(A) of the Act by adding a new clause (vii) which permits States to disregard all or any part of the earned income of a dependent child who is a full-time student and is applying for AFDC in the determination of need under section 402(a)(7) of the Social Security Act, but only to the extent the State disregards such income in determining whether the family's gross income exceeds 185 percent of the State's need standard.

The legislative history of this provision indicates that Congress intended to allow States the authority to disregard, in the determination of eligibility under the gross income limit, earned income which is received by an AFDC child who is a full-time student. As in the case of earnings derived from participation in a program under the JTPA, States may exclude all or a portion of the earned income of a dependent child for up to six months.

The regulation provides that States must specify in their State plans what portion, if any, of the earned income will be disregarded under this disregard provision and the length of time the disregard will be applied (up to six months). Consistent with the JTPA regulations, the six-month limitation is per calendar year (see final rules published December 13, 1984, 49 FR 48547–48550).

The full-time student disregard in section 2642(a) of DEFRA does not override the six-month limitation on the disregard of earned income derived from participation in JTPA programs provided in section 402(a)(8)(A)(v). Thus, earned income of a dependent child who is a full-time student and who is participating in a JTPA program may be disregarded in the determination of eligibility under the gross income limit for a maximum of six months per calendar year, not for 12 months. However, if a full-time student secures employment unrelated to JTPA participation, a second six-calendar-month period could be established by the State under this provision. Thus, up to 12 months of disregard are available, but no more than 6 months for JTPA-related employment and another 6 months for non-JTPA related employment. Where the State disregards, under the JTPA disregard provision, only a portion of the dependent child's JTPA earnings received for a month or none of the JTPA income, any portion of the income which was not disregarded under the JTPA disregard provision for that month may be disregarded under the full-time student disregard provision.

Application of the Disregard

The disregards in this regulation are applicable only to the earned income of dependent children who are full-time students. Earned income of other children is treated as any other earned income and disregarded to the extent required or permitted under other provisions of section 402(a)(8) of the Social Security Act and regulations at § 233.20(a)(11).

The AFDC program has a three-step process for considering income in determining whether a family may receive AFDC, i.e., application of the 185 percent gross income limitation, determination of whether the family is needy under the State's need standard, and determination of financial eligibility and the amount of the assistance payment in relation to either the State's need or payment standard. The amendment to section 402(a)(18) affects only the first step and the amendment to section 402(a)(8)(A) affects the second and third steps.

Gross Income Limitation

First, the family's total income is measured against 185 percent of the State's standard of need. In making this determination, when a dependent child who is a full-time student has earned income which the State elects to disregard under this regulation, the amount to be disregarded is not counted in determining whether the family's total income (without benefit of other disregards in section 402(a)(8) of the Act except, at State option, section 402(a)(8)(A)(v)) is in excess of 185 percent of the standard of need for a family of the same size (including special needs). If the family's income exceeds that amount, the family is ineligible for assistance. If the family's total income does not exceed 185 percent of the standard of need, the process continues.

Determination of Need and the Amount of the Assistance Payment

The second step in the eligibility process for determining whether a family may receive AFDC is to measure the family's income, after appropriate disregards, against the standard of need. Under prior law, in determining need, only the earned income of full-time students who were recipients was disregarded. The DEFRA legislation added a new section 402(a)(8)(A)(vii) to the Act. This section permits States, in making the determination of need, to disregard also the earned income of a dependent child who is applying for AFDC, if the child is a full-time student. However, in order to elect to disregard this income in determining need, the State must also have elected to disregard it in determining whether the family's gross income exceeds 185 percent of the State's standard of need. If the family's income, after application of appropriate disregards, exceeds the State's standard of need, the family is ineligible for assistance. However, if the family's countable income does not exceed the need standard, then there is a third step, i.e., determining the amount of the assistance payment. In making this determination, the earned income of a dependent child who is a full-time student is disregarded in accordance with section 402(a)(8)(A)(i) of the Social Security Act and regulations at § 233.20(a)(11) (i)(A) and (ii)(A) which require that all the earned income of a dependent child who is a full-time student receiving AFDC be disregarded.

Comment: Several States asked whether a State may choose which six months during a calendar year to apply the full-time student disregard, e.g., only those months in which the amount of a student's earned income is enough to cause his/her family to lose eligibility without the disregard.

Response: Yes. This is a reasonable application of the disregard provision. The statute requires that States disregard earned income of a child who is a full-time student in determining the amount of benefits. However, prior to DEFRA, the statute also required that States count a student's earned income in determining whether his/her family's total income exceeded 150 percent of the standard of need and, for applicant children, in determining whether the family was in need. As the intent of the DEFRA full-time student disregard is to avoid, for up to six months per calendar year, families being made ineligible due to a full-time student's earned income, it is consistent with congressional intent to apply the disregard only when the family needs it to retain eligibility.

Comment: Two commenters asked whether the JTPA earned income disregard and the full-time student disregard may be applied simultaneously, e.g., when a full-time student is participating in a JTPA program and also has a newspaper route.

Response: Yes. However, the six-month limitation on the exclusion of either JTPA or non-JTPA income stipulated at § 233.20(a)(3)(xix) run independently. Thus, each disregard can only be applied for individual six-month periods, although the time periods may run simultaneously.

Comment: One commenter requested clarification concerning whether earned income received by a part-time student may be disregarded under the DEFRA student disregard provision in determining whether a family's income exceeds 185 percent of the State standard of need.

Response: The statutory language of the DEFRA student income disregard provision limits application of the disregard to the earned income of children who are full-time students. Earned income of part-time students must be counted in determining whether a family's income exceeds 185 percent of

the standard of need, unless the income is JTPA earnings.

Comment: One commenter asked whether a State may opt to disregard only non-JTPA related income under the full-time student provision.

Response: Yes. In providing new authority to disregard non-JTPA earnings, Congress did not intend to limit or take away the flexibility States have had regarding the disregard of JTPA income.

Comments: One commenter asked whether a State may opt to disregard JTPA earnings for six calendar months and then disregard earnings from other sources for another six calendar months.

Response: Yes. The full-time student disregard and the JTPA disregard are separate provisions.

Recalculation of Ineligibility Caused by Lump Sum Income (Section 233.20(a)(3)(ii)(F) of the Final Regulations)

Section 402(a)(17) of the Act requires non-recurring lump sum income received in a month to be considered available in the month it is received and also in future months. Thus, if such income, along with other income received in that month, exceeds the standard of need, the family is ineligible in that month, or at State option, ineligible not later than the corresponding payment month. In addition, any amount of the remaining income that exceeds the initial month's need standard is divided by the monthly need standard, and the family is ineligible for aid for the number of additional months resulting from that calculation.

Prior to DEFRA, however, the statute contained no specific provision for shortening the period of ineligibility. Nevertheless, the regulation at § 233.20(a)(3)(ii)(D) permitted a State to shorten the period of ineligibility, but only if a life-threatening circumstance, e.g., a medical emergency, fire, flood, or other natural disaster, occurred prior to the expiration of the period of ineligibility which required the assistance unit to expend part or all of the lump sum income to meet such a circumstance. The period of ineligibility could be shortened under the following specified conditions: (1) The family must have used its lump sum money to meet essential needs, (2) the family must have had no other income or resources available, and (3) the family must have expended or would expend some of the remaining lump sum in connection with the life-threatening circumstance.

Section 2632 of DEFRA amends section 402(a)(17) of the Act to provide for three situations where the State may, at its option, shorten the period of ineligibility. The three situations are:

(1) *An event occurs which would have affected the amount payable if the family had been receiving aid.* Although many events occur which can affect the amount payable, i.e., the grant, the period of ineligibility caused by the lump sum can only be recalculated when the event also affects the need standard. This is the case because the method of calculation of the period of ineligibility is not changed by DEFRA. Under section 402(a)(17) of the Act, in order to calculate the number of months of ineligibility, the total income is divided by the need standard. Thus, the only way the number of months can be reduced is if that divisor, i.e., the need standard, is increased. Therefore, a decrease in the income of the family would not in and of itself cause a recalculation. The need standard must also be affected. For example, assume a family with unearned income of $200 (disability benefit) receives a lump sum of $2,000 on April 1. The need standard is $400. The lump sum of $2,000, along with the $200 unearned income received in April exceeds the standard of need, and the family is ineligible in that month. The family is ineligible for 5 months, April through August, assuming the State elects to begin the period of ineligibility with the month of receipt of the lump sum, with $200 to be applied in the first month of eligibility following the period of ineligibility (dividing the $2,200 income by the monthly standard of $400). In June, the family's $200 monthly disability benefit is discontinued. There has been no change in the need standard of $400, however, which remains the divisor. Assume that a recalculation was done in June, under the supposition that $1,400 of the lump sum was still available, since the family should have budgeted $400 for April and May. The $1,400 is divided by the standard of need of $400, continuing to leave 3 more months of ineligibility, i.e., June through August, with $200 to be applied to the first month of eligibility following the ineligibility period.

Examples of events which could result in a recalculation include: An increase in family expenses, such as rent, in a State where a portion of the need standard, e.g., shelter, is based on actual costs; eligibility for a special need item; and any general increase in the need standard. In the interim rule, we said that, as in the past, when a child is born to a family whose members are ineligible due to prior receipt of a lump sum, the child is treated as a separate assistance unit. We viewed the option in the statute of shortening the period of ineligibility as only applying to persons who are already ineligible due to a prior receipt of a lump sum. We have reconsidered this position in light of comments received and determined that when there is an addition to the family unit during the period of ineligibility, the need standard to be used in the recalculation for States opting for this provision must include additions to the family during the period of ineligibility who are otherwise eligible for assistance, e.g., a newborn, a child returning home, or any other individual now required to be included in the assistance unit. However, if the individual added to the unit for purposes of recalculating the period of ineligibility subsequently leaves the unit, the lump sum period of ineligibility does not follow that individual nor is the period of ineligibility recalculated for remaining members of the unit.

(2) *The lump sum or a portion of the lump sum becomes unavailable to the family for a reason that is beyond the family's control.* In order to provide States with maximum flexibility in implementing this provision, we have left the definitions of "unavailable" and "beyond the family's control" to the States. Examples might include loss or theft of income, or a life-threatening circumstance. The recipient must show that the factors resulting in the income becoming unavailable were beyond the family's control. States that elect this option must develop guidelines for determining when a lump sum becomes unavailable to a family for reasons beyond its control and must substantiate such a finding in the case record.

(3) *A family member incurs and pays for medical expenses, as approved by the State, in a month during the period of ineligibility caused by receipt of a lump sum.* A State choosing this option must specify in its plan which medical expenses are allowable under this provision. For recalculations due to medical expenses, States need not initiate the recalculation until the total medical expenses equal or exceed the amount of any remaining income left after determining the number of months of ineligibility. This is because the number of months of ineligibility will not change until income is reduced by that amount.

Based on the statutory language, the recalculation in the first situation above is done as of the month the event occurs. In doing the recalculation, the amount of funds that should be available in that month based on the previous calculation is divided by the standard of need applicable to that month. For example, a family with no other income receives a

lump sum of $2,000 on April 1. The need standard is $400. The family is ineligible for 5 months, May through September (assuming the State elects to begin the period of ineligibility in May rather than April). In July, the need standard is increased to $500. The recalculation in July would be done with the assumption that $1,200 of the lump sum was still available, since the family was expected to have budgeted $400 for May and June. The $1,200 is divided by the increased standard of need of $500. The family is ineligible for July and August and $200 would be counted as income in September.

Other Provisions

Section 2632 of DEFRA also amended section 402(a)(17) of the Act to make two clarifications. The legislative history (statement in the Congressional Record entitled "Clarification of Section 2632, Deficit Reduction Act of 1984", S 10644, August 10, 1984, by Senator Dole, Chairman of the Senate Finance Committee) shows that the purpose of this provision of DEFRA is to clarify the original intent of Congress as to the applicability of the lump sum provision. Senator Dole states that because some courts have interpreted the lump sum provision as enacted in the Omnibus Budget Reconciliation Act of 1981 to apply only to families that have earned income at the time they receive a lump sum, the intent of section 2632(b) of DEFRA is to clarify that the 1981 lump sum provision was always intended by Congress to apply to all families, not just those with earned income. Therefore, the statute now specifies that the lump sum provision applies to all applicants and recipients, and any person whose needs a State considers in determining family income (regardless of whether they have any other income, or whether their other income is earned or unearned). This includes essential persons and stepparents in States with laws of general applicability. (This provision does not apply to stepparents in States without laws of general applicability who are not applying for or receiving AFDC. In these States, the lump sum income of a stepparent is counted in accordance with § 233.20(a)(3)(xiv) of the regulations.)

In addition, the statute specifies that the lump sum income may be either earned or unearned income.

Comment: Several commenters, including the chairman of the authorizing House subcommittee, believe States should be allowed to recalculate the period of ineligibility based on the birth or addition of a child to the household rather than requiring the child to be viewed as a new assistance unit. The commenters variously argue that (1) the statute at section 402(a)(17)(A) states in part, "* * * the family of which such person is a member shall be ineligible for aid," and, therefore, a newborn is as much a family member as are the members who were receiving assistance when the lump-sum payment was received, (2) including the newborn as a family member while recalculating the period of ineligibility is consistent with the standard filing unit provision, and (3) the House legislative history specifically cites increased need due to a birth of a child as a situation in which the period of ineligibility should be shortened.

Response: We agree with the commenters. For States that have elected the option to shorten the period of ineligibility when an event occurs which would have affected the payment amount had the family been receiving aid, the period of ineligibility must be recalculated when an individual joins the family, rather than creating a separate assistance unit for that individual. The need standard to be used in the recalculation includes additions to the family during the period of ineligibility. Examples of situations requiring recalculation include the birth of a child, a child returning home, and the presence in the home of any other individual now required to be in the assistance unit. However, if the individual added to the unit for purposes of recalculating the period of ineligibility subsequently leaves the unit, ineligibility does not follow that individual. We have revised the regulation accordingly.

Comment: One commenter asked whether the example given in the preamble to the interim final rules on how to recalculate the period of ineligibility, which is restated in the discussion of (3) above, is the only acceptable formula.

Response: The procedure described in the interim final rules for recalculating the number of months of ineligibility is one method that comports with the statute. It would also be permissible for a State to use another method as long as that method results in the same number of months of ineligibility and same remainder.

Comment: One commenter asked whether the lump-sum provision applies if the lump sum is received by an ineligible or sanctioned parent or sibling, or a stepparent living in the home. Further, if one of these individuals is not the one who receives the lump sum, would this individual be considered in computing the period of ineligibility and in recalculating the period of ineligibility?

Response: In general, lump sum income received by an individual who is not an applicant, a recipient, or a person whose needs are not taken into account in determining the assistance unit's needs and amount of assistance does not trigger the lump sum rule. The rule does apply to the income of a "sanctioned person"—i.e., a person who must be in an assistance unit under section 402(a)(38) of the Act but who (1) does not meet a condition of his or her eligibility for assistance, or (2) is required by law to have his needs excluded from his family's AFDC grant calculation due to the failure to perform some action. Excluding the needs of such an individual from the assistance unit should not also result in excluding their income because this would defeat the purpose of the assistance unit provision and the sanction as discussed in the preamble sections entitled, "Individuals Who Must File for Assistance as a Unit" and "Treatment of Sanctioned Persons Who Are Required To Be in the Assistance Unit."

Thus, for example, the lump sum rule applies to the income received by the parent of a dependent child who is ineligible for AFDC because she did not assign support rights to the State pursuant to section 402(a)(26) of the Act. Similarly, the rule would apply to the income of a sibling who fails to meet a JOBS participation requirement and, thus, pursuant to section 402(a)(19)(G) of the Act, may not have his needs taken into account in determining the assistance unit's need and amount of AFDC. However, because these individuals are subject to sanctions, their needs are not taken into account in determining the period of the assistance unit's ineligibility for AFDC. Once the sanction ceases their needs are to be taken into account and the period of ineligibility is to be recalculated.

In the case of a stepparent living in the same household as his stepchild who is a dependent child, any lump sum income received by the stepparent would be considered available to the unit pursuant to section 402(a)(38) of the Act if the stepparent is a parent under § 233.90(a)(1)—i.e., the State has a law of general applicability that requires stepparents to support stepchildren to the same extent as natural or adoptive parents. Otherwise, the lump sum income would be attributable to the extent provided under section 402(a)(31) of the Act. The needs of the stepparent would be taken into account in determining the period of ineligibility

only in a State that has a general law of applicability.

If an individual is not the recipient of the lump sum, his needs are required to be taken into account in determining the needs of the unit, and he is not subject to a sanction, then his needs are considered in the need standard amount which is divided into the lump sum amount in order to determine the period of ineligibility. If he is subject to a sanction, his needs are not taken into account.

Comment: Several commenters prefer that we not require increases in both the need standard and amount payable under the first option in order to shorten the period of ineligibility. They believe that States should have more flexibility in this area.

Response: This issue was addressed in the preamble to the interim final regulations and restated above. Our position remains the same because of the statutory language, i.e., the period of ineligibility caused by the lump sum can only be recalculated when the event also affects the need standard because the method of calculation of the period of ineligibility is not changed by DEFRA. Under section 402(a)(17) of the Act, in order to calculate the number of months of ineligibility, the total income is divided by the need standard.

Comment: One commenter asked whether the State can recalculate the period of ineligibility if an assistance unit member takes the lump sum and leaves the family. That is, would this situation fall within the category of the lump sum being unavailable due to a circumstance beyond the family's control?

Response: States are responsible for defining the circumstances for which the period of ineligibility is recalculated due to circumstances beyond the control of the family which result in the lump sum no longer being available. However, the case file must clearly establish that the lump sum is not available to the remaining family members and became unavailable due to reasons beyond their control.

Comment: One commenter asked if, in recalculating the period of ineligibility, the recalculation is based on the current family size if an individual has left the family, or the original family size.

Response: In this situation, if the only factor that has changed is that an individual who was in the original unit has left the family, the original calculation would stand. Otherwise, the recalculation would result in lengthening the period of ineligibility contrary to the intent of the provision which is to permit the State to consider shortening the period of ineligibility under the circumstances specified in section 402(a)(17) of the Act. However, if another factor has changed in the family situation in addition to an individual leaving the unit, i.e., there has been an increase in the need standard, then a recalculation would be done considering all the factors that have changed and the points at which they occurred. If the recalculation taking all factors into consideration results in shortening the period of ineligibility, the appropriate action would be taken to do so. Again, however, if the recalculation would result in a lengthening of the ineligibility period, the original calculation would stand.

Comment: One commenter asked whether it is possible to retroactively recalculate the period of ineligibility because of a change in need and payment, i.e., does the State recalculate from the date the event occurred, or from the date the family reports the event? (For example, if a recipient reports in June that needs increased in April, should the State recalculate the period of ineligibility using the increased need standard beginning in April or June?)

Response: The State must recalculate the ineligibility period as of the date the payment-affecting event occurs, i.e., April, in the example given. However, no retroactive benefits may be paid should the recalculation result in the period of ineligibility ending in April or May in the example above. Payments would begin prospectively based on the date the family reapplied for assistance and met all conditions of eligibility.

Comment: One commenter asked that since the interim final regulation indicates that nonrecurring earned income is to be treated as lump sum income, we provide examples of nonrecurring earnings. The commenter also asked whether regular earnings which exceed the State's need standard are to be handled as a lump sum.

Response: Whether a payment is to be viewed as lump sum earned income depends on the nature of the payment, i.e., whether it represents a part of regular ongoing earnings or is a one-time nonrecurring payment that is separate from the regular earnings payments. For example, severance pay represents non-recurring compensation outside regular earnings, and thus constitutes earned lump sum income. On the other hand, overtime pay is a recurring part of regular ongoing earnings and therefore is treated as income in the month received, not as a lump sum.

Comment: In recalculating ineligibility caused by lump-sum income, one commenter asked if the medical expenses do not equal or exceed the amount of remaining income left after determining the number of months of ineligibility to be applied as income to the first month of eligibility, whether the medical expense may be deducted from the remaining income to lessen the amount of income applied in that month. The commenter also asks if this would be applicable to a portion of the lump sum which becomes unavailable to the family for reasons beyond the family's control.

Response: Yes. If there are medical expenses, recognized under the State plan, that do not equal or exceed the amount of remaining income to be applied in the first month of eligibility following a period of ineligibility, that expense may be used to reduce the amount of income applied in the first month following the period of ineligibility. Likewise, the portion of the lump sum which has become unavailable to the family for reasons beyond its control may be used to reduce the amount of remaining income to be applied in the first month. For example, a family receives a $1,000 lump sum. The applicable standard of need is $300. The family is ineligible for three months—January, February and March—and has $100 income in April. If $200 is stolen from the family in January, after the recalculation, the family is ineligible for January and February and has $200 income in March. However, if the amount stolen is $50, the only change is that income for April is reduced by $50.

Clarification of Earned Income Provision (Section 233.20(a) (3)(ii)(D), (6)(iii), (7)(ii) and (11)(i) of the Final Regulations)

In OBRA, section 402(a)(8) of the Act was amended to standardize the work expense disregard ($75 per month) and cap dependent care costs ($160 per month per dependent) for full-time employment and less for part-time employment. Prior to DEFRA, there were conflicting court decisions concerning whether to apply that work expense disregard to gross income or income remaining after deduction of mandatory payroll expenses. However, on February 27, 1985, the U.S. Supreme Court held in *Heckler* v. *Turner*. 470 U.S. 184 (1985) that the work expense disregard applies to gross income.

Section 2625 of DEFRA added section 402(a)(8)(C) to the Act to clarify that the State agency shall apply the $75 work expense disregard against gross earned income and not to net income after deductions for taxes or for any other purposes.

In the interim final rules, § 233.20(a)(6)(iii), which defines "earned income", was amended to clarify that earned income means gross earned income prior to any deductions for taxes or for any other purposes. Sections 233.20(a)(7)(ii) and 233.20(a)(11)(i) were also amended to clarify that for AFDC the standard $75 work expense disregard is subtracted from gross earned income and is meant to recognize all work expenses (including tax deductions), other than dependent care, which the applicant or recipient may incur. Section 233.20(a)(7)(ii) which pertains to the preliminary step for applying the $30 and one-third disregard to an applicant's income has also been revised in relation to final regulations on Continuation of the $30 Disregard from Earned Income, to clarify that the $30 and one-third disregard is not applied to an applicant's earned income unless the individual has personally received AFDC in one of the four months prior to the month of application. In addition, since the term "net income" was misinterpreted to mean earned income remaining after mandatory payroll deductions, § 233.20(a)(3)(ii)(D) was further revised to delete the term "net income" and refer instead to "income after application of disregards" to more clearly reflect the statute. We also clarified in the interim final rule that the general provision on the availability of income and resources at § 233.20(a)(3)(ii)(D), which requires the taking into account of income and resources only when actually available, applies only where it is not inconsistent with another more specific provision governing the treatment of income or resources, such as the use of gross income or the deeming of stepparent income.

These regulatory changes affect the AFDC program only. Guam, Puerto Rico and the Virgin Islands, in administering the adult financial assistance programs, must still disregard all expenses reasonably attributable to the earning of income.

There were no comments concerning this provision. Therefore, the regulations published in the interim final rules are unchanged.

Gross Income Limitation (Section 233.20(a)(3)(xiii) of the Final Regulations)

OBRA limited AFDC eligibility to families whose gross income was 150 percent or less of the State's need standard. This limit was established in order to target AFDC benefits to those most in need.

Section 2621 of DEFRA amends section 402(a)(18) of the Act to increase this limit on gross income to 185 percent of the State's standard of need. Accordingly, § 233.20(a)(3)(xii) was amended in the interim final rules to embody this change. We also made a technical revision in this section to reflect only those disregards which are not applied in determining eligibility under this section.

There were no comments concerning this provision. Therefore, the regulations published in the interim final rules are unchanged.

Counting the Income of Parents of Minor Parents (Section 233.20(a)(3)(xviii) of the Final Regulations)

Under prior law, a minor could file for benefits solely on behalf of his needy child who then received aid without consideration of the income of the minor's parents. If the minor parent filed for benefits as well, his own parents' income could be considered under certain circumstances. Section 2640 of DEFRA requires that the minor parent must be part of the assistance unit. This section also adds section 402(a)(39) to the Act, which requires that the income of a minor's parent or legal guardian be considered in determining eligibility and payment, subject to the stepparent disregards in section 402(a)(31), if such individual lives in the same household as the assistance unit. For purposes of this section as mandated by section 1883(b)(3)(A) of the Tax Reform Act of 1986 (Pub. L. 99-514), a minor is one who is under age eighteen, as discussed below. For example, where a minor mother applies for AFDC for her child and both live with the minor's parents, the assistance unit would consist of the minor mother and her child. The income of the minor mother's parents would be considered available to the assistance unit, subject to applicable disregards described below. This provision also applies to the income of a parent or legal guardian of a minor legal guardian who files for assistance for a dependent child. Of course, if all these people file for AFDC (i.e., the dependent child, his parent who is also a dependent child, and that child's parents), then all their needs and income are considered as part of a single assistance unit.

Applying Disregards to This Income

Section 402(a)(39) of the Social Security Act provides that the income of a parent or legal guardian of a minor parent will be included only to the extent that the income of a stepparent would be included, pursuant to section 402(a)(31) of the Act. This means that in counting such income of a parent or legal guardian, the State must disregard all of the following income:

(a) $75 for work expenses for each parent or legal guardian. Although the statutory provision is not specific as to whether there should be only one exclusion or one for each employed parent or legal guardian, we have determined that in the case of more than one working parent or legal guardian, each should be given the benefit of the disregard because if each has a job, each has such expenses. This is consistent with existing provisions which provide separate work expense disregards to each working member of the assistance unit.

Section 1883(b)(1)(A) of the Tax Reform Act of 1986 (Pub. L. 99-514) extended the full $75 disregard to part-time and employment of less than a full month.

(b) An amount equal to the State's standard of need for a group with the following members:

(1) The parent(s) or legal guardian(s) living in the home; and

(2) Any other individuals living in the home who are not in the assistance unit, but who are dependents of the parent(s) or legal guardian(s). Thus, if there are two adult parents and a sibling of the minor mother living in the same household as the minor mother and her dependent child, the State would disregard an amount equal to the State's standard of need for three people.

(c) Amounts paid by a parent or legal guardian to support individuals outside the home who could be claimed as dependents; and

(d) Payments of child support and alimony by a parent or legal guardian to individuals outside the home.

Comment: A number of commenters asked how this provision applies to the counting of the income of a stepparent. Does the presence of the minor parent's natural parent affect how to count income of the stepparent?

Response: Nothing in either the statute or legislative history indicates that Congress intended this provision (section 402(a)(39)) to be applied to stepparents of minor parents. Therefore, a State may not count the income of a minor parent's stepparent, unless the State has a law of general applicability holding a stepparent legally responsible to the same extent as a natural or adoptive parent. This is true regardless of the presence of the natural parent. Section 402(a)(31) only provides for the counting of income of the stepparent of a dependent child. In this case, the minor is a parent claiming or receiving aid for a dependent child. Therefore, section 402(a)(31) is not applicable.

Comment: Another commenter asked if this provision applies to the resources of a minor parent's parents?

Response: This provision applies only to counting income of parents of minor parents.

Comment: Many commenters suggested that this provision be applied only to those who are minor according to State law. They believe that an emancipated 17-year-old, for example, even though living in the same household, should not be subject to deeming of parental income.

Response: Pursuant to the enactment of the Tax Reform Act, section 402(a)(39) provides that a minor, for purposes of this provision, is an individual who is "under the age of 18". For this reason, we have determined that section 402(a)(39) applies to all minor parents up to age 18.

Comment: One commenter asked how to treat the income of the parent of a minor if the grandchild resides in the home, but the minor parent leaves the home or becomes ineligible.

Response: The statute clearly indicates that the minor parent and child must both be living with the minor parent's own parent or legal guardian for the provision to apply. Therefore, if the minor parent is absent, the income of a parent or legal guardian is not counted unless he or she (1) makes the income available to the child, or (2) seeks assistance as the caretaker relative of the child.

However, the statute contains no requirement that the minor parent be eligible for AFDC in order for this provision to apply. Therefore, when a minor parent is not eligible for AFDC, due to citizenship requirements, for example, but lives in the same household, the income of his or her parent or legal guardian will be considered available to the assistance unit.

In the case of the minor parent's ineligibility due to SSI entitlement, the State must follow established procedures for deeming income when AFDC and SSI recipients live together. Income of the grandparent(s), including income previously deemed to the SSI recipient for the appropriate month, is deemed first to the AFDC recipients. If eligibility for AFDC exists, the State must then inform the Social Security Office that the income is being counted for AFDC purposes. SSI policy is to exclude any income used to determine another needs-based benefit from the deeming process.

Comment: Two commenters suggested that income of a legal guardian be excluded if the legal guardian is not considered financially responsible for the minor parent under State law.

Response: We are not addressing these comments in view of the statutory change contained in section 5053 of OBRA '90 (discussed in the "Legislative Clarifications Subsequent to Publication of the Interim Final Rules" section of this preamble).

Comment: When the minor parent reaches age eighteen, is deemed income deleted prospectively or retrospectively?

Response: Deemed income is deleted prospectively. For example, assume that a State uses a two-month retrospective budgeting cycle and the minor mother attains age eighteen in February. Her parent's income for February would be considered in determining the unit's eligibility for February. The parent's income for December would be used to determine the unit's payment for February. Beginning in March, however, the parent's income would affect neither eligibility nor payment for the assistance unit.

Continuation of $30 Disregard From Earned Income (Section 233.20(a)(11)(i)(D) and (ii)(B) of the Final Regulations)

Under prior law, application of the $30 and one-third earned income disregard to a recipient's earned income was limited to four consecutive months. This disregard was not available again until 12 consecutive months had passed during which the individual had not received AFDC.

Under section 2623 of DEFRA, the application of the $30 and one-third disregard is still limited to four consecutive months. However, after the $30 and one-third disregard has been applied to the earned income received in four consecutive months, the $30 disregard continues to be available for eight additional months. After this time, the disregards are not available again until 12 consecutive months have passed during which the person did not receive AFDC. The amendments to section 402(a)(8) of the Act made by this section of DEFRA are extremely complex. After careful review, the position taken in these regulations is the only reasonable interpretation that gives effect to all parts of the provision.

However, we have revised the discussion of the method for applying the $30 disregard to provide a more comprehensive explanation of the policy than was provided in the interim rules. No change in the policy set forth in the interim rules is made in these final rules.

The AFDC program has a three-step process for determining eligibility and amount of benefits. The family's income (with very limited earned income disregards, and any unearned income disregards) must first be measured against 185 percent of the State's need standard. If the income is less than 185 percent of the State's need standard, the process continues. The family's income (less disregards for work expenses, dependent care, and excludable unearned income) is then measured against the State's need standard to determine whether the family is in need. If so, the remaining income with additional disregards is subtracted from the payment standard or need standard to determine the amount of benefits. The $30 and one-third and $30 earned income disregards are not applied in determining whether the family's income is less than 185 percent of the need standard. Nor is the $30 and one-third disregard applied to applicants for assistance in determining whether they are needy, unless the person has received AFDC during one of the four preceding months and meets one of the following conditions: (1) The person has not received the disregard in four consecutive months since October 1, 1981; or (2) the person has already received the disregard in four consecutive months since October 1, 1981; however, at some time after the fourth consecutive month in which the disregard was applied, the person did not receive AFDC for a period of 12 consecutive months.

In order to eliminate ambiguity between § 233.20(a)(7)(ii) and § 233.30(a)(11)(i)(D), we have revised § 233.20(a)(7)(ii) to clarify that the $30 and one-third disregard is not applied to an applicant's earned income unless the individual has personally received AFDC benefits in one of the four months prior to the month of application. For example, a mother who recently became employed and her 6-year-old child have received AFDC for one year. The mother's 17-year-old child, who is not a student and is employed full-time, returned to the home. In determining whether the assistance unit (consisting of the mother, 6-year-old child, and 17-year-old child) is needy, the assistance unit's income (after appropriate disregards) is compared with the State's need standard for a unit of the same size and composition. If the unit's countable income does not exceed the need standard, the unit is determined to be needy. Countable income for this purpose is comprised of the mother's gross earned income (after deducting the standard work expense disregard, dependent care disregard (if appropriate) and the $30 and one-third disregard) plus the 17-year-old child's gross earned income (after deducting the

standard work expense disregard). If the assistance unit is needy, the $30 and one-third disregard would be applied to the 17-year-old child's earned income in determining the amount of AFDC benefits.

After the fourth consecutive month that the $30 and one-third disregard has been applied to the person's earned income, the person is eligible to receive the $30 disregard for eight additional months. Since the $30 disregard is a continuation rather than an entirely separate disregard, it is applied differently than the $30 and one-third disregard in two ways. First, the eight-month period runs continuously regardless of whether the person receives either AFDC or earned income during all or part of the period. Where a person becomes ineligible for AFDC before the $30 disregard has been available for a full eight-month period, the $30 disregard can be extended for any of the remaining months if he/she reapplies during the eight calendar month period. Second, the person is not required to have received AFDC during one of the four prior months to qualify for the $30 disregard if he/she reapplies.

Once a person has received the disregards for the allowable time period, he or she is not entitled to receive them again until he or she has not received AFDC for a period of 12 consecutive months. However, in the case of a person who becomes ineligible after the fourth month and who does not receive assistance during the eight additional months, we believe that Congress did not intend that a family must be off the rolls for 20 months after the loss of the $30 and one-third disregard before being eligible again for the $30 and one-third disregard. Therefore, we have kept the rule at § 233.20(a)(11)(ii)(B) which provides that the $30 and one-third disregard is available after 12 consecutive months during which the individual is not a recipient of AFDC. As an example, if the recipient lost eligibility for May after receiving the $30 and one-third disregard for four consecutive months, the $30 and one-third disregard would again be available to him in May of the following year, if he remained off the rolls throughout that period and if he then met the requirements for AFDC eligibility. If, however, he retained eligibility after April through use of the $30 disregard but lost eligibility for July and remained off the rolls for 12 consecutive months, the $30 and one-third disregard would be available to him in July of the following year if other eligibility conditions were met.

Comment: Three commenters believed that Congress intended that recipients have the $30 disregard actually applied to their income in eight additional months after eligibility for the full $30 and one-third disregard expires.

Response: Section 402(a)(8) of the Act, as amended by DEFRA, is a very complicated provision with multiple subclauses. The position taken in the regulations that the $30 disregard is available (regardless of whether the disregard is actually applied to a recipient's earned income) for only the eight months immediately following the fourth consecutive month in which the $30 and one-third disregard is applied to a recipient's earned income, was adopted because it is the most reasonable interpretation which gives effect to all parts of section 402(a)(8) relating to the $30 and ⅓ disregards. Under this interpretation, the various provisions limiting those disregards to a certain number of months are harmonized so that they all cover the same time period. At the same time, this interpretation gives effect to the clear congressional intent that a disregard of earned income continue beyond the first four consecutive months of employment and is administratively simple for the State agencies responsible for implementing it.

The interpretation arises from the statutory language itself. Section 402(a)(8)(B)(ii)(II) provides that the State agency shall not apply the $30 disregard, in the case of any person who has received the $30 and ⅓ disregards for 4 consecutive months "to any month after the 8th month following such month." The antecedent to which the words, "such month" refers is the 4th consecutive month. Thus, the period for which the extended $30 disregard is authorized under the statute is clearly linked to that 4th month and must be measured in relation to it. Accordingly, under a literal reading of the statute, if the 4th month were April, the 8th month following it would be December. Under the regulations, the last month for which the recipient could receive the $30 disregard in the example cited would be December. Our interpretation limiting the $30 disregard to a consecutive 12-month period is also directly in accord with the revised language of section 402(a)(8)(B)(ii)(I) which refers to the application of the $30 disregard for a period of 12 consecutive months.

Moreover, we believe this interpretation is fully consistent with the Conference Committee language which states that the $30 disregard would be limited to 12 months. The purpose of both the $30 and the ⅓ disregards is to provide a temporary period of transition from total dependence on welfare when recipients first become employed to help them become self-sufficient. The new DEFRA provision merely extends the length of the transition period beyond the 4 months permitted by OBRA. The limitation of the $30 disregard to the 8-month period immediately following the 4th consecutive month maintains this congressional purpose of a limited transitional period.

To apply the disregard to any 8 months could result in the application of the disregard in months occurring possibly even years after the initial 4-month period, when it would clearly serve no transitional purpose.

Finally, applying the disregard to any 8 months would be administratively cumbersome and error prone. It would require the State agency to keep track of the number of months the $30 disregard has been applied over a much longer period of time and possibly through repeated case openings and closings. In contrast, under the regulation as written, the State agency must only monitor the case and apply disregards during the immediately succeeding 8 months.

Comment: One commenter suggested that the regulations should reflect the preamble language which states that where a person becomes ineligible for AFDC after receiving the $30 and one-third disregard in four consecutive months, but before eight additional months of the $30 disregard have been available, the person is eligible to have the $30 disregard applied in the determination of need if he/she reapplies for AFDC before the end of the eight-month period.

Response: We agree. Regulations have been added at § 233.20(a)(11)(i)(E) to provide that the $30 disregard is applied in determining eligibility when a person reapplies for AFDC during the eight-consecutive-month period that he/she is eligible for that disregard.

Comment: One commenter stated that families who received the $30 and one-third disregard for four consecutive months prior to October 1, 1984, should be entitled to the $30 disregard for eight months.

Response: The commenter's interpretation of the provision would give the statute a retroactive effect by allowing its application to recipients who lost their $30 and one-third disregard prior to the effective date of DEFRA. Section 2623 of DEFRA clearly applies only to recipients who have not already received the $30 and one-third disregard for four consecutive months prior to October 1, 1984 (unless they

have been ineligible for AFDC for 12 consecutive months).

Treatment of Earned Income Credit in Determining Countable Income (Section 233.20(a)(6)(ix) of the Final Regulations)

Under prior law, States were required to count as earned income the amount of earned income tax credit (EITC) advance payments an individual was eligible to receive, regardless of whether the individual actually received the payments. Section 2629 of DEFRA amended section 402(d)(1) of the Social Security Act to provide that only EITC payments actually received are counted as earned income. The requirement to count the EITC that a recipient was eligible for, but did not receive, was deleted, and the regulation at § 233.20(a)(6)(ix) was amended accordingly under the interim final rules.

We are not responding to comments received on this provision because effective October 1, 1989, section 402(c)(2) of the Family Support Act of 1988 repealed section 402(d) of the Social Security Act, which formerly required that EITC payments be considered as earned income in the AFDC program. Therefore, the DEFRA provision is no longer in effect, and § 233.20(a)(6)(ix) will not be changed in these final rules. We plan to remove § 233.20(a)(6)(ix) when final regulations implementing the AFDC Related Amendments of the Family Support Act (title IV of the Act) are published, and add a new section to reflect the Family Support Act and OBRA '90 amendments to the Social Security Act (see the "Legislative Clarifications Subsequent to Publication of the Interim Final Rules" section of this preamble). In combination, these amendments provide that, effective January 1, 1991, EITC payments will not be considered as income in the determination of eligibility (including the 185 percent gross income limitation) and the amount of benefits, and will also not be considered as a resource for the month of receipt and the following month. Further, at State option, overpayments may be waived when they occurred because receipt of EITC payments during the period January 1 to December 31, 1990, resulted in ineligibility under the 185 percent gross income limitation.

Waiver of Overpayment Recoupment When Cost of Collection Would Exceed Amount Due (Section 233.20(a)(13) (i), (v) and (vi) of the Final Regulations)

Prior to the enactment of DEFRA, section 402(a)(22) of the Social Security Act required that a State correct all overpayments made under the State's plan. Section 2633 of DEFRA amends this statute to permit a State not to recover overpayments for individuals no longer receiving aid (except for cases involving fraud) when the cost to collect the overpayment would equal or exceed the amount of the overpayment. The statute provides that the cost should be based on the Secretary's criteria for determining cost-effectiveness and dollar limitations. The Secretary has established the following criteria for purposes of implementing this section.

For individuals no longer receiving aid who have outstanding overpayments, a State may elect to take no action to recover overpayments of less than $35. When the overpayment amount totals $35 or more, the State must make a reasonable effort to collect the overpayment. At a minimum, it must attempt to notify the former recipient about the amount of and reason for the overpayment and ask for repayment. After that, it may elect when to discontinue pursuing recovery if it determines that such action would not be cost-effective.

There are two principal reasons why $35 was chosen as the amount below which a State, if it chooses, can forego recovery efforts from former recipients. First, $35 is the amount the Food Stamp program currently uses as the criterion to determine cost-effectiveness of overpayment recovery action. Using the same standard promotes consistency and reduces administrative complexity between the two programs. Second, this dollar amount of $35 is consistent with Congressional intent as expressed in the conference report.

Notwithstanding the above criterion, the State must make every effort to recover overpayments caused by recipient fraud, regardless of the amount of the overpayment.

This provision, section 2633 of DEFRA, applies to overpayments uncollected or undiscovered as of the October 1, 1984, effective date as well as to overpayments which occur after that date. Finally, the $35 amount does not represent a tolerance level for overpayments.

The results of a 1986 study funded by the Department on the cost-effectiveness of overpayment recovery techniques should be helpful to States in determining methods of recovering overpayments from former recipients. The State of Illinois conducted the study, "The Overpayment Recovery Project." It demonstrated three methods of collection: (1) Monthly mail-only billing statements; (2) telephone monitoring; and (3) private collection agency referrals. Using traditional cost/benefit analysis, it was determined that while each method was cost-effective, contracting with private collection agencies was the most cost-effective. An important finding was that selected case and recipient characteristics, such as cause of overpayment, amount of overpayment, employment status, age or education of the individual, were not predictive of hypothesized higher repayment levels. Although a number of the State-specific variables would not be completely transferrable to other States, we believe that the study results present a strong case for a State to review its assumptions to not pursue overpayment recovery for cost-effectiveness reasons. We will be pleased to make copies of this report available upon request.

Comment: One commenter suggested that the $35 limit specified in the regulation should be increased because it costs more than $35 to establish and pursue recovery of an overpayment from a former recipient.

Response: Administrative costs of collecting overpayments from former recipients vary from State to State. We chose $35 as the national standard because it would be consistent with the amount used in the Food Stamp Program and because it expresses Congressional intent as reflected in the conference report. We would be interested in reviewing the findings from any cost-effectiveness studies that States have conducted on this subject.

Work Transition in the Case of Certain Families Who Lose AFDC Benefits Because of Earned Income (Section 233.20(a)(14) of the Final Regulations)

Section 303(a)(1) of the Family Support Act of 1988 changed the provisions for extended Medicaid coverage effective April 1, 1990 (October 1, 1990 for Kentucky) through September 30, 1998. Rules to implement these changed provisions for the aforementioned period are being published separately by the Health Care Financing Administration. Accordingly, the discussion beginning with the following paragraph only pertains to the requirements as specified in section 2624 of DEFRA regarding the extension of Medicaid due to the loss of the $30 and one-third disregards. These DEFRA-related rules are suspended until October 1, 1998.

Prior to the enactment of section 2624 of DEFRA, if a family lost eligibility for AFDC solely because of the four-month limitation on the $30 and one-third disregard, the family also lost AFDC-related categorical Medicaid eligibility at the same time.

Section 2624 of DEFRA specifies that in any case where a family has ceased to receive AFDC solely because a member of the family is no longer eligible for either the $30 and one-third or $30 disregard, the family is deemed, but only for purpose of Medicaid eligibility, to be receiving AFDC for a period nine months after the last month of AFDC benefits (regardless of whether the family continues to meet other eligibility conditions). Moreover, at State option, an additional period of up to six months of Medicaid coverage may be provided but only for so long as the family would be eligible for AFDC if the $30 and one-third or $30 disregards were applied. The application of the disregards during the optional six-month period is discussed below in response to a comment.

This provision became effective October 1, 1984, for persons receiving AFDC assistance on or after that date. However, under certain conditions, families not receiving AFDC on that date because a member of the family exhausted his or her eligibility for the $30 and one-third disregard were entitled to extended Medicaid coverage, beginning with the month in which they applied for such coverage. Medicaid coverage was available, beginning with the month of application for this coverage to these families that became ineligible for AFDC prior to October 1, 1984, under the following conditions:

- The family must have applied for Medicaid under this provision no later than March 31, 1985, i.e., the end of the sixth month after the month in which these regulations implementing section 402(a)(37) of the Social Security Act were published;
- The family must have been one that, if the $30 and one-third disregard had been applied, would have been continuously eligible for AFDC (without regard to section 402(a)(37) of the Act) from the time the family ceased to receive AFDC to the time the unit applied under this special provision for Medicaid. In order to have been continuously eligible, a family must have demonstrated to the satisfaction of the State agency that it would have been eligible for each month beginning from the month in which the family lost eligibility. For example, both before and after October 1, 1984, a family would not have been continuously eligible if the family's income exceeded the gross income limit or the only child reached the age limit set by the State; and
- The family must have fully disclosed in ts application any health insurance coverage which was in effect for members of the family.

Because the period covering this "window group" has expired, regulatory sections §§ 233.20(a)(14)(ii) and 233.20(a)(14)(iii) pertaining to this group have been deleted.

Comment: Several commenters asked if recipients entitled to extended Medicaid coverage must meet AFDC eligibility requirements such as monthly reporting and work registration during the period of extended coverage since individuals in the assistance unit are deemed to be AFDC recipients.

Response: Recipients entitled to the nine-month period of extended Medicaid coverage because they lost AFDC eligibility due to loss of earned income disregards prior to October 1, 1984, must have established that they were otherwise eligible for AFDC under the State plan from the time their AFDC benefits were terminated until the time they applied for Medicaid under the provisions of section 2624 of DEFRA. (We will refer to these individuals as the "window group.") However, once they had established initial eligibility for the nine months of extended benefits, they, along with those individuals who lost eligibility due to the loss of the earned income disregards subsequent to October 1, 1984, were automatically entitled to the nine-month period without regard to categorical eligibility. Families who, at State option, received the additional coverage for a period of up to six months, however, must have met all AFDC eligibility requirements each month during this six-month period in order to have qualified for this extended Medicaid coverage.

Comment: Several commenters asked whether extended Medicaid coverage is available to individual members of the assistance unit in the window group even though the unit splits up before application is made for extended Medicaid coverage.

Response: Since a family unit which splits up prior to the filing of the Medicaid application is not the same family which lost both of these disregards, we do not believe the statute provided extended Medicaid eligibility under these circumstances.

Comment: Several commenters asked whether an assistance unit which qualified for the nine-month period of extended Medicaid coverage would still be eligible for such coverage if the unit left the State during the nine-month period but returned to resume residence before the nine-month period expired.

Response: Upon return to the original State, the unit would be eligible for the remainder of the nine-month period, if any. For example, a family's Medicaid coverage for the nine-month period begins in February and runs through October. The family moves to another State March 1st and returns in September. Medicaid coverage would be available in the first State for February and September through October.

Comment: One commenter asked how a State would determine whether to use the $30 and one-third or the $30 disregard in evaluating a family's qualification for the optional six months of extended Medicaid coverage.

Response: Section 402(a)(37) of the Act provides that the optional period of up to six months extended eligibility may be provided to families that would be eligible to receive aid if section 402(a)(8)(A)(iv) of the Act applied. Therefore, the State must apply the $30 and one-third disregards during each month of the optional period of up to six months.

Comment: Several commenters requested clarification as to the appropriate Medicaid extension (four months or nine months) to be applied when ineligibility for AFDC occurs in a month when an increase in earnings *and* the loss of the $30 and one-third disregard or the $30 disregard occur in the same month.

Response: In situations where earnings increase and the $30 and one-third disregard or the $30 disregard are lost simultaneously, the State must determine which event caused the AFDC ineligibility as follows: If the increase in earnings would have caused ineligibility even if the applicable disregard ($30 and one-third or $30) were applied, the assistance unit is eligible only for the four-month period of coverage. This question is applicable only in the month following the last month of eligibility for the $30 and one-third or $30 disregard. In most cases, this would be the fifth or thirteenth month of AFDC eligibility.

Comment: Several commenters have suggested that the publication date of the final regulations rather than the publication date of the interim final regulations trigger the six-month application period for assistance units which lost eligibility for AFDC prior to October 1, 1984.

Response: The statute requires that the six-month application period begin with the date of publication of the final regulations. Interim final regulations are final regulations in that they have the full force and effect of law upon publication. Accordingly, the six-month application period was properly triggered upon publication of the interim final regulations, i.e., September 10, 1984.

Comment: Several commenters maintained that it is difficult for former assistance units which lost AFDC eligibility prior to October 1, 1984, to prove continuous AFDC eligibility. Some commenters proposed that we simply require that former assistance units be AFDC eligible at the time of filing for extended Medicaid benefits.

Response: The requirement has been established by statute and we have no authority to alter it.

Comment: One commenter recommended that States be required to include the supporting documentation required of families applying for extended Medicaid coverage in the State plans and to make these requirements available to the public.

Response: Because State operating manuals rather than State plans include all verification and documentation requirements, and these are already required to be available to the public, no new Federal requirements are necessary.

Comment: Several commenters inquired whether an assistance unit is eligible for extended Medicaid coverage every time the unit loses eligibility due to loss of either disregard. For example, if the unit lost eligibility due solely to the loss of the $30 and one-third disregard, regained eligibility three months later with the application of the $30 disregard, and then lost eligibility due solely to the loss of the $30 disregard, would the unit be eligible for a full nine months of extended Medicaid coverage or only the six months remaining from the first period of coverage?

Response: The family is eligible for nine months of coverage every time it loses eligibility due solely to the loss of either disregard.

Comment: Several commenters have inquired as to which Federal program (title IV-A or title XIX) will provide FFP for reimbursement of administrative costs incurred in making extended Medicaid coverage available under section 2624 of the Act.

Response: FFP for reimbursement of administrative costs incurred in making extended Medicaid coverage available under section 2624 will be provided in accordance with currently approved cost allocation plans. These plans are to provide for the charging of administrative costs incurred to the benefitting program. Accordingly, those AFDC eligibility determinations performed solely for the purpose of evaluating an applicant's eligibility for extended Medicaid coverage, whether or not performed by AFDC staff, would benefit the Medicaid program and would properly be charged to Medicaid. Therefore, those AFDC eligibility determinations which must be performed in evaluating former recipients who lost AFDC eligibility prior to October 1, 1984, will be solely for the purpose of evaluating eligibility for extended Medicaid coverage and, thus, should be charged to Medicaid. On the other hand, routine AFDC eligibility determinations which must be performed during the course of certifying current recipients' ongoing AFDC eligibility (even though the results may also be used to certify eligibility for extended Medicaid coverage) primarily benefit the AFDC program and, thus, are charged to AFDC.

Monthly Reporting and Retrospective Budgeting (Sections 233.20(b)(2), 233.31, 233.35, 233.36 and 233.38 of the Final Regulations)

Under prior law, States required all recipients, unless exempt under an approved State waiver, to submit monthly reports to the State agency. States were required to use these monthly reports to determine eligibility prospectively and the amount of the payment retrospectively. Section 2628 of DEFRA amends section 402(a)(14) of the Act to limit the categories of recipients who are subject to mandatory monthly reporting and amends section 402(a)(13) of the Act to eliminate mandatory retrospective budgeting for recipients who are not subject to monthly reporting. It also permits waivers, under certain circumstances, of AFDC monthly reporting requirements and retrospective budgeting to make requirements under the AFDC and Food Stamp programs compatible.

Monthly Reporting

Under DEFRA, the only categories of recipients for which the State must require monthly reports are recipients with earned income and recipients with a recent work history. Categories of recipients, for purposes of mandatory monthly reporting, include recipients who have earned income deemed to them from individuals living with them who have earned income or a recent work history. For purposes of this provision, we have amended § 233.31 to include a minimal definition of recent work history which covers recipients who received some earnings during at least one of the two months prior to the "budget month." The interim final rule specified that "recent work history covers recipients who received some earnings during at least one of the two months prior to the payment month." However, we are revising the rule to change "payment" month to "budget" month because "payment" month is technically imprecise. While every month is a payment month, the determination of whether or not a recipient is in recent work history status and required to file a monthly report for any month is dependent upon whether or not the recipient received income in the applicable budget month or any one of the two months prior to that budget month. Of course, as defined in § 233.31(b)(4), in prospective budgeting, the payment month and the budget month are the same, while in retrospective budgeting, the payment month follows the budget month. For example, under this requirement, a recipient who received her last paycheck in June is required to file monthly reports for June because she received earnings in June, and for July and August because she received income in the one month prior to July and in the two months prior to August. The agency, therefore, in a State that has adopted a two-month retrospective budgeting system, must receive monthly reports for June, July and August before issuing AFDC payments for August, September and October.

In defining a minimal standard for recent work history, we considered the recommendations of a monthly reporting study funded by the Department of Health and Human Services, which proposed that a recipient be required to file a monthly report for the two months following the last month in which the case received earnings. Furthermore, the proposed definition is consistent with the definition used by most States. A State may, of course, establish a longer period in defining recent work history, provided it is so specified in its State plan.

Section 2628 of DEFRA also provides that States may, with prior approval of the Secretary, exempt recipients with earned income or with a recent work history from monthly reporting. The Secretary will approve exemptions for a period up to one year, at the end of which time the State may request a continuation of the exemption. Approval of these exemptions will be based on evidence provided by the State that not requiring these cases to file monthly reports is cost effective. Since Congress has given the Secretary the discretion to determine whether an exemption is appropriate, the Secretary's decision on a request for an exemption is not appealable.

Under DEFRA, States may continue to require all other categories of recipients to report monthly.

Retrospective Budgeting

The interim final rule amended § 233.31 to specify that, for recipients who are not required to file a monthly report, States have the option of computing payments either retrospectively or prospectively.

For those who are required, either by Federal regulation or at State option, to report monthly, the payment amount is determined using retrospective budgeting (except as provided in § 233.34 for their initial months of assistance).

For a State opting to compute payments prospectively for cases exempt from monthly reporting, a transition from prospective budgeting will be necessary when a case becomes required to report, and a transition from retrospective budgeting will be necessary when a case is no longer required to report. Thus, the regulations provide that the question of whether to use prospective or retrospective budgeting for any payment month is dependent on whether the assistance unit was or should have been required to file a monthly report for the corresponding budget month used under retrospective budgeting. For example, if a recipient begins working and receives income in March in a two-month retrospective budgeting State, the payments for March and April will be computed prospectively since no monthly reports were required for the corresponding budget months of January and February. The payments for May, June, and July will be computed retrospectively. Conversely, if the recipient's last earnings are received in March, prospective budgeting will begin with the August payment since the recipient, as a recent earner (under the Federal minimal definition), must file monthly reports for March, April, and May and no monthly report is required for June, the budget month corresponding to the August payment month. To avoid double-counting of income, the transition from prospective to retrospective budgeting should be treated as specified at § 233.35(b), i.e., as if the first month in which the recipient received earnings was the initial month of eligibility. In this situation, the State shall not count income from the budget month already considered for any month determined prospectively which is not of a continuous nature.

In any event, regardless of the method used to determine eligibility and payment amount, if the State subsequently receives information which alters the amount to which the assistance unit was entitled for a month, the payment made is an incorrect payment which the State must correct pursuant to § 233.20(a)(13).

Waivers for Compatibility With Food Stamps

The interim final rules added a new § 233.38 which provides that States may request waivers of Federal regulations on monthly reporting and retrospective budgeting methods in §§ 233.31 to 233.37 to make AFDC compatible with the reporting and budgeting requirements of the Food Stamp Act of 1977, as amended. Approval of waiver requests by the Secretary will be based on information provided by the State that documents the need for the waiver and explains how the waiver would simplify administration of both programs. In addition, the rules provide, consistent with Congressional intent as expressed in the conference report, that the Secretary will not approve any waiver request that would result in a net cost to the Federal government. The Secretary will grant waivers under this provision for a period up to one year, at the end of which time the State may request an extension of the waiver.

Congress has given the Secretary discretionary authority to determine whether any waivers should be granted. Therefore, a decision not to grant a waiver is not appealable.

Comment: Several commenters asked whether responsibility for reporting income of parents or legal guardians of minor mothers rests with the non-aided parents or guardians or with the minor AFDC mother and asked that it be clarified in regulations.

Response: The Deficit Reduction Act did not change who is responsible for filing a required monthly report. It is the responsibility of the caretaker relative, or such person as designated by the State, to submit a monthly report on behalf of the assistance unit. That report must include all income of the assistance unit. We have revised regulations at § 233.36(a) to make clear who has responsibility for submitting a monthly report and whose income is included.

Comment: One State's comments concerned the transition period from retrospective to prospective budgeting for States electing to compute payments prospectively for cases exempt from monthly reporting. The State asked that, for those cases, States be permitted to prospectively budget income for two months after earnings cease if they must prospectively budget income for two months when earnings begin.

Response: The Deficit Reduction Act amended the statute to allow States to limit retrospective budgeting to cases required to report monthly. It also provided that States could limit the monthly reporting requirement to cases with earnings or recent work histories. It did not provide any authority for a State to prospectively budget income for the two months following the month that earnings cease. Instead, in keeping with the intent of the statute, these rules provide that recipients must file a monthly report for any month in which they receive earned income and, since they have a recent work history, for the next two additional months. In order to compute the AFDC payment based on actual income, these rules provide that retrospective budgeting for any payment month is dependent on whether the assistance unit is required to file a monthly report for the corresponding budget month.

However, neither the statute nor regulations require States to prospectively budget income for two months when earnings begin. The interim final rule presented only one example. States could begin retrospective budgeting with the month in which earnings begin. For example, if a recipient begins working and receives income in March in a two-month retrospective budgeting State, prospective budgeting may end with February and the payments for March and April may be budgeted retrospectively, using the rules at § 233.35, if prospectively eligible for those months.

Comment: Questions were raised as to whether States may budget some categories of non-reporters prospectively and other categories retrospectively.

Response: Yes. However, this must be specified in the State plan.

Comment: One commenter asked whether States may still delay the monthly reporting requirement for applicants until the month following the month in which assistance is authorized and for recipients until the month following the month in which earnings begin.

Response: These regulations do not change our policy of permitting a delay of monthly reporting. However, no delay in retrospective budgeting is permitted. For example, if a recipient begins receiving earnings in May, the State must budget July's payment retrospectively even though the State does not require a May monthly report.

Comment: One commenter asked whether three monthly reports were required if the applicant's earnings ended before the month of application.

Response: No. An applicant with a recent work history may file proportionally fewer reports. For

example, under this requirement an individual who applies in May and last received earnings in March would file only a monthly report for May in June. If the State has a policy of delaying monthly reporting until the month after the month in which payment is authorized, no monthly report is necessary.

Eligibility Requirements for Aliens (Sections 233.51, 233.52, and 233.20(a)(3)(xv) of the Final Regulations)

Section 415 of the Social Security Act, which was added by OBRA, concerns the AFDC eligibility of aliens who are sponsored by an individual as a condition of entry into the United States. That legislation did not address the eligibility of aliens who were sponsored by public or private agencies or organizations. Section 2635 of DEFRA, however, amends section 415 of the Social Security Act to provide that any alien whose sponsor is a public or private agency or organization is ineligible for assistance for three years from the date of the alien's entry into the United States, unless the State agency determines that the sponsoring public or private agency or organization is either no longer in existence or has become unable to meet the alien's needs. This determination is based on such criteria as the State specifies in the State plan. States may require aliens to submit such documentary evidence as is reasonably available to facilitate this determination. In such a case, as a condition of eligibility, the alien is required to cooperate with the State agency by providing necessary information and documentation pertaining to the sponsoring public or private agency or organization as are reasonably available.

Comment: One State asked whether the Immigration and Naturalization Service (INS) requires affidavits of support from organizations such as Catholic Charities, Lutheran Social Services and other similar organizations. The State has been informed that affidavits of support are required from individual sponsors only.

Response: According to INS central office, the organizations mentioned and other similar organizations work primarily with refugees. Refugees are exempt from the deeming requirements at § 233.51 regardless of whether they are sponsored by individuals or organizations. In any case, under the statute an individual or organization can only be considered a sponsor if an affidavit of support or similar agreement required by INS has been executed on behalf of an alien.

In the interim final rules, regulations at §§ 233.51 and 233.52 were added to implement this provision. There was also a technical amendment to § 233.20(a)(3)(xv) to reflect the statutory requirement at section 415(a) of the Social Security Act that both income and resources be considered for deeming to a sponsored alien pursuant to § 233.51.

Exceptions to Requirements for Protective Payments (Sections 234.60(a)(12) and (a)(13) and 240.22 (a)(1) and (b)(1) of the Final Regulations)

Under prior law, States were required to provide for protective payments under the AFDC program when a caretaker relative was sanctioned for failure to meet program requirements in WIN, employment search, or CWEP, as well as for failure to assign rights to support or cooperate in establishing paternity and securing support. The caretaker relative who failed to fulfill these requirements not only had his/her needs removed from the grant, but was also replaced as the payee by a protective payee appointed by the State agency.

Section 2634 of DEFRA amended sections 402(a)(19)(F) and 402(a)(26)(B) of the Act to allow States to continue AFDC payments to the sanctioned caretaker relative for the remaining members of the assistance unit if, after making reasonable efforts, the State agency is unable to locate an appropriate individual to whom such protective payments can be made. In the interim final rules, we amended the regulations at §§ 234.60(a)(12) and (a)(13) and 240.22(a)(1) and (b)(1), accordingly. The Family Support Act of 1988 amended section 402(a)(19) of the Act to provide for the JOBS program. That law also amended that section regarding protective payments (see section 402(a)(19)(G) of the Act). Section 234.60(a)(12) was subsequently amended to reflect the amended section 402(a)(19)(G) of the Act in federal regulations (52 FR 42244 (October 13, 1989)).

Comment: Several commenters recommended that the regulations at § 234.60(a) (12) and (13) be amended to delete the word "all" from the phrase "all reasonable efforts" which would then reflect the precise language of the law.

Response: We agree, and have amended the regulation to delete the word "all" to conform with the statutory language. However, we believe it is clear from the legislative history that it was Congress' intent that States make diligent efforts to identify a suitable payee before continuing the grant to the sanctioned caretaker.

Regulatory Procedures

Executive Order 12291

Executive Order 12291 requires that a regulatory impact analysis be performed for any "major rule." A major rule is one that:

—Has an annual effect on the national economy of $100 million or more;
—Results in a major increase in costs or prices for consumers, any industries, any governmental agencies, or any geographic region;
—Has 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 import markets.

The incremental changes from the interim final rule resulted in negligible costs for the lump sum provision. Costs attributable to the standard filing unit provision are considered negligible because the regulations reflect current practice. The preamble and regulations basically clarify and codify existing policy, as set forth in AT 86-1. Therefore, these regulations do not constitute a "major rule," and an impact analysis describing potential benefits of the regulations, alternative approaches and their costs and benefits is not required.

Paperwork Reduction Act

The Office of Management and Budget has determined that the State Plan requirements are subject to review and approval under the Paperwork Reduction Act of 1980 (Pub. L. No. 96-511). The Office of Management and Budget has approved all information collection requirements contained in the final regulations and assigned OMB approval number 0960-0260. No additional paperwork requirements are contained in these final regulations.

Regulatory Flexibility Act

The Regulatory Flexibility Act (Pub. L. No. 96-354) requires the Federal government to anticipate and reduce the impact of rules and paperwork requirements on small businesses. For each particular rule, we must publish an initial analysis describing the rule's impact on small business. This analysis should indicate the purpose and reason for the rule, the number of small businesses to which it would apply, anticipated reporting and recordkeeping requirements, possible overlap and conflict with other Federal rules, and a description of possible alternative

means of accomplishing the stated objectives which would minimize the impact on small businesses.

The primary impact of these regulations is on State governments and individuals. We certify that these regulations will not have a significant economic impact on a substantial number of small entities because the regulations affect only benefits to individuals and payments to States. Therefore, a regulatory flexibility analysis as provided in Public Law 96-354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Programs No. 13.780 Assistance Payments-Maintenance Assistance)

List of Subjects

45 CFR Part 205

Computer technology, Family Assistance Office, Grant programs-social programs, Privacy, Public assistance programs, Reporting and recordkeeping requirements, Wages.

45 CFR Part 206

Family Assistance Office, Grant programs-social programs, Public assistance programs.

45 CFR Part 232

Aid to Families with Dependent Children, Child support, Family Assistance Office, Grant programs-social programs.

45 CFR Part 233

Aliens, Family Assistance Office, Grant programs-social programs, Public assistance programs, Reporting and recordkeeping requirements.

45 CFR Part 234

Family Assistance Office, Grant programs-social programs, Health care, Public assistance programs, Rent subsidies.

45 CFR Part 237

Family Assistance Office, Grant programs-social programs, Public assistance programs.

These regulations are issued under the authority of section 1102 of the Social Security Act, as amended, 49 Stat. 647, as amended; 42 U.S.C. 1302.

Dated: February 14, 1992.

Jo Anne B. Barnhart,

Assistant Secretary for Children and Families.

Approved: March 23, 1992.

Louis W. Sullivan,

Secretary, Department of Health and Human Services.

The interim rule published in the Federal Register at 49 FR 35599-35604 (September 10, 1984), as subsequently amended by the Final Rule published in the Federal Register at 54 FR 42243-42267 (October 13, 1989) and as set forth in 45 CFR parts 205, 206, 232, 233, and 234, is adopted as final with the following changes:

1. The heading of Ch. II, title 45, Code of Federal Regulations, is revised to read "Office of Family Assistance (Assistance Programs), Administration for Children and Families, Department of Health and Human Services".

PART 205—GENERAL ADMINISTRATION—PUBLIC ASSISTANCE PROGRAMS

Part 205 of chapter II, title 45, Code of Federal Regulations is amended as set forth below:

1a. The authority citation for part 205 continues to read as follows:

Authority: 5 U.S.C. 552a note; 42 U.S.C. 602, 603, 606, 607, 611, 1302, 1306(a), and 1320b-7.

2. Section 205.50 is amended by revising paragraph (a)(2)(v) to read as follows:

§ 205.50 Safeguarding information for the financial assistance programs.

(a) * * *

(2) * * *

(v) The same policies are applied to requests for information from a governmental authority, the courts, or a law enforcement officer (except as provided for under paragraph (a)(1)(v) with respect to fugitive felons) as from any other outside source.

* * * * *

PART 206—APPLICATION, DETERMINATION OF ELIGIBILITY AND FURNISHING ASSISTANCE—PUBLIC ASSISTANCE PROGRAMS

Part 206 of chapter II, title 45, Code of Federal Regulations is amended as set forth below:

1. The authority citation for part 206 is revised to read as set forth below and the authority citations following all the sections in part 206 are removed:

Authority: Sections 402 and 1102 of the Social Security Act (42 U.S.C. 602 and 1302) and Pub. L. No. 97-248, 96 Stat. 324, and Pub. L. No. 99-603, 100 Stat. 3359.

2. Section 206.10 is amended by revising paragraphs (a)(1)(ii) and (b)(2) and by adding new paragraph (b)(5) to read as follows:

§ 206.10 Application, determination of eligibility and furnishing of assistance.

(a) * * *

(1) * * *

(ii) The agency shall require a written application, signed under a penalty of perjury, on a form prescribed by the State agency, from the applicant himself, or his authorized representative, or, where the applicant is incompetent or incapacitated, someone acting responsibly for him. When an individual is required to be included in an existing assistance unit pursuant to paragraph (a)(1)(vii), such individual will be considered to be included in the application, as of the date he is required to be included in the assistance unit;

* * * * *

(b) * * *

(2) *Application* is the action by which an individual indicates in writing to the agency administering public assistance (on a form prescribed by the State agency) his desire to receive assistance. The relative with whom a child is living or will live ordinarily makes application for the child for AFDC. An application is distinguished from an inquiry, which is simply a request for information about eligibility requirements for public assistance. Such inquiry may be followed by an application. When an individual is required to be included in an existing assistance unit pursuant to paragraph (a)(1)(vii), such individual will be considered to be included in the application, as of the date he is required to be included in the assistance unit.

* * * * *

(5) *Assistance Unit* is the group of individuals whose income, resources and needs are considered as a unit for purposes of determining eligibility and the amount of payment.

PART 232—SPECIAL PROVISIONS APPLICABLE TO TITLE IV-A OF THE SOCIAL SECURITY ACT

Part 232 of chapter II, title 45, Code of Federal Regulations is amended as set forth below:

1. The authority citation for part 232 is revised to read as set forth below:

Authority: 42 U.S.C. 1302.

2. Section 232.20 is amended by revising paragraphs (a) and (b)(2), to read as follows:

§ 232.20 Treatment of child support collections made in the Child Support Enforcement Program as income and resources in the Title IV-A Program.

(a) *Definition.* For purposes of this section, notwithstanding any other regulations in this chapter, support collections, monthly collections and support amounts for a month mean the assigned amount that the support enforcement agency collects from an absent parent or spouse on a monthly support obligation, less the disregarded sum under § 302.51(b)(1).

(b) * * *

(2) Any payment received pursuant to § 302.51(b) (3) or (5) shall be treated as income in the month following the month to which the redetermination in paragraph (b)(1) of this section applies.

* * * * *

PART 233—COVERAGE AND CONDITIONS OF ELIGIBILITY IN FINANCIAL ASSISTANCE PROGRAMS

Part 233 of chapter II, title 45, Code of Federal Regulations is amended as set forth below:

1. The authority citation for part 233 is revised to read as set forth below:

Authority: Secs. 1, 402, 406, 407, 1002, 1102, 1402, and 1602 of the Social Security Act (42 U.S.C. 301, 602, 606, 607, 1202, 1302, 1352 and 1382 (note)), and sec. 6 of Pub. L. No. 94–114, 89 Stat. 579, and Part XXIII of Pub. L. No. 97–35, 95 Stat. 843, Pub. L. No. 97–248, 96 Stat. 324, and Pub. L. No. 99–603, 100 Stat. 3359, and section 1883 of Pub. L. 99–514, 100 Stat. 2916.

2. Section 233.10 is amended by revising paragraph (b)(2)(ii)(*b*) to read as follows:

§ 233.10 General provisions regarding coverage and eligibility.

* * * * *

(b) * * *

(2) * * *

(ii) * * *

(*b*) The parent(s) of a dependent child, a caretaker relative (other than a parent) of a dependent child, and, in certain situations, a parent's spouse.

* * * * *

3. Section 233.20 is amended by revising paragraphs (a)(3)(i)(B) (*4*) and (*5*), (ii)(F), (xiv)(A), (xviii), and (xx); (a)(7)(ii); (a)(11) (i)(D) and (ii)(B); and (a)(14); and by adding new paragraphs (a)(1) (iii), (iv), and (v); (a)(3)(iv) (A) through (G); and (a)(11)(i)(E) to read as follows:

§ 233.20 Need and amount of assistance.

(a) * * *

(1) * * *

(iii) For AFDC, when an individual who is required to be included in the assistance unit pursuant to § 206.10(a)(1)(vii) is also required to be included in another assistance unit, those assistance units must be consolidated, and treated as one assistance unit for purposes of determining eligibility and the amount of payment.

(iv) For AFDC, when a State learns of an individual who is required to be included in the assistance unit after the date he or she is required to be included in the unit, the State must redetermine the assistance unit's eligibility and payment amount, including the need, income, and resources of the individual. This redetermination must be retroactive to the date that the individual was required to be in the assistance unit either through birth/adoption or by becoming a member of the household. Any resulting overpayment must be recovered or corrective payment made pursuant to § 233.20(a)(13).

(v) In determining need and the amount of payment for AFDC, all income and resources of an individual required to be in the assistance unit, but subject to sanction under § 250.34 or because of an intentional program violation under the optional fraud control program implementing section 416 of the Social Security Act, are considered available to the assistance unit to the same extent that they would be if the person were not subject to a sanction. However, the needs of the sanctioned individual(s) are not considered. In accord with § 250.34(c), if a parent in an AFDC–UP case is sanctioned pursuant to § 233.100(a)(5), the needs of the second parent are not taken into account in determining the family's need for assistance and the amount of the assistance payment unless the second parent is participating in the JOBS program. An individual required to be in an assistance unit pursuant to § 206.10(a)(1)(vii) but who fails to cooperate in meeting a condition of his or her eligibility for assistance is a sanctioned individual whose needs, income, and resources are treated in the manner described above.

* * * * *

(3) * * *

(i) * * *

(B) * * *

(*4*) Bona fide funeral agreements (as defined and within limits specified in the State plan) up to a total of $1,500 in equity value or such lower limit as the State may specify in the State plan for each member of the assistance unit (any excess equity value must be applied towards the general resource limit specified in the State plan). This provision addresses only formal agreements for funeral and burial expenses such as burial contracts, burial trusts or other funeral arrangements (generally with licensed funeral directors) and does not apply to other assets (e.g., passbook bank accounts, simple set-aside of savings, and cash surrender value of life insurance policies);

(*5*) Real property for a period of six consecutive months (or, at the option of the State, nine consecutive months) which the family is making a good faith effort (as defined in the State plan) to sell, subject to the following provisions. The family must sign an agreement to dispose of the property and to repay the amount of aid received during such period that would not have been paid had the property been sold at the beginning of such period, but not to exceed the amount of the net proceeds of the sale. The family has five working days from the date it realizes cash from the sale of the excess real property to repay the overpayment; failure to make repayment within this period results in the cash being considered to be an available resource. If the family becomes ineligible for AFDC for any other reason during the conditional payment period while making a good faith effort to sell the property, or fails to sell the property by the end of the period despite such a good faith effort, then the amount of the overpayment attributable to the real property will not be determined and recovery will not be begun until the property is, in fact, sold. However, if the property was intentionally sold at less than fair market value so that a good faith effort to sell it was not made, or if it is otherwise determined that a good faith effort to sell the property is not being made, the overpayment amount shall be computed using the fair market value determined at the beginning of the period. For applicants, the conditional payment period begins with the first payment month for which all otherwise applicable eligibility conditions are met and payment is authorized. For recipients who acquire property while receiving assistance, the period begins with the payment month in which the recipient receives the property; and

* * * * *

(ii) * * *

(F) When the AFDC assistance unit's income, after applying applicable disregards, exceeds the State need standard for the family because of receipt of nonrecurring earned or unearned lump sum income (including for AFDC, title II and other retroactive monthly benefits, and payments in the nature of a windfall, e.g., inheritances or lottery winnings, personal injury and worker compensation awards, to the extent it is not earmarked and used for the purpose for which it is paid, i.e., monies for back medical bills resulting from accidents or injury, funeral and burial costs, replacement or repair of resources, etc.), the family will be ineligible for aid for the full number of months derived by dividing the sum of the lump sum income and other income by the monthly need standard for a family of that size. Any income

remaining from this calculation is income in the first month following the period of ineligibility. The period of ineligibility shall begin with the month of receipt of the nonrecurring income or, at State option, as late as the corresponding payment month. For purposes of applying the lump sum provision, family includes all persons whose needs are taken into account in determining eligibility and the amount of the assistance payment, and includes solely for determining the income and resources of a family an individual who must be in a family pursuant to § 206.10(a)(1)(vii) but who does not meet a condition of his or her eligibility due to a failure to cooperate or is required by law to have his or her needs excluded from an assistance unit's AFDC grant calculation due to the failure to perform some action. A State may shorten the remaining period of ineligibility when: the standard of need increases and the amount the family would have received also changes (e.g., situations involving additions to the family unit during the period of ineligibility of persons who are otherwise eligible for assistance); the lump sum income or a portion thereof becomes unavailable to the family for a reason beyond the control of the family; or the family incurs and pays for medical expenses. If the State chooses to shorten the period of ineligibility, the State plan shall:

(1) Identify which of the above situations are included;

(2) In the case of situations involving an increase in the need standard and changes in the amount that should have been paid to the family, specify the types of circumstances which will be included;

(3) In the case of situations involving the unavailability of the lump sum income, include a definition of unavailability, and specify what reasons will be considered beyond the control of the family; and

(4) In the case of situations involving the payment of medical expenses, specify the types of medical expenses the State will allow to be offset against the lump sum income.

For purposes of this paragraph (a)(3): Automobile means a passenger car or other motor vehicle used to provide transportation of persons or goods. (In AFDC, in appropriate geographic areas, one alternate primary mode of transportation may be substituted for the automobile); Equity value means fair market value minus encumbrances (legal debts); Fair market value means the price an item of a particular make, model, size, material or condition will sell for on the open market in the geographic area involved (If a motor vehicle is especially equipped with apparatus for the handicapped, the apparatus shall not increase the value of the vehicle); Liquid assets are those properties in the form of cash or other financial instruments which are convertible to cash and include savings accounts, checking accounts, stocks, bonds, mutual fund shares, promissory notes, mortgages, cash value of insurance policies, and similar properties; Need standard means the money value assigned by the State to the basic and special needs it recognizes as essential for applicants and recipients; Payment standard means the amount from which non-exempt income is subtracted;

* * * * *

(iv) Provide that in determining the availability of income and resources, the following will not be included as income:

(A) Except for AFDC, income equal to expenses reasonably attributable to the earning of income (including earnings from public service employment);

(B) Loans and grants, such as scholarships, obtained and used under conditions that preclude their use for current living costs;

(C) Home produce of an applicant or recipient, utilized by him and his household for their own consumption;

(D) For AFDC, any amounts paid by a State IV-A agency from State-only funds to meet needs of children receiving AFDC, if the payments are made under a statutorily-established State program which has been continuously in effect since before January 1, 1979;

(E) For AFDC, income tax refunds (except the earned income tax credit (EITC) portion as provided in § 233.20(a)(6)(ix)) but such payments shall be considered as resources;

(F) At State option, small nonrecurring gifts, such as those for Christmas, birthdays and graduations, not to exceed $30 per recipient in any quarter; and

(G) For AFDC, the amount paid to the family by the IV-A agency under § 232.20(d) or, in a State that treats direct support payments as income under § 233.20(a)(3)(v)(B), the first $50 received by the assistance unit which represents a current monthly support obligation or a voluntary support payment. In no case shall the total amount disregarded exceed $50 per month per assistance unit.

* * * * *

(xiv) * * *

(A) The first $75 of the gross earned income of the stepparent;

* * * * *

(xviii) For AFDC, in the case of a dependent child whose parent or legal guardian (as defined under State law) is a minor under the age of 18 (without regard to school attendance), the State shall count as income to the assistance unit the income, after appropriate disregards, of such minor's own parent(s) or legal guardian(s) living in the same household as the minor and dependent child. The disregards to be applied are the same as are applied to the income of a stepparent pursuant to paragraph (a)(3)(xiv) of this section. However, in applying the disregards, each employed parent or legal guardian will receive the benefit of the work expense disregard in paragraph (a)(3)(xiv)(A) of this section.

* * * * *

(xx) In the case of AFDC, if the State chooses to disregard in the determination of eligibility the monthly earned income of dependent children applying for AFDC who are full-time students, provide that the State plan shall:

(A) Specify the amount that will be disregarded, and

(B) Provide that the disregard shall only apply to the extent that the earned income is also disregarded pursuant to paragraph (a)(3)(xix) of this section.

* * * * *

(7) * * *

(ii) In applying the $30 and one-third disregard under paragraph (a)(11)(i)(D) of this section to an applicant for AFDC, there will be a preliminary step to determine whether the assistance unit is eligible without applying the disregard to the individual's earned income, by comparing the applicant's gross earned income (less the disregards in paragraphs (a)(11)(i) (A), (B) and (C)) and all of the assistance unit's other income to the State need standard. This preliminary step does not apply if the individual has received AFDC in one of the four months prior to the month of application.

* * * * *

(11) * * *

(i) * * *

(D) Where appropriate, an amount equal to $30 plus one-third of the earned income not already disregarded under paragraphs (a)(11) (i), (v), and (vi) of this section of an individual who received assistance in one of the four prior months. The $30 plus one-third disregard is not applied to the income of an applicant for assistance in determining whether the individual is eligible, unless the individual has received AFDC during one of the four preceding months and meets either of the following two

conditions: the individual has not received the disregard in four consecutive months since October 1, 1981, or the individual has already received the disregard in four consecutive months since October 1, 1981, but at sometime after the fourth consecutive month in which the disregard was applied, the individual did not receive AFDC for a period of 12 consecutive months.

(E) Where appropriate, $30 of the earned income not already disregarded under paragraphs (a)(11) (i), (v), and (vi) of this section, in the case of an individual who reapplies for assistance within the eight-month period that he/she is eligible for the $30 disregard.

(ii) * * *

(B) Disregard from any other individual's earned income the amounts specified in paragraphs (a)(11)(i) (B) and (C) of this section, and $30 plus one-third of his earned income not already disregarded under paragraphs (a)(11) (ii) and (v) of this section. However, the State may not provide the one-third portion of the disregard to an individual after the fourth consecutive month (any month for which the unit loses the $30 plus one-third disregard because of a provision in paragraph (a)(11)(iii) of this section, shall be considered as one of these months) it has been applied to his earned income and may not apply the $30 disregard after the eighth month following the fourth consecutive month (regardless of whether the $30 disregard was actually applied in those months) unless twelve consecutive months have passed during which he is not a recipient of AFDC. If income from a recurring source resulted in suspension or termination due to an extra paycheck, the month of ineligibility does not interrupt the accumulation of consecutive months of the $30 and one-third disregard, nor does it count as one of the consecutive months.

* * * * *

(14) For Medicaid eligibility only, beginning October 1, 1998, pursuant to section 402(a)(37) of the Act, an assistance unit will be deemed to be receiving AFDC, but only for the purposes of this paragraph, for a period of nine months after the last month the family actually received aid if the loss of AFDC eligibility was solely because a member of the unit was no longer eligible due to the 4 and 12 month time limitations to have the $30 and one-third or the $30 disregard in paragraph (a)(11)(ii)(B) applied to his or her earned income. At State option, an additional period of Medicaid coverage for up to six months may be provided when the assistance unit would be eligible during such additional period to receive AFDC if the $30 and one-third or the $30 disregards were applied to the assistance unit's earned income.

4. Section 233.31 is amended by revising paragraph (b)(5) to read as follows:

§ 233.31 Budgeting methods for AFDC.

* * * * *

(b) * * *

(5) "Recent work history" means the individual received earned income in any one of the two months prior to the budget month.

5. Section 233.36 is amended by revising paragraph (a) introductory text and paragraph (a)(3) to read as follows:

§ 233.36 Monthly reporting (AFDC).

(a) Except as provided in paragraph (b) of this section, a State plan for AFDC shall require the caretaker relative, or another person designated by the State, to submit, on behalf of each assistance unit whose members have earned income or recent work history, each assistance unit which has income deemed to it from individuals living with the unit who have earned income or a recent work history and, at State option, other assistance units, a completed report form to the agency monthly on:

* * * * *

(3) The income of a parent or a legal guardian of a minor parent, a stepparent, or an alien sponsor, as well as the resources of an alien sponsor, where appropriate.

* * * * *

6. Section 233.51 is amended by revising the introductory paragraph to read as follows:

§ 233.51 Eligibility of sponsored aliens.

Definition: *Sponsor* is any person who, or any public or private agency or organization that, executed an affidavit(s) of support or similar agreement on behalf of an alien (who is not the child of the sponsor or the sponsor's spouse) as a condition of the alien's entry into the United States. Paragraphs (a) through (d) of this section apply only to aliens who are sponsored by individuals and who filed applications for the first time after September 30, 1981. Paragraphs (e) and (f) apply only to aliens sponsored by public or private agencies or organizations with respect to periods after October 1, 1984. A State plan under title IV-A of the Act shall provide that:

* * * * *

PART 234—FINANCIAL ASSISTANCE TO INDIVIDUALS

Part 234 of chapter II, title 45, Code of Federal Regulations is amended as set forth below:

1. The authority citation for part 234 is revised to read as follows:

Authority: 42 U.S.C. 602, 603, 606, and 1302.

2. Section 234.60 is amended by revising paragraph (a)(13) to read as follows:

§ 234.60 Protective, vendor and two-party payments for dependent children.

(a) * * *

(13) For cases in which a caretaker relative fails to meet the eligibility requirements of §§ 232.11, 232.12, or 232.13 of this chapter by failing to assign rights to support or cooperate in determining paternity, securing support, or identifying and providing information to assist the State in pursuing third party liability for medical services, the State plan must provide that only the requirements of paragraphs (a)(7) and (9)(ii) of this section will be applicable. For such cases, the entire amount of the assistance payment will be in the form of protective or vendor payments. These protective or vendor payments will be terminated, with return to money payment status, only upon compliance by the caretaker relative with the eligibility requirements of §§ 232.11, 232.12, and 232.13 of this chapter. However, if after making reasonable efforts, the State agency is unable to locate an appropriate individual to whom protective payments can be made, the State may continue to make payments to the sanctioned caretaker relative on behalf of the remaining members of the assistance unit.

* * * * *

PART 237—FISCAL ADMINISTRATION OF FINANCIAL ASSISTANCE PROGRAMS

Part 237 of chapter II, title 45, Code of Federal Regulations is amended as set forth below:

1. The authority citation for part 237 is revised to read as set forth below and the authority citation following the section in part 237 is removed:

Authority: Section 1102 of the Social Security Act (42 U.S.C. 1302); 49 Stat. 647, as amended.

2. Section 237.50 is amended by revising paragraph (b) to read as follows:

§ 237.50 Recipient count, Federal financial participation.

* * * * *

(b) *AFDC category.* For the AFDC category under title IV, Part A, of the Act:

(1) The recipient count for any month includes:

(i) Eligible recipients in families which receive a money payment, plus

(ii) Eligible recipients in families not otherwise counted on whose behalf protective or nonmedical vendor assistance payments are made for such month in accordance with the vendor payment provisions at § 234.60, provided that such payments are not excluded from Federal financial participation under the provisions of § 233.145(c) of this chapter.

(2) For the purpose of this provision, *recipients* means, if otherwise eligible:

(i) Children;

(ii) In a home with no parent who is the caretaker relative, an otherwise eligible relative of specified degree;

(iii) Parent(s);

(iv) The spouse of such parent, in the case of AFDC eligibility due to incapacity or unemployment;

(3) As used in paragraph (b)(2)(iii) of this section, the term *parent* means the natural or adoptive parent, or the stepparent who is married to the child's natural or adoptive parent and is legally obligated to support the child under a State law of general applicability which requires stepparents to support stepchildren to the same extent that natural or adoptive parents are required to support their children; and the term "spouse" as used in paragraph (b)(2)(iv) of this section means an individual who is the husband or wife of the child's own parent, as defined above, by reason of a legal marriage as defined under State law.

(4) Where there are two or more dependent children living in a place of residence with two other persons and each of such other persons is a relative who has responsibility for the care and control of one or more of the dependent children, there may be two AFDC families (assistance units), if neither family includes a parent or sibling included in the other family pursuant to § 206.10 (a)(1)(vii).

* * * * *

[FR Doc. 92-15594 Filed 7-7-92; 8:45 am]
BILLING CODE 4150-04-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 89-18; Notice 6]

RIN 2127-AD75

Federal Motor Vehicle Safety Standards; Glazing Materials

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

ACTION: Final rule.

SUMMARY: This notice amends Standard No. 205, Glazing Materials, to permit a new item of glass-plastic glazing. The new item of glazing permitted is Item 15B, Tempered glass-plastic glazing, that may be used anywhere in a motor vehicle, excluding the windshield. This new item of glazing is a restricted version of existing Item 14 glass-plastic glazing, which may be used anywhere in a motor vehicle, including the windshield. After reviewing public comments to proposals to remove Test No. 1 from the list of tests applicable to Item 3 glazing, the agency concludes that it has insufficient data at this time to support removal of Test No. 1 for Item 3 glazing. Therefore, the agency defers a final decision on this issue.

DATES: *Effective Date:* The changes made in this rule are effective August 7, 1992.

Petitions for Reconsideration: Any petitions for reconsideration of this rule must be received by NHTSA no later than August 7, 1992.

ADDRESSES: Petitions for reconsideration must refer to the docket and notice numbers set forth at the beginning of this notice and be submitted to the following: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Docket hours are 9:30 am to 4 pm, Monday through Friday. It is requested, but not required that 10 copies of the petition be submitted.

FOR FURTHER INFORMATION CONTACT: Mr. Clarke Harper, Office of Vehicle Safety Standards, NRM-12, NHTSA, 400 Seventh Street, SW, Washington, DC 20590. Mr. Harper's telephone number is (202) 366-4916.

SUPPLEMENTARY INFORMATION:

Background

Federal Motor Vehicle Safety Standard No. 205 Glazing Materials, (49 CFR 571.205) specifies performance requirements for the types of glazing that may be installed in motor vehicles. Standard No. 205 currently incorporates by reference American National Standards Institute Standard Z26.1 "Safety Code for Safety Glazing Materials for Glazing Motor Vehicles Operating on Land Highways" as amended through 1980 (ANS Z26). The requirements of ANS Z26 are specified in terms of performance tests that the various types of "items" of glazing must meet. It also specifies the vehicle locations in which each type of glazing may be installed.

One variety of glazing addressed in Standard No. 205 is glass-plastic glazing, a laminate of one or more layers of glass and one or more layers of plastic. It is installed so that a plastic layer faces inward, towards the interior of the motor vehicle, and a glass layer faces outward. The agency encourages use of glass-plastic glazing because of its proven injury-reduction capabilities in crashes.

April 1991 Final Rule and Supplementary Notice of Proposed Rulemaking

In a final rule of April 23, 1991 (56 FR 18526), the agency amended Standard No. 205 to permit three new items of glass-plastic glazing. Item 15A Annealed glass-plastic glazing, is permitted to be used anywhere in a motor vehicle, except the windshield. Item 16A Annealed glass-plastic glazing, and Item 16B Tempered glass-plastic glazing, may be used in areas not requisite for driving visibility. In that final rule, the agency also discussed further action on two issues: whether it should permit tempered glass-plastic glazing to be used anywhere in a motor vehicle, except the windshield, and whether it should remove Test No. 1, Light Stability, from the list of tests that Item 3 glazing must meet. These two issue are more fully discussed below.

The issue of permitting an item of tempered glass-plastic glazing for use anywhere in a motor vehicle, except for the windshield, was first raised by NHTSA in the notice of proposed rulemaking (54 FR 41632; October 11, 1989) that preceded the April 1991 final rule. In the NPRM, the agency did not propose to permit a tempered version of glass-plastic glazing for use anywhere in a motor vehicle except the windshield, citing its concern about potential visibility problems if the glazing should shatter. However, public comments in response to the NPRM convinced the agency that because of tempered glass-plastic's greater strength, the benefits from permitting a tempered version of glass-plastic glazing for use anywhere in a motor vehicle except the windshield, outweighed possible visibility problems that may result from shattered glazing.

Also in the October 1989 NPRM, the agency proposed removal of Test No. 1 for motor vehicle glazing that is used in areas that are not requisite for driving visibility. Its rationale was that it saw no safety need for glazing used in those areas to meet that test requirement. Test No. 1, Light Stability, in the American National Standards Institute Standard (ANS) Z26 (1980 edition), is a measure of visual deterioration of the glazing due to exposure to simulated sunlight and humidity.

In response to that proposal in the NPRM, the agency received comments from four glazing manufacturers. The comments were mixed. Some manufacturers that provided comments concurred with the proposal to remove Test No. 1 from Item 3 glazing. One manufacturer, Libbey-Owens-Ford, however, noted that changes in light transmittance can also indicate deterioration of plastic layers in the glazing. That commenter asserted that if Test No. 1 were no longer applied to Item 3 laminated or glass-plastic glazing, plastics with inferior weathering characteristics may be permitted. These inferior glazing products may have long range safety and reliability problems.

The agency stated in the April 1991 final rule that it had reexamined its position concerning use of tempered glass in glass-plastic glazing in visibility areas other than the windshield. It indicted that the issues raised by commenters on the utility of Test No. 1 for Item 3 glazing might have merit. Accordingly, the agency said that it would provide another opportunity for public comment on these issues.

In a supplementary notice of proposed rulemaking, (SNPRM) (56 FR 18559; April 23, 1991) published by NHTSA on the same date as the April 1991 final rule, the agency proposed the creation of Item 15B Tempered glass-tempered glazing for use in all locations that are requisite for driving visibility, other than the windshield. Also in the April 1991 SNPRM, the agency again asked for public comment on the issue whether to remove Test No. 1 from the list of tests that an item of glazing must meet in order to be designated as Item 3 glazing. The agency specifically requested test data to document the type of safety problems that may arise by permitting plastics that may fail Test No. 1.

Public Comments on the SNPRM

In response to the SNPRM, the agency received comments from five commenters, Chrysler Corporation (Chrysler), the Flat Glass Association of Japan (FGAJ), General Motors Corporation (GM), Libbey-Owens-Ford Company (LOF), and Monsanto Chemical Company (Monsanto). The commenters addressed the issues raised in the SNPRM as follows:

A. Item 15B Glazing

In general, four commenters, Chrysler, GM, LOF, and Monsanto, concurred with the agency's proposal to permit Item 15B, Tempered glass-plastic glazing. GM and FGAJ offered specific comments about other aspects of the proposal to permit Item 15B glazing. In its comments, GM requested that Item 15B be permitted in the side and rear windows of convertibles. The agency had proposed in the SNPRM to prohibit the use of Item 15B in convertibles. This restriction was proposed because of the agency's belief that excessive exposure to ultraviolet light may make the plastic in glass-plastic glazing deteriorate, possibly degrading visibility in windshields, side or rear windows.

GM stated that, in its opinion, Item 15B glazing would not be exposed to significantly greater amounts of ultraviolet light directed against the plastic side of glazing in convertibles than in non-convertibles. GM stated it believes that convertibles are typically operated with the side windows down. It stated that, similarly, rear windows are typically part of the removed or stowed roof. Therefore, according to GM, the side and rear windows in convertibles are not likely to be exposed to significantly more ultraviolet light when the roof is removed or stowed.

GM further stated that not permitting Item 15B glazing in convertibles could discourage use of this glazing. GM explained that in some cases, the same glazing material is used in both the base and convertible versions of the same passenger automobile. If Item 15B were prohibited in convertibles, a vehicle manufacturer that wanted to use glass-plastic glazing in the base version might be discouraged from using glass-plastic glazing by the additional cost of developing different glazing materials for the base and convertible versions.

Although it did not specifically state its views whether Item 15B glazing should be permitted, the Flat Glass Association of Japan (FGAJ) provided technical comments about some of the tests proposed to be applicable to Item 15B glazing. FGAJ stated that Test No. 4, Boil, was not appropriate for glass-plastic glazing and should be replaced with Test No. 5, Bake; that Test No. 7, Fracture, should be amended to incorporate the 1990 version of Test No. 7 in the ANS Z26 standard; and that the agency should use abrasion resistance Tests Nos. 33 and 34, as stated in the 1990 edition of the ANS Z26 standard, instead of, as proposed in the SNPRM, Test No. 17, Abrasion Resistance (Plastics), and Test No. 18, Abrasion Resistance (Safety Glass).

B. Applicability of Test No. 1 to Item 3 Glazing

Chrysler, GM and FGAJ stated that Test No. 1 should be removed from the list of tests applicable to Item 3 glazing, concurring with the agency's rationale that Test No. 1 is a test of luminous transmittance, and is not, therefore, appropriate for glazing to be used in areas not requisite for driving visibility. Libbey-Owens-Ford stated that it had no objection to the removal of Test No. 1 from the Item 3 glazing list of tests. However, it expressed a concern about the agency's eliminating the applicability of Test No. 1 to laminated glazing. LOF reported a 30 percent loss of strength in certain plastics after exposure to ultraviolet radiation in test situations. LOF stated that the test results indicate removal of Test No. 1 might permit use of plastics in laminated safety glazing that would lose their safety properties with extended exposure to outdoor light. LOF did not identify any specific plastics that were tested. LOF stated that whatever the agency decides to do about Test No. 1, Items 3, 16A and 16B glass-plastic glazing should be treated in the same fashion with respect to the applicability of Test No. 1 since all three items are used in the same locations in a motor vehicle. At present, Test No. 1 applies to neither Item 16A nor 16B.

Monsanto opposed making Test No. 1 inapplicable to Item 3 glazing. It stated that although polyvinyl butyryl (PVB) will meet Test No. 1, Monsanto stated that glazing "which is significantly inferior and will not pass the test" should not be permitted because such materials can develop "color, bubbles, haze, etc." as a result of exposure to ultraviolet light. Monsanto did not specify any particular type of material that may encounter the difficulties that were described.

Agency Analysis of Public Comments and Final Decision

A. Item 15B Glazing

All the comments addressing the issue, whether Item 15B Tempered glass-plastic glazing should be permitted, supported the creation of Item 15B glazing. Neither the public comments, nor other information available to the agency indicates that permitting Item 15B glazing would adversely affect safety. Accordingly, for the reasons stated in the notices of April 23, 1991 (56 FR 18526; 56 FR 18559), the agency is

amending Standard No. 205 to permit Item 15B glazing for use in all motor vehicle locations requisite for driving visibility other than the windshield.

As already noted, two other issues were raised by commenters about further defining the parameters of Item 15B glazing: the issue of whether Item 15B should apply to side and rear windows of convertibles; and the issue of tests applicable to Item 15B glazing.

GM raised the issue of permitting glass plastic glazing in side and rear windows of convertible motor vehicles both in comments on the April 1991 SNPRM and in its petition for reconsideration of the April 1991 final rule creating Items 15A, 16A, and 16B glazing (56 FR 18526). In that petition, GM requested that a prohibition against use of Item 15A glazing in convertibles be removed. GM's rationale in both rulemakings was that the plastic side of Item 15A glazing on the side windows or rear window of convertibles is not significantly more likely to be exposed to ultraviolet light than the same type of glazing in passenger automobiles that are not convertibles. In a January 15, 1992 notice responding to petitions for reconsideration (57 FR 1652), the agency granted GM's request and removed Standard No. 205's prohibition against Item 15A glazing in convertibles. NHTSA took this action because it agreed with GM's rationable.

Since NHTSA has already decided, in the January 1992 final rule, that permitting another type of glass-plastic glazing in side windows and the rear window in convertibles is consistent with motor vehicle safety, the agency adopts the same position regarding the use of Item 15B glazing. Item 15B glazing will be permitted for use in the side windows and rear window of convertibles.

Most of FGAJ's suggestions concerning amendments to tests applicable to Item 15B glazing appear to have been made with the intent of making Standard No. 205 conform more closely with the 1990 edition of the ANS Z26 standard. FGAJ did not base any of its suggestions on a desire to promote greater reliability in test results, or on a need for greater safety. Regarding FGAJ's first recommendation, that Test No. 5, *Bake*, instead of Test No. 4, Boil, should apply to Item 15A, the agency notes that FGAJ previously recommended replacing Test No. 4 with Test No. 5 for other items of glass-plastic glazing. The earlier recommendation was made in response to the agency's NPRM of October 11, 1989 (54 FR 41632) proposing to create Items 15A, 16A, and 16B. In the April 23, 1991 final rule (56 FR 18526), the agency responded to the FGAJ's recommendation, and noted that the main difference between the two tests is that humidity or water is present in the boil test but not in the bake test. The agency stated that it was aware from field reports and certification test failures from independent laboratories, that some grades of plastic will become opaque in the presence of moisture. If this phenomenon is not detected, glazing with lessened visibility could be hazardous in hot, humid climates. Accordingly, the agency concluded that it was inappropriate to replace Test No. 4, Boil, with Test No. 5, Bake. (See 56 FR at 18530).

In its response to the SNPRM to create Item 15B glazing, the FGAJ again raised the issue of replacing the boil test with the bake test. However, it offered no additional information why the proposed change should be make, did not address the agency's concern about the inappropriateness of the bake test in replicating conditions in hot, humid climates, and offered no safety rationale for its proposal. Since no reason has been given why the agency's decision not to replace the bake test for the boil test (for Items 15A, 16A and 16B) was inappropriate, the agency again adopts the rationale stated in the final rule of April 23, 1991 (56 FR 18526).

The second FGAJ recommendation was that the procedure in Test No. 7, Fracture, be amended to be consistent with the 1990 version of ANS Z26. FGAJ noted differences between the Standard No. 205 version (that incorporates the 1980 edition of ANS Z26) and the 1990 test procedures. FGAJ did not cite a safety need to amend the test procedure. Since FGAJ did not show how making the changes would result in more valid results or would promote safety, the agency has decided not to adopt FGAJ's recommendation of Test No. 7.

The third FGAJ recommendation was that abrasion tests 17 and 18 be replaced with different abrasion tests. Test Nos. 33 and 34 (from the 1990 version). Test Nos. 17 and 18 differ from Test Nos. 33 and 34 in that the latter tests indicate on which side (plastic or glass) the test should be run. The agency notes that in S5.1.2.9, of Standard No. 205, Test Nos. 17 and 18 are modified to indicate on which sides the test should be run. Since this addition to Standard No. 205 makes Test Nos. 17 and 18 almost identical to Test Nos. 33 and 34, adopting the third recommendation would have essentially no practical effect. Accordingly, the agency is not adopting that recommendation.

B. Applicability of Test No. 1 to Item 3 Glazing

The agency also requested comments in the SNPRM on its proposal to remove Test No. 1, Light Stability, from the list of tests applicable to Item 3 glazing. Test No. 1, as indicated earlier, is intended to measure the reduction of luminous transmittance after the material is exposed to simulated sunlight. The agency initially concluded that there was no apparent safety need to include this visibility test requirement for Item 3 glazing since it is permitted to be used only in areas not requisite for driving visibility.

In both the October 1989 NPRM and April 1991 SNPRM, the agency proposed to remove Test No. 1 from the list of tests for Item 3 glazing because the agency believed that Test No. 1 was included only because of an oversight. Similarly, when the lists of tests applicable to Items 16A and 16B glazing was created, the agency did not include Test No. 1 in the list for either item. The agency took this step because it believed that Test No. 1 would eventually be removed from Item 3, and that since Items 3, 16A and 16B are permitted in identical locations in a motor vehicle, the lists of tests applicable to Items 3, 16A and 16B should be as consistent as possible.

In response to the SNPRM, several commenters characterized Test No. 1 merely as a "reliability" test and stated that the test is irrelevant for an item of glazing specified for use only in areas not requisite for driving visibility. However, two commenters, Libbey-Owens-Ford (LOF) and Monsanto, stated that the test is an indirect detector of inferior plastics. LOF specifically expressed concern that certain materials experienced a 30 percent loss of strength after undergoing several hundred hours of exposure to ultraviolet radiation. The agency agrees with LOF and Monsanto that Test No. 1 may be capable of identifying inferior and potentially unsafe plastic. The agency also concurs with LOF that Standard No. 205 is inconsistent with respect to the applicability of Text No. 1. Test No. 1 applies to Item 3 glazing, but does not apply to Items 16A and 16B glazing, which may be used in motor vehicle locations identical to Item 3.

After carefully reviewing these issues raised by commenters, the agency concludes that it has insufficient information to support either the removal of this test for Item 3 glazing or the extension of its applicability to Items 16A and 16B glazing. Accordingly, the agency again defers its decision on

the issue of applicability of Test No. 1 to Items 3, 16A and 16B glazing pending further analysis of the issue.

Effect of Final Rule on Concurrent Standard No. 205 Rulemakings

In anticipation of possible questions from the public, the agency wishes to note that this final rule is independent of, and has no effect on, the NPRM issued by the agency on January 22, 1992 (57 FR 2496) that proposed to amend Standard No. 205 to revise light transmittance requirements to replicate real-world conditions more closely. The issues raised in the January 1992 NPRM are different from those addressed in this final rule. Since NHTSA encourages greater use of glass-plastic glazing, it is issuing this final rule primarily to permit Item 15B glazing to be used in designated motor vehicle locations as soon as possible.

Effective Date

This rule is effective 30 days after publication in the **Federal Register**. The rule relieves a restriction in Standard No. 205 by permitting the use of tempered glass-plastic in all glazing locations, except the windshield. Those manufacturers that do not deem it appropriate to use this material at this time are not required to do so. Since this rule permits but does not require the increased use of glass-plastic glazing, the agency concluded that this optional item of glazing should be permitted sooner than 180 days after the issuance of this rule. Therefore, the agency finds good cause that this rule should become effective 30 days after it is published.

This final rule does not have any retroactive effect. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1392(d)), whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. Section 105 of the Act (15 U.S.C. 1394) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Rulemaking Analyses and Notices

1. Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

This agency has considered the costs and other impacts of this rule and determined that the rule is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation's regulatory procedures. This rule does not impose new requirements, but instead, provides additional flexibility to manufacturers by permitting use of an additional item of glazing in motor vehicles. Since the use of this new item of glazing is optional, no costs will be imposed by this final rule. Any cost impacts resulting from the use of Item 15B glazing will be so slight that they cannot be quantified. Since the effects of this final rule are so minimal, preparation of a full regulatory evaluation is not required.

2. Regulatory Flexibility Act

NHTSA has analyzed the effects of this final rule on small entities in accordance with the Regulatory Flexibility Act. Based on that analysis, I hereby certify that this final rule will not have a significant economic impact on a substantial number of small entities. As indicated above, this rule does not impose new requirements but instead provides additional flexibility to manufacturers by permitting a new item of glazing. Accordingly, no final regulatory flexibility analysis has been prepared.

3. Executive Order 12612 (Federalism)

This rule has been analyzed in accordance with the principles and requirements contained in Executive Order 12612, and the agency has determined that it does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

4. National Environmental Policy Act

The agency has considered the environmental implications of this rule in accordance with the National Environmental Policy Act of 1969 and has determined that it will not significantly affect the quality of the human environment.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

PART 571—[AMENDED]

In consideration of the foregoing, 49 CFR part 571 is amended to read as follows:

1. The authority citation for part 571 continues to read as follows:

Authority: 15 U.S.C. 1391, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

2. In § 571.205, a new S5.1.2.6 is added, S5.1.2.10 is revised to read as follows, and the second sentence of S6.1 is revised to read as follows:

§ 571.205 Standard No. 205, Glazing Materials.

* * * * *

S5.1.2.6 *Item 15B—Tempered Glass-Plastic for Use in All Positions In a Vehicle Except the Windshield.* Glass-plastic glazing materials that comply with Tests Nos. 1, 2, 3, 4, 7, 8, 16, 17, 18, 19, 24, and 28, as those tests are modified in S5.1.2.9 *Test Procedures for Glass-Plastics,* may be used anywhere in a motor vehicle except the windshield.

* * * * *

S5.1.2.10 *Cleaning instructions.*

(a) Each manufacturer of glazing materials designed to meet the requirements of S5.1.2.1, S5.1.2.2, S5.1.2.3, S5.1.2.4, S5.1.2.5, S5.1.2.6, S5.1.2.7, or S5.1.2.8 shall affix a label, removable by hand without tools, to each item of such glazing material.

(b) Each manufacturer of glazing materials designed to meet the requirements of paragraphs S5.1.2.4, S5.1.2.5, S5.1.2.6, S5.1.2.7, or S5.1.2.8 may permanently and indelibly mark the lower center of each item of such glazing material, in letters not less than 3/16 inch nor more than 1/4 high, the following words, Glass Plastic Material—See Owner's Manual for Care Instructions.

* * * * *

S6.1 * * * The materials specified in S5.1.2.1, S5.1.2.2, S5.1.2.3, S5.1.2.4, S5.1.2.5, S5.1.2.6, S5.1.2.7, and S5.1.2.8 shall be identified by the marks "AS 11C", "AS 12", "AS 13", "AS 14", "AS 15A", "AS 15B", "AS 16A", and "AS 16B", respectively. * * *

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Issued on: July 1, 1992.

Frederick H. Grubbe,

Deputy Administrator.

[FR Doc. 92-15868 Filed 7-7-92; 8:45 am]

BILLING CODE 4910-59-M3

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB66

Endangered and Threatened Wildlife and Plants; Threatened Status for the Plant Thelypteris pilosa var. alabamensis (Alabama Streak-sorus Fern)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines a plant, *Thelypteris pilosa* var. *alabamensis* (Alabama streak-sorus fern), to be a threatened species under the authority contained in the Endangered Species Act (Act) of 1973, as amended. *Thelypteris pilosa* var. *alabamensis* is currently believed to be limited to a 3.25 mile stretch along the Sipsey Fork, a tributary of the Black Warrior River in Winston County, Alabama. In this area, 15 separate localities have been documented. This species is extremely vulnerable due to its limited distribution. Populations have been impacted or are potentially threatened by impoundments, bridge construction, vandalism and incidental damage from recreational use of habitats, and timbering of forest upslope. This action will extend the Act's protection to *Thelypteris pilosa* var. *alabamensis*.

EFFECTIVE DATE: August 7, 1992.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the Jackson, Mississippi Field Office, U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, Suite A, Jackson, Mississippi 39213.

FOR FURTHER INFORMATION CONTACT: Cary Norquist at the above address or telephone (601/965-4900 or FTS 490-4900).

SUPPLEMENTARY INFORMATION:

Background

Thelypteris pilosa var. *alabamensis* is a small, evergreen fern with linear-lanceolate fronds 10 to 20 centimeters (cm) (4 to 8 inches) long. The fronds appear clustered, arising from short, slender rhizomes covered with reddish-brown scales. The stipe portion of the frond ("petiole") is slender, erect to ascending, 1 to 3 cm (0.4 to 1 inch) long, and covered with long hairs. The blade is typically 3 to 10 cm (1 to 4 inches) long, 1.5 to 3 cm (.05 to 1 inch) broad, and divided once into many ovate to suborbicular leaf segments (pinnae). The sori (groups of spore-producing reproductive structures) occur on the underside of the blades and are linear in shape. This is the only southeastern species of *Thelypteris* which lacks indusia (thin membrane that covers the sori) (Kral 1983, Mickel 1989).

This variety was first described by Crawford (1951) based on material that he and A.M. Harvill collected in 1949 along the Sipsey Fork of the Black Warrior River (Winston County, Alabama). Two specimens from the Mexican States of Chihuahua and Sonora were cited in Crawford's description as belonging to this variety. These specimens, and other *Thelypteris pilosa* specimens from Mexico, have been recently examined by Mickel (1989) and Alan Smith (*Thelypteris* authority, University of California at Berkeley, pers. comm. 1990). They concluded that the Alabama plants are distinct (at least at the varietal level) from the Mexican material, including those specimens from Chihuahua and Sonora, cited in the original description by Crawford (1951). *Thelypteris pilosa* var. *alabamensis* differs from *Thelypteris pilosa* var. *pilosa* (a species relatively common in Mexico and extending south to Guatemala and Honduras) by its overall smaller size, narrower blades, rounded (versus acuminate) pinna and pinna lobe tips, and the frequent free lobe at the base of the basal pinnae (Lellinger 1985, Mickel 1989). Studies are currently underway to determine if these differences warrant elevating *Thelypteris pilosa* var. *alabamensis* to the species' level (Mickel 1989).

In 1960, the type locality was destroyed by bridge construction and subsequent flooding in association with the completion of Lewis Smith Dam, located several miles downstream. The species was presumed to be extinct (Dean 1969) until 1972, when Alabama naturalist L. Smith rediscovered it approximately eight miles upstream (Short and Freeman 1978). Additional colonies were located in this general area in 1975 and 1976 by Short and Freeman (1978). Surveys to locate additional populations and delineate its range along the Sipsey Fork were conducted by Alabama Natural Heritage Program in 1990 (Gunn 1991). Currently, the species' known range is confined to an approximately 3.25 mile stretch along the Sipsey Fork, a tributary of the Black Warrior River in Winston County, Alabama. In this area, the Heritage Program has documented 15 localities. Approximately 50 percent of the sites support small populations (a dozen or fewer plants); three have moderate populations (20 to 75 plants); three have large populations (several hundred); and two have extensive populations (ca. 1,500 and 6,000) (Gunn 1991). A mid-1970's report of this species along the Sipsey Fork near the Lawrence and Winston County line (Short and Freeman 1978) has not been relocated, despite repeated attempts (Gunn 1991).

Thelypteris pilosa var. *alabamensis* takes root in crevices or on rough rock surfaces of Pottsville sandstone along the Sipsey Fork (Gunn 1991). Plants typically occur on "ceilings" of sandstone overhangs (rockhouses), on ledges beneath overhangs, and on exposed cliff faces. These bluffs and overhangs are usually directly above the stream; however, some are located a short distance away from the river. Locations vary in slope aspect and shade coverage, from completely shaded to partially sunny on exposed bluff faces. The sites are kept moist by natural water seepage over the sandstone from up-slope runoff. Water vapor from the stream increases the humidity for those sites directly above the water or nearby. *Thelypteris pilosa* var. *alabamensis* grows among various bryophytes and is often associated with climbing hydrangea (*Decumaria barbara*), (*Thalictrum clavatum*, *Heuchera parviflora*, and the ferns *Osmunda cinnamonea*, *O. regalis*, and most notably, the Appalachian bristle fern (*Trichomanes boschianum*). Surrounding forest is of the hemlock-hardwood type and includes various cove-type hardwoods (Gunn 1991, Kral 1983).

All sites are within the boundaries of the Bankhead National Forest and the majority occur on U.S. Forest Service land. Several localities are on private inholdings.

Federal actions involving *Thelypteris pilosa* var. *alabamensis* began with Section 12 of the Endangered Species Act of 1973, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants, considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94-51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of the report of the Smithsonian Institution as a petition within the context of section 4(c)(2), now section 4(b)(3)(A), of the Act and of its intention thereby to review the status of those plants. 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 to be endangered species pursuant to section 4 of the Act. *Thelypteris pilosa* var. *alabamensis* was included in the Smithsonian petition and the 1976 proposal. General comments received in relation to the 1976 proposal were summarized in an April 26, 1976, **Federal Register** publication (43 FR 17909).

The Endangered Species Act Amendments of 1978 required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. In the December 10, 1979, **Federal**

Register (44 FR 70796), the Service published a notice of withdrawal of the June 16, 1976, proposal, along with four other proposals that had expired. *Thelypteris pilosa* var. *alabamensis* was included as a category 2 species in a revised list of plants under review for threatened or endangered classification published in the December 15, 1980, **Federal Register** (45 FR 82480). This species was maintained in category 2 in the Service's updated plant notices of September 27, 1985 (50 FR 39526) and February 21, 1990 (55 FR 6184). (Category 2 species are those for which are listing as endangered or threatened species may be warranted but for which substantial data on biological vulnerability and threats are not currently known or on file to support a proposed rule.

The Service funded a survey in 1990 to determine the status of this species in Alabama. Additional water courses were surveyed; however, no populations were located outside an approximately 3 mile segment of the Sipsey Fork (Black Warrior River). A final report was received and approved by the Service in the spring of 1991. This report (Gunn 1991) and other information supported the proposed listing. The data demonstrated a limited distribution and potential threats to the species.

Section 4(b)(3) of the Endangered Species Act, as amended in 1982, requires the Secretary to make certain findings on pending petitions within 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. This was the case for *Thelypteris pilosa* var. *alabamensis* because of the acceptance of the 1975 Smithsonian report as a petition. In October of 1983, and succeeding years, the Service found that the petitioned listing of *Thelypteris pilosa* var. *alabamensis* was warranted, but that listing this species was precluded due to other higher priority listing actions and additional data were being gathered. On November 29, 1991, the Service published a proposal (56 FR 60957) to list *Thelypteris pilosa* var. *alabamensis* as a threatened species, constituting the final 1-year finding.

Summary of Comments and Recommendations

In the November 29, 1991, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate Federal and State agencies, county governments, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice, inviting public comment, was published in the *Daily Mountain Eagle*, Jasper, Alabama, on December 15, 1991.

Five written responses to the proposed rule were received, including two from private individuals, and three from private organizations (Access Fund, Center for Plant Conservation, and Biodiversity Legal Foundation). The Access Fund (a climbing organization) requested additional information without stating an opinion on the proposed rule. The other four comments were in support of the listing. The two individuals also supplied additional background information on this species which has been incorporated into appropriate sections of the rule.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Thelypteris pilosa* var. *alabamensis* should be classified as a threatened species. Procedures found at Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act were followed. 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 *Thelypteris pilosa* var. *alabamensis* (Mart. and Gal.) Crawford (Alabama streak-sorus fern) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

The type locality, which is approximately 5 miles downstream of extant populations, was destroyed in 1960. The cliffs where the plants grew were leveled when a new bridge was constructed. The area was subsequently flooded with the completion of Lewis Smith Dam several miles downstream (Short and Freeman 1978, Burks *in litt.*). The impoundment inundated suitable habitat, and perhaps plants, upstream and downstream of the type locality (Gunn 1991). Currently, plants are located on both sides of a highway bridge over the Sipsey Fork (upstream of the reservoir's influence). Plants may have been destroyed by this bridge construction (Gunn 1991). Future road or dam construction along the upper reach of the Sipsey Fork poses a potential threat to extant populations.

Logging of woodlands above the occupied sites could adversely affect the microhabitat needed by the fern. As noted in the "Background" section, the species is dependent on up-slope runoff and seepage to maintain the substrate moisture. Heavy timbering or clear-cutting could alter the area's hydrology by interrupting this natural seepage. Additionally, the loss of the canopy would increase ambient light and lower the humidity. Thus, timber removal would dehydrate the habitat and such could be detrimental to this fern (Gunn 1991, Kral 1983, Currie *in litt.*).

Overhangs or rockhouses are habitat for about 50 percent of the known populations of *Thelypteris pilosa* var. *alabamensis*. These areas are frequented by hikers, fishermen, and campers and are subject to vandalism. Two of the larger populations occur in rockhouses which are often used by humans, as evidenced by numerous footprints, abundant litter, and old campfires. Intentional or incidental damage caused by hikers and campers, in addition to the heat and smoke from campfires, threatens these populations (Gunn 1991).

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

This species is not known to be in commercial trade. Over-collecting for any purpose would adversely impact this species due to its rarity and the small number of individuals at several sites. The fern's limited distribution makes it vulnerable to collectors and vandals.

C. Disease of Predation

No species specific diseases or predators have been identified. However, as in Factor B, disease or predation could have a serious adverse impact on the small and fragmented populations.

D. The Inadequacy of Existing Regulatory Mechanisms

This species is considered endangered by the Alabama Natural Heritage Program (Gunn, pers. comm. 1991) but receives no protection from State legislation. All sites are located along the portion of the Sipsey Fork of the Black Warrior River that has been assigned "Wild and Scenic River" status by 1988 Federal legislation. Those sites on Forest Service land are designated "recreational status", which requires certain management actions by Federal landholders. The managing agency must develop management plan for the wild and scenic corridor, including management recommendations for *Thelypteris pilosa* var. *alabamensis*,

which is identified as a sensitive species for Bankhead National Forest (BNF). Currently, no management plan or recommended action, for either the river or the fern, has been developed by the U.S. Forest Service (Gunn 1991). As a result, no formal protection is afforded to sites on BNF. Four (possibly six) of the sites are on private property where there is no protection.

F. Other Natural or Manmade Factors Affecting its Continued Existence

The greatest threat to this species is its extreme vulnerability due to its limited range and small number of plants at many of the sites (see "Background"). A single natural or anthropogenic disturbance could seriously reduce the population size and affect the species' viability. Catastrophic flooding through the narrow gorge could possibly scour all the occupied sites to such a degree that the size of the population would be significantly reduced. Sites near the water have few individuals (one to three plants), probably because of scouring from seasonal (as opposed to catastrophic) flooding. Severe drought would decrease the substrate moisture and be detrimental to this species. A local drought in 1990 appeared to kill individual plants at several localities (Gunn 1991).

As a natural erosional process, sandstone overhangs and bluffs periodically erode small and large sections. A site could be completely eliminated (including one with a large number of plants) if one such incident occurred (Gunn 1991).

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 make this rule final. Based on this evaluation, the preferred action is to list *Thelypteris pilosa* var. *alabamensis* as threatened. Threatened status seems appropriate since this species is not in imminent danger of extinction. However, this species is extremely vulnerable due to its restricted range and is likely to become endangered in the foreseeable future if protective measures are not taken. Critical habitat is not being designated for reasons discussed in the following section.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is presently not prudent for this species. Publication of critical habitat maps will increase public interest and possibly lead to additional threats to this species from collecting and vandalism. This species occurs at a limited number of sites and several are easily accessible and frequented by hikers and campers. Taking is an activity that is difficult to control and is only regulated by the Act with respect to plants in cases of (1) removal and reduction to possession of endangered plants from lands under Federal jurisdiction, or their malicious damage or destruction on such lands; and (2) removal, cutting, digging up, or damaging or destroying in knowing violation of any State law or regulation, including State criminal trespass law. Publication of critical habitat descriptions and maps in the **Federal Register** and local newspapers would make *Thelypteris pilosa* var. *alabamensis* more vulnerable and increase enforcement problems. The principal parties involved, including State/Federal agencies, have been notified of the location and importance of protecting this species' habitat. Protection of this species' habitat will be addressed through the recovery process and through the Section 7 jeopardy standard. Therefore, it would not now be prudent to determine critical habitat for *Thelypteris pilosa* var. *alabamensis*.

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, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States 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)(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.

All sites are located within the boundary for the Bankhead National Forest and the majority of the sites are on U.S. Forest Service lands. The Forest Service will consider this species regarding their activities on their lands. The Environmental Protection Agency will consider this species relative to pesticide (herbicide) registration. Currently, no other activities to be authorized, funded, or carried out by Federal agencies are known to exist that would affect *Thelypteris pilosa* var. *alabamensis*.

The Act and its implementing regulations found at 50 CFR 17.71 and 17.72 set forth a series of general 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, 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 this species in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jurisdiction. 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 State law or regulation, including State criminal trespass law. Section 4(d) of the Act allows for the provision of such protection to threatened species through regulations. The protection may apply to threatened plants once revised regulations are promulgated. Certain exceptions apply to agents of the Service and State 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.

It is anticipated that few trade permits would ever be sought or issued because the species is not common in cultivation or in the wild. Requests for copies of the regulations on listed plants and inquiries regarding prohibitions and permits may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive,

room 432, Arlington, Virginia 22203 (703/358-2104).

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

Crawford, L.C. 1951. A new fern for the United States. Amer. Fern. Journ. 41:15-20.

Dean, B.E. 1969. Ferns of Alabama, 2nd ed. Southern University Press, Birmingham, AL. 222 pp.

Gunn, S.C. 1991. An update on the status of *Thelypteris pilosa* var. *alabamensis*. Report to the U.S. Fish and Wildlife Service, Jackson, Mississippi. 18 pp.

Kral, R. 1983. A report on some rare, threatened, or endangered forest-related vascular plants of the South. USDA, U.S. Forest Service, Tech. Publ. R8-TP2. 1305 pp.

Lellinger, D.B. 1985. A field manual of the ferns and fern-allies of the United States and Canada. Smithsonian Inst. Press, Washington, D.C. 389 pp.

Mickel, J.T. 1989. Current status of *Thelypteris Pilosa* var. *alabamensis*. Unpubl. man. 5 pp.

Short, J.W., and J.D. Freeman. 1978. Rediscovery, distribution and phytogeographic affinities of *Leptogramma pilosa* in Alabama. Amer. Fern. Journ. 68:1-2.

Author

The primary author of this rule is Cary Norquist (see ADDRESSES section) 601/965-4900 or FTS 490-4900.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended 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. Amend § 17.12(h) by adding, in alphabetical order, the family Thelypteridaceae, and the following entry, 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					
Thelypteridaceae—Marsh fern family:						
*	*	*	*	*	*	*
Thelypteris pilosa var. *alabamensis*. (= *Leptogramma pilosa* var. *alabamensis*).	Alabama streak-sorus fern	U.S.A. (AL)	T	476	NA	NA
*	*	*	*	*	*	*

Dated: June 22, 1992.

Richard N. Smith,

Director, Fish and Wildlife Service.

[FR Doc. 92-15976 Filed 7-7-92; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 920655-2155]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Emergency interim rule; request for comments.

SUMMARY: NMFS has determined that an emergency exists in the groundfish fisheries being conducted in the Gulf of Alaska. Premature attainment of the total allowable catch (TAC) specification for the "other species" category is causing unnecessary discarding of groundfish that otherwise could be utilized. The TAC specification for the "other species" category is being increased to allow retention of component species comprising this category when caught as bycatch in other fisheries. This action is necessary to reduce discarding of groundfish for no meaningful purpose. This action is intended to further the goals and objectives of the North Pacific Fishery Management Council.

DATES: Effective July 1, 1992 through October 6, 1992.

Comments are invited on this action until July 23, 1992.

ADDRESSES: Copies of the Environmental Assessment (EPA) prepared for this action may be obtained from Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802. Comments should be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg, (907) 586-7228.

SUPPLEMENTARY INFORMATION: The U.S. groundfish fishery in the exclusive economic zone of the Gulf of Alaska is managed by the Secretary of Commerce (Secretary) under the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). The FMP was prepared by the North Pacific Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act (Magnuson Act) and is implemented by regulations governing the U.S. fishery at 50 CFR part 672. Additional regulations applicable to U.S. fisheries are codified at 50 CFR part 620.

At times, amendments to the FMP and its implementing regulations are necessary to respond to fishery conservation and management problems that cannot be addressed within the time frame of the normal procedures provided for by the Magnuson Act. Section 305(c) of the Magnuson Act, 16 U.S.C. section 1855(c), authorizes the Secretary to promulgate emergency rules necessary to address these problems. These emergency rules may remain in effect for not more than 90 days after publication in the **Federal Register**, with a possible 90-day extension. This emergency rule is implemented to increase the TAC for the

"other species" category. A fuller description of, and need for, this action follows:

Under section 3.1 of the FMP, groundfish species managed under the FMP include those in the target species categories and the "other species" category. Section 4.2.1 of the FMP provides a framework procedure for setting annual TAC specifications for these categories. Under the framework procedure, acceptable biological catch (ABC) amounts are specified annually for each of the target species categories. TACs for each of the target species are specified, based on ABCs and other biological and socioeconomic information. Unlike the target species, the "other species" category is not based on biological or socioeconomic information, but solely is based on a formula that requires a TAC for the "other species" category equal to 5 percent of the sum of the TACs for the target species.

Species that constitute the "other species" category include Atka mackerel, sculpins, sharks, skates, eulachon, smelts, capelin, squid, and octopus. The purpose of the "other species" category is to account for amounts of certain groundfish species that are caught as bycatch in the target species fisheries. Usually, the 5 percent allowance of the "other species" category is more than adequate to support bycatch needs while fishing for target species. For example, the total catch of "other species" in 1991 was 4,823 metric tons (mt), which was only 2 percent of the total catch (236,003 mt) of the target species categories.

For the 1992 fishing year, the TAC specified for the "other species" category is 13,432 mt, or 5 percent of the sum of the TACs specified for the target species categories, which is equal to 268,634 mt (57 FR 2844, January 24, 1992). The "other species" TAC applies to the entire Gulf of Alaska.

Although the "other species" TAC was expected to support bycatch needs for all of the 1992 fishing year, it was reached unexpectedly early. On May 13, under § 672.20(c)(3), further retention of "other species " was prohibited for the remainder of that 1992 fishing year (57 FR 21215, May 19, 1992). The "other species" TAC was reached early when fishermen targeted the Atka mackerel component of the "other species" TAC in the westward areas of the Gulf of Alaska. This was an extraordinary and unanticipated event, having never occurred before in the Gulf of Alaska. Until now, the conventional wisdom regarding Atka mackerel in the Gulf of Alaska has been that while they were known to be in the Gulf, it was not believed they were present in sufficient numbers to support a directed fishery.

Each fisherman now is required by § 672.20(c)(3) to treat all catches of each component species of the "other species" category as a prohibited species and to sort his catch as soon as possible after retrieval of the catch and to return any prohibited species to the sea as required by § 672.20(e)(2). Inadvertent catches of some components of the "other species" category (e.g., eulachon, capelin, sculpins) commonly occur in the groundfish fisheries. These species are small in size and, when caught in large numbers, impose a significant cost to fishermen who must sort them at sea to comply with regulations. Such treatment of "other species" is imposing an unnecessary burden on fishermen and processors because most, if not all, of the "other species" catches perish after capture. Having to discard them at sea serves no useful purpose when they might otherwise be used by processors.

The Secretary has reviewed the reasons underlying the closure and has determined that no useful purpose is being accomplished by its continuation. Targeting the Atka mackerel component of the "other species" category was an unforeseen event that resulted in premature attainment of the TAC for the "other species" category. An emergency rule is justified to prevent significant economic loss resulting from discarding "other species" catches that otherwise could have been utilized. The Secretary is specifying a new TAC for the "other species" category of 20,432 mt. This amount is an increase of 7,000 mt from the current amount of 13,432 mt. The increase of 7,000 mt is the sum of 5,200 mt and 1,800 mt; 5,200 mt represents a bycatch allowance of about 5 percent of the remaining TAC of the target species categories as of May 17, 1992, and 1,800 mt represents the amount of "other species" taken and returned to the ocean since the May closure.

In a separate action, the Secretary intends to prohibit directed fishing for the "other species" category under 50 CFR paragraph 672.20(c)(2)(ii). NMFS expects that fishing mortality inflicted on any of the component species in the "other species" category resulting from inadvertent bycatches will be the same as if the prohibited species status were retained and each catch had to be sorted and discarded at sea. No significant conservation impacts are expected to result from this action, including any risk of overfishing of any component of the "other species" category. Likewise, no significant allocative impacts are expected.

For the reasons explained above, the Secretary modifies the final specifications for the "other species" TAC in Table 1 as provided in § 672.20(c)(1), from July 1, 1992 until October 6, 1992 as follows:

TABLE 1.—FINAL 1992 SPECIFICATIONS FOR OVERFISHING LEVELS, ACCEPTABLE BIOLOGICAL CATCHES (ABC), AND TOTAL ALLOWABLE CATCHES (TAC) FOR THE WESTERN/CENTRAL (W/C), WESTERN (W), CENTRAL (C), AND EASTERN (E) REGULATORY AREAS AND IN THE SHUMAGIN (SH), CHIRIKOF (CH), KODIAK (KD), WEST YAKUTAT (WYK), AND SOUTHEAST OUTSIDE (SEO) DISTRICTS OF THE GULF OF ALASKA (GW). SPECIFICATIONS OF DOMESTIC ANNUAL PROCESSING (DAP) EQUAL TAC. VALUES ARE IN METRIC TONS

Species	Over-fishing level	Area	ABC	TAC = DAP
* * * * *				
Other species	NA	GW	NA	20,432
Total				289,066
* * * * *				

Comments on this emergency rule are invited until July 23, 1992 and should be sent to the Chief, Fisheries Management Division, Alaska Region (see **ADDRESSES**). NMFS will initiate action with the Council about changes to regulations that will prevent a recurrence of this situation in future years.

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this rule is necessary to respond to an emergency situation and that it is consistent with the Magnuson Act and other applicable law.

The Assistant Administrator finds that the reasons justifying promulgation of this rule on an emergency basis also make it impracticable and contrary to the public interest to provide notice and opportunity for prior comment or to delay for 30 days its effective date under sections 553 (b) and (d) of the Administrative Procedure Act. In addition, this rule relieves a restriction on the fishing industry. Unnecessary sorting and discarding of groundfish that otherwise might be utilized will continue to occur until this emergency rule is implemented.

The Assistant Administrator has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal management program of the State of Alaska. This determination has been submitted for review by the responsible State agency under section 307 of the Coastal Zone Management Act.

Based on the EA prepared for this action, the Assistant Administrator concluded that no significant impact on the human environment will result. A copy of the EA is available (see **ADDRESSES**).

NMFS has determined that none of the actions taken under this emergency rule will adversely affect endangered or threatened species. Therefore, formal consultation pursuant to section 7 of the Endangered Species Act is not required for the implementation of this rule.

This emergency rule is exempt from the normal review procedures of Executive Order 12291, as provided in section 8(a)(1) of that order. This rule is being reported to the Director of the Office of Management and Budget with an explanation of why following the usual procedures of that order is not possible.

This rule is exempt from the procedures of the Regulatory Flexibility Act, because it is issued without opportunity for prior public comment.

This rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

The 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 675

Fisheries, Reporting and recordkeeping.

Dated: July 1, 1992.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 92-15876 Filed 7-1-92; 4:40 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 57, No. 131
Wednesday, July 8, 1992

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

DEPARTMENT OF ENERGY

Office of Energy Research

10 CFR Part 605

Office of Energy Research Financial Assistance Program

AGENCY: Office of Energy Research, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Energy (DOE) today is issuing this second notice of proposed rulemaking (NOPR) for the Special Research Grants Program, to be renamed the Office of Energy Research Financial Assistance Program, in connection with DOE's implementation of the President's regulatory review program. This proposal would additionally streamline, make uniform, clarify and reduce the burden of 10 CFR part 605. This proposal is associated with the proposal on 10 CFR part 605 appearing in the June 24, 1992, **Federal Register** at 57 FR 28137.

DATES: Written comments must be received August 7, 1992.

ADDRESSES: Send comments to: U.S. Department of Energy, Office of Energy Research, ER-64/GTN, Mail Stop G-236, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Mr. Robert A. Zich, Director, U.S. Department of Energy, Acquisition and Assistance Management Division, Office of Energy Research, ER-64/GTN, Washington, DC 20585, (301) 903-5544.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background
II. Amendments to 10 CFR Part 605
III. Opportunity for Public Comment
IV. Review Under Executive Order 12291
V. Review Under the Regulatory Flexibility Act
VI. Review Under the Paperwork Reduction Act
VII. Review Under the National Environmental Policy Act
VIII. Intergovernmental Review
IX. Review Under Executive Order 12612
X. Review Under Executive Order 12778
XI. Catalog of Federal Domestic Assistance

I. Introduction and Background

In accordance with the DOE's response to the President's request for regulatory reform, the Office of Energy Research (ER) is hereby proposing a second amendment to 10 CFR part 605. This proposal would additionally streamline part 605, make part 605 uniform with other agencies' practices, and clarify the policies and administrative requirements for financial assistance awards in program areas of scientific, technical or educational interest to ER. This proposal would delete further provisions of part 605 that are unduly burdensome to financial assistance award recipients. The basis for the proposed amendments in ER's participation as a member of the Federal Demonstration Project, along with 10 other Federal agencies, that has for the past three years been testing streamlined financial assistance processes. Today's proposed rule references the new part heading proposed in the amendments published on June 24, 1992, at 57 FR 28137.

II. Amendments to 10 CFR Part 605

The following amendments are proposed today:

To include cooperative agreements under part 605; therefore, all references to grants should be amended to read "awards," and all references to grantees should be amended to read, "recipients." Except for this overall amendment, the following are the only amendments being proposed at this time:

605.1 is amended to include cooperative agreement awards under 10 CFR part 605.

605.2 is amended to make cooperative agreement awards under 10 CFR part 605.

605.6 is amended to include cooperative agreement awards under 10 CFR part 605.

605.8 is amended to include cooperative agreement awards under paragraph (d)(2)(iv), include renewal applications as well as new applications in paragraph (b), and delete the twice-used phrase "continuation or" from paragraph (g).

605.9 is amended by deleting the phrase "of grants" from paragraph (f).

605.10 is amended to revise the evaluation criteria to include educational and training activities, substitute the words "applicants, recipients, awards and project" for "research, grantees, grant and research."

605.12 is amended by deleting the word, "grant" from paragraph (a). Delete the phrase "for a grant" from paragraph (b) and substitute the phrase, "of an award" in its place.

605.14 is amended to delete the word "Grants" and use the term "Awards" to indicate both grants and cooperative agreement awards are included under 10 CFR part 605.

605.16 is amended to include DOE's use of an indirect cost rate established at 8 percent of total direct costs on awards issued under part 605 for educational or training activities and to clarify DOE's requirements not to allow indirect costs under awards for conferences or meetings. This amendment makes DOE's payment and non-payment of indirect costs on these activities uniform with other Federal agencies' practices.

III. Opportunity for Public Comment

Written comments from interested persons are invited in response to this NOPR by submitting three copies of data, views or arguments with respect to the proposals set forth in this notice to the address above. Please identify any comments submitted as "ER Amendments #2."

This notice of proposed rulemaking does not involve any significant issues of law or fact and the rule would be unlikely to have a substantial impact on the Nation's economy or large numbers of individuals or businesses. Accordingly, pursuant to 42 U.S.C. 7191(c) and 5 U.S.C. 553, DOE is not scheduling a public hearing.

IV. Review Under Executive Order 12291

This NOPR has been reviewed by OMB under Executive Order 12291 (46 FR 13192, February 17, 1981). Prior to publication of the NOPR, DOE concluded that the proposed rule is not a "major rule" because its promulgation would not result in (1) an annual effect on the economy of $100 million or more, (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographical regions, or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based

enterprises to compete in domestic or export markets.

V. Review Under the Regulatory Flexibility Act

This NOPR was reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96–354, 95 Stat. 1164) which requires preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities, i.e., small business, small organizations, and small governmental jurisdictions. DOE concluded that this proposed rule would only affect small entities as they apply for and receive awards and does not create additional economic impacts on small entities. Accordingly, DOE certifies that this NOPR will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

VI. Review Under the Paperwork Reduction Act

The collection of information requirements contained in this NOPR has been approved by OMB under control numbers 1910–0040 and 1910–1400.

VII. Review Under the National Environmental Policy Act

DOE has concluded that the NOPR clearly would not represent a major Federal action having significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.* (1976)), the Council on Environmental Quality Regulations (40 CFR parts 1500–1508), and the DOE guidelines (10 CFR part 1021) and, therefore, does not require an environmental impact statement pursuant to NEPA.

VIII. Intergovernmental Review

This program is generally not subject to the intergovernmental review requirements of Executive Order 12372 as implemented by 10 CFR 1005. However, certain financial assistance applications may be. All applications from governmental or non-governmental entities which involve research, development or demonstration activities are subject to the provisions of the Executive Order and 10 CFR Part 1005 when such activities: (1) Have a unique geographic focus and are directly relevant to the governmental responsibilities of a State or local government within the geographic area; (2) necessitate the preparation of an Environmental Impact Statement under NEPA; or (3) are to be initiated at a particular site or location and require unusual measures to limit the possibility of adverse exposure or hazard to the general public. Those planning to submit covered applications should immediately contact ER for further information.

IX. Review Under Executive Order 12612

Executive Order 12612 requires that regulations or rules be reviewed for any substantial direct effects on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government. Today's proposal would amend existing regulations for a financial assistance program to stimulate research and development, as well as educational and training activities. There will not be any substantial direct effects on States.

X. Review Under Executive Order 12778

Section 2 of Executive Order 12778 instructs each agency subject to Executive Order 12291 to adhere to certain requirements in promulgating new regulations and reviewing existing regulations. These requirements, set forth in sections 2(a) and (b)(2), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards (whether they be engineering or performance standards), and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation: Specifies clearly any preemptive effect, effect on existing Federal law or regulation, and retroactive effect; describes any administrative proceedings to be available prior to judicial review and any provisions for the exhaustion of such administrative proceedings; and defines key terms. DOE certifies that today's proposal meets the requirements of sections 2(a) and (b) of Executive Order 12778.

XI. Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number for 10 CFR part 605 is 81.049.

Lists of Subjects in 10 CFR Part 605

Energy, Grant programs-energy, Reporting and recordkeeping requirements, Research.

In consideration of the foregoing, part 605 of chapter II of title 10 of the Code of Federal Regulations is proposed to be amended as set forth below

Issued in Washington, DC, on June 30, 1992.

Robert M. Simon,

Principal Deputy Director, Office of Energy Research.

Part 605 of chapter II of title 10, Code of Federal Regulations, is proposed to be amended as follows:

PART 605—THE OFFICE OF ENERGY RESEARCH FINANCIAL ASSISTANCE PROGRAM

1. The authority citation for part 605 continues to read as follows:

Authority: Section 31 of the Atomic Energy Act, as amended, Pub. L. 83–703, 68 Stat. 919 (42 U.S.C. 2051); sec. 107 of the Energy Reorganization Act of 1974, Pub. L. 93–438, 88 Stat. 1240 (42 U.S.C. 5817); Federal Nonnuclear Energy Research and Development Act of 1974, Pub. L. 93–577, 88 Stat. 1878 (42 U.S.C. 5901 *et seq.*); secs. 644 and 646 of the Department of Energy Organization Act, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254 and 7256); Federal Grant and Cooperative Agreement Act, as amended (31 U.S.C. 6301 *et seq.*).

§ 605.1 [Amended]

2. In § 605.1, after the phrase "award and administration of," replace "special research grants" with "grants and cooperative agreements".

§ 605.2 [Amended]

3. Section 605.2(b) is amended by replacing "special research grants," with "grants and cooperative agreements."

§ 605.6 [Amended]

4. Section 605.6, replace the phrase "special research grant" with "grant or cooperative agreement" as it appears in both sentences.

5. Section 605.8 is amended as follows:

(A) Amend paragraph (b), first sentence by replacing the word, "grant" with "or renewal award."

(B) Amend paragraph (b), second sentence by adding after the word, "new," the phrase, "or renewal."

(C) Paragraph (d)(2)(iv) is revised to read as follows:

§ 605.8 Solicitation.

* * * * *

(d) * * *

(2) * * *

(iv) Any other information which identifies areas in which grants or cooperative agreements may be made.

* * * * *

(D) Paragraph (g) is amended by removing the phrase "continuation or" (both occurrences).

§ 605.9 [Amended]

6. Section 605.9 is amended by removing the phrase "of grants" in paragraph (f).

7. Section 605.10 is amended as follows:

(A) Revise paragraph (d)(1) to read as follows:

§ 605.10 Application evaluation and selection.

* * * * *

(d) * * *

(1) The scientific and/or technical merits or the educational benefits of a project.

* * * * *

(B) Amend paragraph (d)(3) by replacing the word "research" with "applicant's."

(C) Amend paragraph (f) by replacing the word "grantee's" with "recipient's," replacing the word "grant" with "award," and removing the phrase "or continuation."

(D) Amend paragraph (g) by replacing the word "research" with the word "application" in the first sentence.

§ 605.12 [Amended]

8. Section 605.12 is amended as follows:

(A) Amend paragraph (a) by removing the word "grant" in the first sentence (both occurrences).

(B) Amend paragraph (b) by replacing the phrase "for a grant" with "of an award."

§ 605.14 [Amended]

9. Section 605.14 is amended as follows:

(A) Replace the phrase "Grants awarded" with "Awards".

10. Section 605.16 is added to read as follows:

§ 605.16 Indirect Cost Limitations.

(a) Awards issued under this part for conferences and scientific/technical meetings will not include payment for indirect costs.

(b) Under this Part, DOE restricts the indirect cost allowance for OER educational or training awards to an 8 percent rate based upon total direct costs.

[FR Doc. 92-15987 Filed 7-7-92; 8:45 am]

BILLING CODE 6450-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92-CE-32-AD]

Airworthiness Directives; Beech 58, 58P, and 58TC Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would be applicable to certain Beech 58, 58P, and 58TC airplanes. The proposed action would require a modification to the engine controls support structure. The Federal Aviation Administration (FAA) has received several reports of cracked angle attachment clips that support the engine controls inside the pedestal on the affected airplanes. The actions specified by the proposed AD are intended to prevent loss of engine throttle control caused by failure of the engine controls support angle attachment clips.

DATES: Comments must be received on or before September 11, 1992.

ADDRESSES: Submit comments in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92-CE-32-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that is applicable to this AD may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201-0085; Telephone (316) 676-7111. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. James M. Peterson, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946-4145.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 92-CE-32-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, attention: Rules Docket No. 92-CE-32-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has received reports of cracked angle attachment clips that support the engine controls inside the pedestal on certain Beech 58, 58P, and 58TC airplanes. In a few of these instances, the cracked angle attachment clips separated, which resulted in loss of engine throttle control. One cracked and separated angle attachment clip incident resulted in a blown tire because of the excessive braking required when the airplane could not be throttled back to idle. Cracked, but not separated, angle attachment clip incidents have resulted in the throttles sticking.

Beech has developed Kit No. 58-5016-1 S, which provides parts and information needed to replace the engine controls support angle attachment clip with brackets. This kit is referenced in Beech Service Bulletin (SB) No. 2439, dated May 1992.

After examining the circumstances and reviewing all available information related to the incidents described above including the referenced service information, the FAA has determined that AD action should be taken to prevent loss of engine throttle control caused by failure of the engine controls support angle attachment clips.

Since the condition described is likely to exist or develop in other Beech 58, 58P, and 58TC series airplanes of the same type design, the proposed AD would require modification of the engine controls support structure in accordance with the instructions in Beech Kit No. 58-5016-1 S as referenced in Beech SB No. 2439, dated May 1992. This kit provides all the materials and instructions for replacing the engine

controls support angle attachment clips with brackets.

The FAA estimates that 237 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 4 workhours per airplane to accomplish the proposed action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $257 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $113,049.

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

For the reasons discussed above, I certify that this action (1) is not a "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 regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [AMENDED]

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

Beech: Docket No. 92-CE-32-AD.

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

Models	Serial numbers
58 and 58A	TH-1389 and TH-1396 through TH-1662.
58TC and 58TCA	TK-147 and TK-151.
58P and 58PA	TJ-436 and TJ-444 through TJ-497.

Compliance: Required within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent loss of engine throttle control caused by failure of the engine controls support angle attachment clips, accomplish the following:

(a) Modify the engine controls support structure in accordance with the instructions in Beech Kit No. 58-5016-1 S as referenced in Beech Service Bulletin No. 2439, dated May 1992.

Note 1: Beech Kit No. 58-5016-1 S consists of all the materials and instructions for replacing the engine controls support angle attachment clips with brackets, and may be obtained from the manufacturer at the address specified in paragraph (d) of this AD.

(b) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, room 100, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and send it to the Manager, Wichita Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita Aircraft Certification Office.

(d) Service information that is applicable to this AD may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201-0085. This information may also be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri.

Issued in Kansas City, Missouri, on July 1, 1992.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-15908 Filed 7-7-92; 8:45 am]

BILLING CODE 4920-13-M

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14 CFR Part 39

[Docket No. 92-CE-22-AD]

Airworthiness Directives; British Aerospace, Regional Aircraft Limited, Jetstream Model 3101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to supersede Airworthiness Directive (AD) 91-08-01, which currently requires revising the maximum speed for flaps at 50 degrees from 153/149 knots indicated airspeed (KIAS) to 130 KIAS on British Aerospace (BAe), Regional Aircraft Limited, Jetstream Models 3101 airplanes; and also requires limiting the maximum flap extension to 20 degrees anytime ice is present on the airplane. BAe has developed a modification to the flap system and the Federal Aviation Administration (FAA) has determined that, if the affected airplanes have this modification incorporated, then the actions of AD 91-08-01 are no longer required. The actions specified in this proposed AD are intended to prevent sudden pitch down of the airplane during icing conditions, which could lead to loss of control of the airplane.

DATES: Comments must be received on or before September 18, 1992.

ADDRESSES: Submit comments in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92-CE-22-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that is applicable to this AD may be obtained from British Aerospace, Regional Aircraft Limited, Manager Product Support, Prestwick Airport, Ayrshire, KA9 2RW Scotland; telephone (44-292) 79888; facsimile (44-292) 79703; or British Aerospace, Inc., Librarian, Box 17414, Dulles International Airport, Washington, DC, 20041; Telephone (703) 435-9100; facsimile (703) 435-2628. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond A. Stoer, Program Officer, Brussels Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B-1000 Brussels, Belgium; Telephone (322) 513.38.30 ext. 2710; Facsimile (322) 230.68.99; or Mr. John P. Dow, Sr., Project Officer, Small Airplane Directorate, Airplane Certification Service, FAA, 601 E. 12th Street, Kansas City, Missouri 64106; telephone (816) 426-6932; facsimile (816) 426-2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the

proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 92-CE-22-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92-CE-22-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

AD 91-08-01, Amendment 39-7007 (56 FR 24333, May 30, 1991), currently requires revising the maximum speed for flaps at 50 degrees from 153/149 knots indicated airspeed (KIAS) to 130 KIAS on British Aerospace (BAe), Regional Aircraft Limited, Jetstream Models 3101 airplanes; and also requires limiting the maximum flap extension to 20 degrees anytime ice is present on the airplane. This AD action was prompted by an accident in which a Jetstream Model 3101 airplane crashed following flap extension to the 50-degree position for landing. Three post-incident reports of pitch-down occurrences that did not result in an accident were also reported. In one case, a pilot experienced a pitch down and after landing noticed a buildup of over three inches of rough ice on the leading edge of the horizontal stabilizer. The two other reports were of a similar nature with lesser amounts of ice.

After the issuance of AD 91-08-01, the Civil Aviation Authority, which is the airworthiness authority for the United Kingdom, and the FAA conducted a special flight test and evaluation program of the Jetstream Model 3101. The goal of this program was to help identify any possible problem areas, or define any permanent remedial measures. Based upon the findings of this evaluation program, BAe has developed a modification to the flap system that, if incorporated, would eliminate the need for the flap system revision and limitation currently required by AD 91-08-01.

BAe has issued Service Bulletin (SB) 27-JA 910541, which specifies procedures for incorporating this flap system modification. BAe SB 27-JA 910541 consists of the following pages and revision levels:

Pages	Revision level	Date
1, 3, 4, 31, and 32.....	2	Feb. 4, 1992.
2, 5 through 30, and 33 through 45.	1	Nov. 11, 1991.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. The FAA has examined the circumstances and reviewed all available information related to the incidents described above, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since the condition described is likely to exist or develop in other BAe, Regional Aircraft Limited, Jetstream Model 3101 airplanes of the same type design, the proposed AD would supersede AD 91-08-01 with a new AD that would (1) retain the flap system operating revision and limitation currently required by AD 91-08-01; and (2) limit the applicability to only those airplanes that have not modified the flap system in accordance with BAe Service Bulletin 27-JA 910541.

The FAA estimates that 152 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 1 workhour per airplane to accomplish the proposed action, and that the average labor rate is approximately $55 an hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $8,360. The only cost difference between the proposed actions and those required by AD 90-08-01, which would be superseded by the proposed AD, is the exemption of airplanes that have incorporated the flap system modification. The cost impact of the proposed AD on U.S. operators would be reduced by this exemption, but the FAA cannot determine how much it would be reduced because there are no available means of determining how many operators have incorporated the flap system modification.

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

For the reasons discussed above, I certify that this action (1) is not a "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 regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing AD 91-08-01, Amendment 39-7007 (56 FR 24333, May 30, 1991), and adding the following new AD:

British Aerospace, Regional Aircraft Limited: Docket No. 92-CE-22-AD. Supersedes AD 91-08-01, Amendment 39-7007.

Applicability: Jetstream Model 3101 airplanes (all serial numbers), certificated in any category, that have not modified the flap system in accordance with the Accomplishment Instructions section of British Aerospace (BAe) Service Bulletin (SB) 27-JA 910541, which consists of the following pages and revision:

Pages	Revision level	Date
1, 3, 4, 31, and 32	2	Feb. 4, 1992
2, 5 through 30, and 33 through 45	1	Nov. 11, 1991

Compliance: Required as indicated after the effective date of this AD, unless already accomplished.

To prevent sudden pitch down of the airplane during icing conditions, which could lead to loss of control of the airplane, accomplish the following:

(a) Within the next 10 hours time-in-service (TIS) after June 10, 1991 (the effective date of superseded AD 91-08-01), accomplish the following:

(1) Modify the operating limitations placards located on the flight deck in accordance with Jetstream Alert SB No. 27-A-JA 910340, dated March 25, 1991. This modification will limit the maximum flap extension speed at the 50-degree position to 130 knots indicated airspeed (KIAS).

(2) Insert a copy of this AD into the limitations section of the airplane flight manual and operate the airplane in accordance with these limitations.

(b) Within the next 25 hours TIS after June 10, 1991 (the effective date of superseded AD 91-08-01), accomplish the following:

(1) Fabricate a placard with the words "Do not extend the flaps beyond the 20-degree position if ice is visible on airplane and ensure that the landing gear selector is down prior to landing." Install this placard on the airplane's instrument panel within the pilot's clear view and operate the airplane in accordance with these limitations. Parts of the airplane where ice could specifically be visible include the windshield wipers, center windshield, propeller spinners, or inboard wing leading edges.

(2) Operate the airplane in accordance with BAe CAA-Mandatory Alert Service Bulletin 27-A-JA 910340, dated March 25, 1991, Section 2.B.—Instruction for Aircraft Operations, paragraphs (1)(a) and (1)(c) until Amendments P/32, P/49, and P/52 have been received. Upon receipt, incorporate these amendments into Airplane Flight Manual (AFM) HP.4.10 and operate the airplane accordingly. Ensure that Amendment G/10 is incorporated into AFM HP.4.10.

(c) Within the next 150 hours TIS, perform an operational test of the landing gear position indication and warning system to establish whether the warning system operates at the 20-degree or 50-degree position. Accomplish this test in accordance with the instructions in the Jetstream Series 3100 Airplane Maintenance Manual.

(1) If the warning system operates at the 20-degree position, no further action is needed.

(2) If the warning system operates at the 50-degree position, modify the airplane in accordance with the instructions in Jetstream SB 32-JM 7493, Revision 1, dated March 25, 1991.

(d) The actions required by paragraphs (a), (b), and (c) of this AD may be terminated if the flap system is modified in accordance with BAe SB 27-JA 910541.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a location where the requirements of this AD can be accomplished.

(f) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B-1000 Brussels, Belgium. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels Aircraft Certification Office.

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

(g) All persons affected by this directive may obtain copies of the documents referred to herein upon request to British Aerospace, Regional Aircraft Limited, Manager Product Support, Commercial Aircraft Airlines Division, Prestwick Airport, Ayrshire, KA9 2RW Scotland; or British Aerospace, Inc., Librarian, Box 17414, Dulles International Airport, Washington, DC, 20041; or may examine these documents at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(h) This amendment supersedes AD 91-08-01, Amendment 39-7007.

Issued in Kansas City, Missouri, on July 1, 1992.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-15909 Filed 7-7-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 92-NM-57-AD]

Airworthiness Directives; Boeing Model 737-300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 737-300 series airplanes, that currently requires a one-time inspection for chafing and leaks on the variable stator vane (VSV) control system fuel manifold, inspections for correct orientation of the three fifth/ninth stage pneumatic duct coupling clamps, and repair or replacement of chafed components, and relocation of components, if necessary. This action would require that these inspections be performed at repetitive intervals; and provides an optional terminating modification for the repetitive inspections. This proposal is prompted by a recent re-evaluation of the available service information and the actions required by the existing AD. The actions specified by the proposed AD are intended to prevent fuel leakage, which can create a potential fire hazard and lead to subsequent engine shutdown.

DATES: Comments must be received by August 24, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-57-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen S. Bray, Aerospace Engineer, Seattle Aircraft Certification Office, Propulsion Branch, ANM-140S, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2681; fax (206) 227-1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained

in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report 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 postcard on which the following statement is made: "Comments to Docket Number 92-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-57-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

Discussion

On September 9, 1991, the FAA issued AD 91-20-03, Amendment 39-8037 (56 FR 47671, September 20, 1991), to require inspection for chafing and leaks on the variable stator vane (VSV) control system fuel manifold, inspections for correct orientation of the three fifth/ninth stage pneumatic duct coupling clamps, and replacement or relocation of components, if necessary. That action was prompted by reports of damage to VSV control system fuel manifolds and chafing of the fuel supply tube lower clamp. The requirements of that AD are intended to prevent fuel leakage, which can create a potential fire hazard and lead to subsequent engine shutdown.

Since the issuance of that AD, the FAA has received a number of inquiries from affected operators requesting clarification of the actions currently required by AD 91-20-03 and the accomplishment instructions of applicable service information. The following discussion provides responses to these inquiries and explains proposed changes to the rule that the FAA has determined to be necessary.

The existing AD does not specify that the fuel supply line on Group 1 airplanes must be inspected to detect interference of the left fan cowl hold open rod with a fuel supply tube and/or lower clamp, as described in Part I of Boeing Alert Service Bulletin 737-71A1208, Revision 2, dated March 23, 1989. The FAA has determined that this inspection is necessary for Group 1 airplanes in order to ensure that the fan hold open rod does not chafe the fuel supply line; therefore, a requirement for such an inspection is included in this proposed AD.

The FAA has received assurance from the airplane manufacturer that proper installation of the VSV fuel manifold and the fifth/ninth stage pneumatic duct coupling clamps has been performed on all Group 3 airplanes during production. Based on this information, the FAA has determined that an initial inspection of the VSV manifold and check of the fifth/ninth stage pneumatic duct coupling clamps is not required for Group 3 airplanes. That requirement is not included in the proposed AD.

Additionally, the FAA has determined that repetitive inspections for chafing and leaks on the variable stator vane (VSV) control system fuel manifold, and inspections for correct orientation of the three fifth/ninth stage pneumatic duct coupling clamps, must be required for Groups 1, 2, and 3, airplanes in order to ensure that the pneumatic duct coupling clamps are correctly installed. Such a repetitive inspection requirement has been included in this proposed AD. However, and optional modification is included in this proposed AD which, if installed, would provide terminating action for the repetitive inspections of these airplanes. This modification consists of installing index keyed pneumatic ducts, which will prevent chafing of the VSV control system fuel manifolds. Procedures for installing this modification are described in Boeing Alert Service Bulletin 737-71A1208, Revision 2, dated March 23, 1989.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 91-20-03 to include the changes described previously.

There are approximately 455 Model 737-300 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 264 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 17 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $246,840. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

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 the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety and recordkeeping requirements.

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—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39-8037 (56 FR 47671, September 20, 1991), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 92-NM-57-AD. Supersedes AD 91-20-03, Amendment 39-8037.

Applicability: Model 737-300 series airplanes; as listed in Boeing Alert Service Bulletin 737-71A1208, Revision 2, dated March 23, 1989; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent fuel leakage, causing a potential fire hazard and subsequent engine shutdown, accomplish the following:

(a) For airplanes listed in Boeing Alert Service Bulletin 737-71A1208, dated December 10, 1987: Within the next 30 days after May 27, 1988 (the effective date of AD 88-11-01, Amendment 39-5918), inspect the variable stator vane (VSV) fuel manifold for

chafing and leaks, and check orientation of the fifth/ninth stage pneumatic duct coupling clamps, in accordance with that service bulletin. Repair or replace chafed components and relocate components, as necessary, prior to further flight.

(b) For Groups 1 and 2 airplanes listed in Boeing Alert Service Bulletin 737-71A1208, Revision 2, dated March 23, 1989, that are not subject to paragraph (a) of this AD: Within the next 60 days after October 7, 1991 (the effective date of AD 91-20-03, Amendment 39-8037), inspect the VSV fuel manifold for chafing and leaks, and check orientation of the fifth/ninth stage pneumatic duct coupling clamps, in accordance with that service bulletin. Repair or replace chafed components and relocate components, as necessary, prior to further flight.

(c) For Groups 1 and 2 airplanes listed in Boeing Alert Service Bulletin 737-71A1208, Revision 2, dated March 23, 1989: Within the next 60 days after the effective date of this AD, and thereafter at each engine change, inspect the VSV fuel manifold for chafing and leaks, and check orientation of the fifth/ninth stage pneumatic duct coupling clamps, in accordance with that service bulletin. Repair or replace chafed components and relocate components, as necessary, prior to further flight.

(d) For Group 3 airplanes listed in Boeing Alert Service Bulletin 737-71A1208, Revision 2, dated March 23, 1989: At each engine change after the effective date of this AD, inspect the VSV fuel manifold for chafing and leaks, and check orientation of the fifth/ninth stage pneumatic duct coupling clamps, in accordance with that service bulletin. Repair or replace chafed components and relocate components, as necessary, prior to further flight.

(e) For Group 1 airplanes, as listed in Boeing Alert Service Bulletin 737-71A1208, Revision 2, dated March 23, 1989: Within 60 days after the effective date of this AD, inspect the fuel supply line for interference of the left fan cowl hold open rod with a fuel supply tube and/or lower clamp; in accordance with Boeing Alert Service Bulletin 737-71A1208, Revision 2, dated March 23, 1989. Repair or replace chafed components and relocate components, as necessary, prior to further flight.

(f) Installation of index keyed pneumatic ducts, in accordance with Boeing Alert Service Bulletin 737-71A1208, Revision 2, dated March 23, 1989, constitutes terminating action for the repetitive inspections required by paragraphs (c) and (d) of this AD.

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

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

(h) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on June 22, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-15919 Filed 7-7-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 92-AGL-7]

Proposed Transition Area Establishment; Cottage Grove, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a transition area near Cottage Grove, WI, to accommodate a new VOR-A Standard Instrument Approach Procedure (SIAP) to Blackhawk Field Airport, Cottage Grove, WI. The intended effect of this action is to ensure segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

DATES: Comments must be received on or before August 17, 1992.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL-7, Attn: Rules Docket No. 92-AGL-7, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

An informal docket may also be examined during normal business hours at the Air Traffic Division, System Management Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Douglas F. Powers, Air Traffic Division, System Management Branch, AGL-530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in the proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 92-AGL-7." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to section 71.181 of part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish a transition area near Cottage Grove, WI, to accommodate a new VOR-A SIAP to Blackhawk Field Airport, Cottage Grove, WI.

The development of the procedure requires that the FAA alter the designated airspace to ensure that the procedure would be contained within

controlled airspace. The minimum descent altitude for this procedure may be established below the floor of the 700-foot controlled airspace.

Aeronautical maps and charts would reflect the defined area which would enable pilots to circumnavigate the area in order to comply with applicable visual flight rule requirements.

The airspace designation for the transition area listed in this document is published in § 71.181 of Handbook 7400.7, effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(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) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, Transition areas.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective December 1, 1991, is amended as follows:

Section 71.181 Designation

* * * * *

AGL WI TA Cottage Grove, WI [New]

Cottage Grove, Blackhawk Field Airport, WI

(lat. 43° 06′ 15″ N. long. 89° 11′ 05″ W)

That airspace extending upward from 700 feet above the surface within a 6.2 nautical mile radius of Blackhawk Field Airport; excluding that airspace within the Madison, WI, ARSA and Transition Area.

* * * * *

Issued in Des Plaines, Illinois on June 19, 1992.

John P. Cuprisin,

Manager, Air Traffic Division.

[FR Doc. 92-15678 Filed 7-7-92; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

14 CFR Part 71

[Airspace Docket No. 92-AGL-5]

Proposed Alteration to VOR Federal Airway V-103; MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Federal Airway V-103 by realigning the airway from the Windsor, ON, Canada, VHF omnidirectional range (VOR) to the Pontiac, MI, VHF Omnidirectional Range/Tactical Air Navigation (VORTAC) and to the Lansing, MI, VORTAC. Realigning V-103 would reduce controller workload, simplify routings and make better use of the airspace.

DATES: Comments must be received on or before August 24, 1992.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, AGL-500 Docket No. 92-AGL-5, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL 60018.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Patricia P. Crawford, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9255.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 92-AGL-5." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to realign V-103 from the Windsor, ON, Canada, VOR to the Pontiac, MI, VORTAC and to the Lansing, MI, VORTAC. The current alignment of V-103 coupled with the 8,000 feet mean sea level minimum en route altitude restrict operation along the airway. Realigning V-103 would allow air traffic control the capability to utilize a lower en route

altitude. Modifying the airway would reduce controller workload, simply routings, and make better use of the airspace. VOR Federal airways are published in § 71.123 of Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. The amended designation of the airway listed in this document would be published subsequently in Section 71.123 of the Handbook, if the regulation is promulgated.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, VOR Federal airways.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compliation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

Section 71.123 Domestic VOR Federal Airways

* * * * *

V–103 [Revised]

From Chesterfield, SC; Greensboro, NC; Roanoke, VA; Elkins, WV; Clarksburg, WV; Bellaire, OH; INT Bellaire 327°T(331°M) and Akron, OH, 181°T(185°M) radials; Akron; INT Akron 319°T(323°M) and Windsor, ON, Canada, 125°T(131°M) radials; Windsor; Pontiac, MI; to Lansing, MI. The airspace within Canada is excluded.

* * * * *

Issued in Washington, DC, on June 30, 1992.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 92–15920 Filed 7–7–92; 8:45 am]

BILLING CODE 4910–13–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 6E3447/P546; FRL-4070-3]

RIN 2070-AC18

Pesticide Tolerance for Ebufos

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to establish a 2-year time-limited import tolerance for residues of the nematicide/insecticide ebufos, O-ethyl S,S-di-*sec*-butyl phosphorodithioate, in or on the raw agricultural commodity (RAC) bananas at 0.01 part per million (ppm). This proposal to establish maximum permissible levels of residues of the nematicide/insecticide in or on the commodity was requested by the FMC Corp.

DATES: Comments, identified by the document control number [PP 6E3447/P546], must be received on or before August 7, 1992.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in rm. 1128 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Robert A. Forrest, Product Manager (PM 14), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 219, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, 703-305-6600.

SUPPLEMENTARY INFORMATION: The FMC Corp., Agricultural Chemical Group, 200 Market St., Philadelphia, PA 19103, has submitted pesticide petition (PP) 6E3447 to EPA. The petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(e)), propose the establishment of an import tolerance for residues of the nematicide/insecticide ebufos in or on the RAC bananas at 0.02 ppm. The petition was subsequently amended to lower the tolerance proposed to 0.01 ppm.

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought. The toxicological data considered in support of the proposed tolerance include:

1. A 1-year dog feeding study with a no-observed-effect level (NOEL) at 0.001 milligram/kilogram/day. The lowest effect level (LEL) was 0.005 mg/kg/day for cholinesterase (ChE) inhibition. Levels tested were 0.0002, 0.001, 0.005, and 0.02 mg/kg.

2. A 2-year rat feeding/carcinogenicity study with a NOEL of 1.0 ppm for both systemic and ChE inhibition. The study was negative for carcinogenic effects under the conditions of the study at all feeding levels. Levels tested were 0.1, 0.5, 1.0, and 5.0 ppm.

3. A 2-year mouse carcinogenic study which was negative for carcinogenic effects under the conditions of the study at all feeding levels. Levels tested were 0.1, 0.5, 1.0, and 5.0 ppm.

4. A two-generation reproduction study in rats with a NOEL of 0.1 ppm (equivalent to 0.005 mg/kg/day) for reproductive effects consisting of a significant decrease in the live birth index at the 0.5 ppm (0.025 mg/kg) level. Levels tested were 0.1, 0.5, and 5.0 ppm.

5. A rat teratology study with a NOEL of 6.0 mg/kg/day for developmental toxicity based on developmental effects associated with the toxicity of ebufos. Levels tested were 0.2, 6.0, and 18.0 mg/kg/day.

6. A rabbit teratology study with a lowest observable effect level (LOEL) of 0.9 mg/kg/day for developmental

toxicity. Levels tested were 0.1, 0.3, and 0.9 mg/kg.

7. An acute delayed neurotoxicity study in chickens, which was negative for neurotoxic effects under the conditions of the study (highest dose tested was 8.0 mg/kg).

8. An Ames test was not mutagenic at the highest doses tested, 600 and 900 ug/plate, with or without metabolic activation, respectively.

9. An unscheduled DNA synthesis test in rat hepatocytes was not mutagenic at the highest dose tested, 45 ul/ml.

10. A chromosome aberration assay in Chinese hamster ovary cells was not mutagenic at the highest dose tested, 75 ul/ml with or without the metabolic activation.

11. In an in vitro cell transformation test, it was concluded that ebufos was capable of inducing morphological transformations of mouse embryo cells in the presence of metabolic activation at the highest three out of the four dose levels tested which were 0.06, 0.07, 0.08, and 0.09 ul/ml. A positive finding in a mutagenicity test such as this one suggests that the test substance has the potential for inducing carcinogenic effects. Based on the negative findings of the 2-year rat and mouse carcinogenicity studies described above, the pesticide is not considered to be a carcinogen.

12. In a metabolism study with rats, 63 to 79 percent of the dose was excreted in the urine within 24 hours. The major urinary metabolites were methane sulfonic acid; o-ethyl S-(2-butyl) phosphorothioic acid; the threo and ethylthro stereoisomers of methyl 1-methyl-2-hydroxypropyl-sulfone; and S,S-di(2-butyl) phosphorodithioate.

The reference dose (RfD) based on the 1-year feeding study in dogs with a NOEL for ChE at 0.001 mg/kg/day and using an uncertainty factor of 100 is calculated to be 0.00001/mg/kg of body weight (bwt)/day. The theoretical maximum residue contribution (TMRC) resulting from this action will be 0.000002 mg/kg/bwt/day for the overall U.S. population and represents 23 percent of the RfD. The TMRC for the highest exposed subgroup, nonnursing infants less than 1 year old, is 0.000011 mg/kg/ bwt/day, or 108.38 percent of the RfD, assuming that residue levels are at the established tolerances and that 100 percent of the crop is treated.

The Agency believes that actual residues to which the public is likely to be exposed are considerably less than indicated for the following reasons.

1. Not all the planted crop for which a tolerance is established is normally treated with the pesticide.

2. Most treated crops have residue levels which are below the established tolerance level at the time of consumption.

To take the second factor into account, the Agency used the anticipated residues in the RfD analysis. In particular, the anticipated residue value of 0.005 ppm which is the limit of detection of the analytical method for ebufos was used in the analysis. This value was used considering the fact that most bananas are eaten or processed with the peel removed and that the available data showed no detectable residues in the pulp even for exaggerated application rates. Following this adjustment, the estimate of exposure from the proposed tolerance is 0.000001 mg/kg bwt/day, or 11.5 percent of the RfD for the overall population and the estimate of exposure to nonnursing infants less than 1-year old is 0.000005 mg/kg bwt/day, or 54.2 percent of the RfD.

To ensure that ebufos is being applied on bananas in a manner that would not result in an increase in the anticipated residue level, the Agency is requiring that confirmatory usage data including the application rate, number and timing of applications, and the application method be submitted within 12 months after the effective date of the final rule establishing the tolerance.

The nature of the residues in bananas is adequately understood, and an adequate analytical method, gas liquid chromatography using either a flame photometric detector or an alkali ionization detector, is available for enforcement purposes.

Because of the long lead time from establishing this tolerance to publication of the enforcement methodology in the Pesticide Analytical Manual, Vol. II, the analytical methodology is being made available in the interim to anyone interested in pesticide enforcement when requested from: Calvin Furlow, Public Information Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1128, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-5232.

Residue methodology data using the Food and Drug Administration pesticide multiresidue method protocols are currently lacking for ebufos and are needed to fulfill the regulatory requirements.

Bananas are not considered to be a livestock feed item. Thus, there is no reasonable expectation of secondary residues in eggs, milk, and meat byproducts from the use of ebufos on bananas.

Because of the lack of FDA multiresidue methodology studies, and the need for confirmatory usage data, the Agency is limiting the period of time that the proposed regulation is to be in effect. Upon receipt of adequate multiresidue methodology studies, and usage data, the Agency will reassess the tolerance for bananas and, if appropriate, will propose that a permanent tolerance be established for this commodity.

The pesticide is considered useful for the purpose for which the tolerance is sought, and it is concluded that the establishment of the tolerance will protect the public health. Therefore, the tolerance is proposed as set forth below.

The proposed tolerance of .01 ppm agrees with the tolerance proposed by the Codex Alimentarius Commission for residues of ebufos in or on bananas.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 6E3447/P546]. All written comments filed in response to this petition will be available in the Public Information Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

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

Dated: June 25, 1992.

Stephanie R. Irene,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

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

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

2. By adding new § 180.461 to subpart C, to read as follows:

§ 180.461 Ebufos; tolerances for residues.

(a) [Reserved]

(b) A time-limited tolerance to expire July 8, 1994 is established for residues of the nematicide/insecticide ebufos, O-ethyl S,S-di-*sec*-butyl phosphorodithioate, in or on the following raw agricultural commodity:

Commodity	Parts per million
Bananas	0.01

There are no U.S. registrations as of July 8, 1992 for the nematicide/insecticide ebufos.

[FR Doc. 92-15826 Filed 7-7-92; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL MARITIME COMMISSION

46 CFR Part 586

[Petition No. P2-92; Docket No. 92-42]

Actions To Adjust or Meet Conditions Unfavorable to Shipping in the United States/Korea Trade

AGENCY: Federal Maritime Commission.

ACTION: Proposed rule.

SUMMARY: The Federal Maritime Commission publishes this proposed rule, pursuant to section 19(1)(b) of the Merchant Marine Act, 1920, in response to a petition for relief from conditions allegedly unfavorable to shipping in the United States-Korea trade resulting from Republic of Korea laws. The proposed rule imposes sanctions on Korean, non-U.S. citizen, owned or controlled ocean freight forwarders and non-vessel-operating common carriers.

DATES: Comments due on or before August 7, 1992.

ADDRESSES: Comments (original and 15 copies) are to be submitted to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523-5725.

FOR FURTHER INFORMATION CONTACT: Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523-5740.

SUPPLEMENTARY INFORMATION:

Introduction

Section 19 of the Merchant Marine Act, 1920, 46 U.S.C. app. 876, as amended by Public Law 101-595, 104 Stat. 2979 ("section 19"), authorizes the Federal Maritime Commission ("Commission") or "FMC") to take regulatory action to correct unfavorable shipping conditions in U.S. foreign oceanborne commerce. Specifically, paragraph (1)(b) of section 19 directs the Commission:

> [T]o make rules and regulations affecting shipping in the foreign trade not in conflict with law in order to adjust or meet general or special conditions unfavorable to shipping in the foreign trade, whether in any particular trade or upon any particular route or in commerce generally, including intermodal movements, terminal operations, cargo solicitation, forwarding and agency services, non-vessel-operating common carrier operations and other activities and services integral to transportation systems, and which arise out of or result from foreign laws, rules, or regulations or from competitive methods or practices employed by owners, operators, agents or masters of vessels of a foreign country.

46 U.S.C. app. 876(1)(b).

Section 19 further provides that the Commission may initiate such rule or regulation on its own motion or pursuant to a petition for section 19 relief by an affected person. Paragraph (5) of section 19 states in this regard:

> Any person, including a common carrier, tramp operator, bulk operator, shipper, shippers' association, ocean freight forwarder, marine terminal operator, or any component of the Government of the United States, may file a petition for relief under paragraph (1)(b) of this section.

46 U.S.C. app. 876(5).

The Commission's regulations governing section 19 proceedings are set forth at 46 CFR part 585—Regulations To Adjust or Meet Conditions Unfavorable to Shipping in the Foreign Commerce of the United States ("Section 19 Regulations"). The section 19 Regulations describe who may file petitions, 46 CFR 585.4, how such petitions are filed, 46 CFR 585.5, the contents of petitions, 46 CFR 585.6, and how petitions may be amended or dismissed, 46 CFR 585.7.

The section 19 Regulations also set forth the types of conditions which are generally presumed to be actionable under section 19. These include those which impose discriminatory fees, charges, requirements or restrictions upon certain vessels in the foreign trade of the United States; preclude or tend to preclude some vessels from competing in the trade on the same basis as any other vessel; reserve substantial cargoes to the national-flag or other vessels and fail to provide, on reasonable terms, for effective and equal access to such cargo by vessels in U.S. foreign trades; are discriminatory or unfair as between carriers, shippers, exporters, importers, or ports or between exporters from the United States and their foreign competitors; and are otherwise unfavorable to shipping in the foreign trade of the United States. 46 CFR 585.3(a), (b), (c), (d).

Background

Direct Container Line, Inc. ("Petitioner" or "DCL"), a California corporation operating as a non-vessel operating common carrier ("NVOCC") in the outbound Trade, has filed a petition for relief ("Petitioner") under section 19 from conditions allegedly unfavorable to shipping in the United States-Korea trade ("Trade"). The Petition alleges that DCL has been prevented by Korean law from establishing a branch office in Korea and from operating in the inbound Trade.

A Notice of Filing of the Petition was published in the **Federal Register**, 57 FR 3433 (Jan. 29, 1992), soliciting comments on the Petition generally and specifically on the question of what relief might be fashioned to deal with the unfavorable conditions alleged. Comments were received from nine parties.

The Petition

Petitioner alleges that it has been unable to establish a branch office in Korea and therefore has been precluded from operating in the inbound U.S. trade from Korea as a result of the Korean Maritime Transportation Business Act ("Korean Act"), a statute of the Republic of Korea ("ROK"). Petitioner describes the relevant provisions of the Korean Act as follows:

> Chapter IV of the Act, entitled "Maritime Freight Forwarding Business; Maritime Transportation Brokering Business; Shipping Agency Business; Vessel Chartering Business; and Vessel Management Business," broadly covers the shoreside activities of Korea's waterborne foreign commerce, which it expressly classifies generically as "maritime freight forwarding business, etc."
>
> * * * Article 34 of the Act requires as a prerequisite to engaging in any such business in Korea that the would-be operator "register with the Administrator of the Korean Maritime and Port Administration under the conditions as prescribed by the Ordinance of the Ministry of Transportation."
>
> Article 35-2, (paragraph 1, requires that) * * * "a foreigner" wishing to engage in "a maritime freight forwarder business, etc." * * * (have) the "authorization of the aforesaid Administrator, (and) paragraph 2 * * * (provides):

(2) If a foreigner desires to obtain the authorization of investment in a maritime freight forwarding business, etc. under Paragraph (1), the ratio of domestic persons' investment and that of composition of the juristic person's officers shall exceed ½, and the representative of such juristic person shall be a domestic person."

Petition, 2. The Korean Act thus imposes a strict nationality-based requirement for participation as a freight forwarder or NVOCC in the Trade from Korea, and further provides for penalties for violation, including imprisonment and substantial fines.

Petitioner also describes diplomatic attempts to resolve the problem, including ongoing efforts by the U.S. Trade Representative ("USTR") and discussions by the U.S. embassy in talks with representatives of the Government of Korea. These efforts are said to have yielded no visible progress.

Additionally, Petitioner reports that its past attempts to do business in Korea in the prescribed manner, i.e. through a Korean agent, have resulted in a succession of business losses as "one after another, each of (the agents engaged by Petitioner) has gone out of business, in each case holding freight revenues collected on petitioner's shipments, none of which petitioner has been able to recover." Id., 4. Petitioner reports that it has also explored the possibility of entering into a minority ownership arrangement with a Korean national which would comply with the Korean Maritime Transportation Business Act, but found the arrangements and the outcome unsatisfactory.

Finally, Petitioner advises that it is unable to suggest a satisfactory form of sanction which might be imposed under section 19 in this case and requests that the Commission fashion an appropriate remedy.

Comments on the Petition

A. Comments in Support

Target Intermodal supports the Petition and suggests the suspension of the tariffs of U.S. resident, Korean owned NVOCCs. Trans-World Shipping Corporation, a customshouse broker and freight forwarder, suggests as a sanction that all licensed freight forwarders and NVOCCs be required to certify that the firm is less than fifty percent owned by Korean nationals.

The New York Foreign Freight Forwarders and Brokers Association ("New York Association"), on behalf of its 110 FMC-licensed ocean freight forwarder and NVOCC members, informs the Commission that the current trade practices of the ROK have created unfavorable shipping conditions in the Trade. The New York Association states that its members are disadvantaged by the Korean laws which prevent them from freely conducting business operations in Korea while their Korean competitors suffer no similar restrictions in their U.S. operations.

Absent action by the ROK to change its practices, the New York Association urges the Commission to enforce reciprocal measures against Korean forwarders and NVOCCs operating in the U.S. Noting the correspondence from the USTR and the U.S. Maritime Administrator, filed as attachments to the Petition, indicating that legislative changes by the Korean Government are unlikely in the near term, the Association calls for the Commission to issue regulations to adjust or meet the conditions imposed by Korean law. It proposes that any freight forwarder or NVOCC that falls under the direct or indirect control of Korean nationals by subjected to sanctions. To this end, the New York Association suggests that:

—The FMC determine that an entity of which more than 51 percent is owned by Korean nationals is Korean owned and controlled;
—Every NVOCC filing a tariff with the FMC certify that it is not owned or controlled by Korean nationals;
—All ocean freight forwarder applicants similarly certify non-Korean ownership;
—All existing NVOCC tariffs and ocean freight forwarder licenses be reviewed to ascertain that the business is not owned or controlled by Korean nationals (measured by whether Korean nationals comprise more than one-half of the officers and operators); the license of any freight forwarder found to be Korean owned or controlled be revoked after notice and hearing; and the tariff of any NVOCC found to be Korean owned or controlled be suspended; and
—Each existing NVOCC and ocean freight forwarder be required to certify in its annual anti-rebate certification that it is not owned or controlled by Korean nationals.

The Pacific Coast Council of Customs Brokers and Freight Forwarders ("Pacific Coast Council") also supports the Petition. The Council, which represents over 7,000 customs brokers, freight forwarders and NVOCCs, states that its members are most directly affected by discriminatory Korean law because their West coast location is the gateway to Korea and the Pacific rim. It complains that the ownership restrictions imposed by Article 35–2 of the Korean Act "force U.S. NVOCCs/freight forwarders to relinquish both managerial and ownership control over their own branch organizations." Pacific Coast Council Comments, 4. Pacific Coast Council disputes the claim that poor judgment in choosing an agent is to blame for DCL's problems, nothing that this approach "begs the question" of the discriminatory impact of the requirement for a U.S. enterprise "to turn over its business to (a) * * * Korean agent." *Id.*

The Pacific Coast Council is among those commenters who discussed the planned consortium of Korean forwarders to operate a U.S.-based nationwide customhouse brokerage and forwarder, expressing the belief of many of its members:

> That the Korean Government will secretly force or persuade most of the major trading companies and manufacturing companies to direct their U.S. bound or sourced transportation forwarding consolidation and Customs requirements to those Korean companies who are members of the consortium.

Id., 5. The planned consortium is said to indicate both the discrepancy between treatment of foreign forwarders and NVOCCs in the U.S. and Korea and the need for equal treatment.

The Pacific Coast Council notes that "the problem of discriminatory treatment of U.S. forwarders/NVOCCs in Korea has previously been addressed through intergovernmental negotiations," but that is has not been resolved. *Id.*, 2–3. It refers to the contacts with Korean authorities by the USTR and the U.S. embassy in Seoul, as reported by the Maritime Administrator, without satisfactory results.

The Pacific Coast Council suggests that the Commission impose sanctions on Korean-based freight forwarders and NVOCCs. It proposes that the FMC scrutinize the freight forwarder licenses and NVOCC bonds on file with the Commission to identify those companies based in Korea, and notify each that it is subject to license or bond revocation or suspension [1] unless Korean laws and practices are revised to eliminate their discriminatory impact. The Council emphasizes that its object in urging imposition of sanctions is not to prevent Korean-based companies from operating in the United States, but to gain equal treatment for U.S. companies operating in Korea.

The National Customs Brokers and Forwarders Association of America, Inc.

[1] The Council believes that suspension of an NVOCC's bond will prevent it from operating because ocean common carriers are prohibited from accepting cargo from an NVOCC which lacks a bond.

("NCBFAA") advises that its members are directly affected by the issues raised in DCL's Petition. NCBFAA identified the detrimental effects of Korean law as follows:

First, the ban on control makes it difficult for non-Korean forwarders to establish efficient and viable relationships with inland Korean transportation companies, thus placing them at a substantial competitive disadvantage with Korean-owned firms. Second, the absence of a direct presence in Korea makes it substantially more difficult for U.S.-owned firms to solicit the business of Korean exporters.

NCBFAA Comments, 3.

NCBFAA also focusses on the planned consortium operation, indicating that reported ROK participation and direction raises extremely troublesome issues of antitrust, national security and fundamental commercial fairness. NCBFAA argues that the allegedly smaller size of Korean-based forwarders and brokers is not a basis for discrimination against U.S. companies, most of which are, in any event, relatively small in size.

NCBFAA agrees with the New York Association that sanctions should be imposed on forwarders and NVOCCs owned or controlled by Korean nationals, and further suggests that the Commission seek participation of the U.S. Customs Service so as to include in the proceeding consideration of the continued fitness of licensed Korean-owned or controlled customs brokers. NCBFAA cautions, however, that care be taken to avoid affecting U.S. citizens of Korean descent "who are unconnected with the Korean government's initiatives." *Id.*, 5.

Although not entirely supportive of Commission action at this time, the comments of the Korean Forwarders and Customs Brokers Association of Southern California ("KFCBA") generally support Petitioner's allegation that conditions unfavorable to shipping in the Trade exist as a result of laws, policies, and actions of the ROK. KFCBA argues that the issues which should be considered are not solely those raised by the Petition but should include activities of the ROK to direct the operations of a substantial proportion of the business in the Trade. KFCBA advocates discussion of these issues in bilateral talks in a manner which addresses the alleged participation and direction of the Korean Customs Administration in a consortium of Korean business entities to establish a "transportation operation (customs brokerage, freight forwarding, NVOCC, trucking and warehousing) in the United States." KFCBA Comments, 2. KFCBA requests that the Commission recommend to U.S. negotiators that the issues raised by DCL be addressed at the same time as the issues raised by the consortium proposal, and that the FMC stay its consideration of the Petition while such talks take place.

KFCBA states that the issues raised by DCL are vastly different from those raised by the anticipated ROK-impelled consortium, which are its major concern. "The consortium is a move by the Korean government to invade and control private industry in the U.S." *Id.* KFCBA urges that bilateral negotiators not trade ROK action favorable to DCL for permission to proceed with the government-backed consortium. Should the Commission proceed to act on the DCL Petition, KFCBA urges thorough evaluation of the issues. With respect to sanctions, KFCBA objects to iimposition of sanctions on Korean-owned, U.S.-resident freight forwarders or NVOCCs, stating that its members are U.S. companies owned and operated by U.S. citizens "(although of Korean extract.)" *Id.*, 5. KFCBA makes no specific recommendation regarding possible remedial action but urges FMC caution in avoiding targeting U.S. operations whose owners are of Korean descent.

B. Comments in Opposition

The Korean International Freight Forwarders Association ("KIFFA"), representing 322 ocean freight forwarders in Korea, opposes the Petition. KIFFA, stating that its members are overwhelmingly small-sized companies with a very short history (less than ten years) of operations, argues that ROK's protection of such enterprises from large foreign NVOCCs from advanced countries such as the U.S. and the European Communities is not inappropriate or different from the policies of other countries to protect their own nationals. KIFFA believes that the suspension of Korean-owned, U.S.-resident NVOCC tariffs or ocean freight forwarder licenses would be an inappropriate application of section 19. Petitioner's unsatisfactory experience with agents in Korea is attributed by KIFFA to a lack of caution by DCL in "choosing the capable agent with a good reputation in Seoul." KIFFA Comments, 3. KIFFA contends that it is inappropriate for DCL to seek relief under section 19 at the juncture inasmuch as "the issue of market-opening for a foreign freight forwarding business was not raised in the previous bilateral shipping talks." *Id.*, 5.

KIFFA states that the "Customs Brokerage Venture [presumably the projected Korean-government related venture discussed by others] to be established in U.S.A. has, at this moment, no plan to do the business of NVOCC's or ocean freight forwarders." *Id.*, 3. Referring to past actions by the ROK to liberalize the access of foreign-flag carriers to shoreside activities, KIFFA states its understanding that "KMPA, taking into account the ongoing UR (Uruguay Round) Multilateral negotiations, has a plan to open the freight forwarding market to the foreign companies on a gradual basis after revising the related shipping acts." *Id.*, 5.

Hyundai Merchant Marine Co., Ltd. ("Hyundai") advocates resolution of this matter through discussions between the U.S. and the Korean Governments, without resort to formal FMC proceedings. Hyundai also believes that the unique nature of this inquiry, i.e. the status of Petitioner as a "transportation intermediary," provides additional reasons for the Commission to approach this matter with all deliberate speed, and to assure that all factors are fully considered and analyzed. It is particularly concerned that any Commission action not have harmful consequences on ocean common carriers or their cargo.

Hanjin Shipping Co., Ltd. ("Hanjin") recommends that the Commission decline to initiate a rulemaking proceeding in response to the Petition on the grounds that there is no basis for countervailing sanctions of any kind. Hanjin asserts that the problem alleged by DCL has never before been discussed by the U.S. and Korean Governments, and that such talks should precede any proposal of sanctions. Hanjin maintains that, in any event, it would be wrong to impose sanctions on Korean-flag carriers because they have not been beneficiaries of the laws about which DCL complains.

Hanjin contests Petitioner's characterization of Korean law as constituting an absolute ban on operations by foreign-owned forwarders and NVOCCs. DCL's problems in operating in Korea are said to be no greater than those of other foreign firms which have established successful operations in Korea under the putatively restrictive laws, and attributes DCL's history to poor selection of agents. Hanjin states that recent liberalization of the shipping industry in Korea has occurred and has been in fulfillment of commitments made in bilateral talks. The talks scheduled to take place in June, 1992, which Hanjin understands will include for the first time the subject of NVOCC operations in Korea, are said to be the appropriate forum for action on these issues.

Should the Commission determine to impose sanctions in this matter, Hanjin is in agreement with the Petitioner that per voyage fees imposed on Korean-flag ocean common carriers would not be appropriate. Suggesting that the Korean carriers have done everything possible to ease restrictions affecting U.S.-flag carriers in Korea, Hanjin maintains that sanctions against the Korean carriers, would not be a countervailing sanction or one that meets or adjusts the alleged condition unfavorable to shipping, but would be arbitrary, discriminatory, fundamentally unfair, and therefore "subject to certain reversal by the courts * * *" Hanjin Comments, 5.

Kun Young Trading Co., Ltd. ("Kun Young") states that it is a member of the consortium informally formed by a number of Korean firms. It posits the group's belief that by entering into the customs brokerage business in the United States it can "facilitate the movement of our imports into the United States while at the same time ensuring compliance with all United States Customs and trade laws." Kun Young Comments, 1.

Kun Young notes that foreign ownership of customs brokerage services in the U.S. is not a new concept. It advises that this undertaking will assure the compliance of Korean importers with U.S. laws and provide information concerning Korean laws and requirements to U.S. exporters, and further reports that the group has yet to focus on the viability of providing ancillary services such as freight forwarding, warehousing, NVOCC operations and trucking. Kun Young expresses its expectation that the ROK will give an objective view to any market improvement initiative proposed by the U.S. and hopes that the Commission, based on the precepts of a free market economy, "will not seek to unfairly penalize a venture such as ours." *Id.*, 2

Discussion

The provisions of the Korean Act upon which the Petition is based are, on their face, discriminatory. They clearly establish nationality-based requirements for non-Korean companies wishing to participate in the Trade. They flatly prohibit companies owned by U.S. citizens, as well as other non-Koreans, from participating in the U.S./Korea bilateral and Korean cross trades in the same manner, and with the same opportunities, as their Korean-based competitors.

Korean firms are, on the other hand, free to operate in the United States without such barriers. Many commenters linked this Petition to the expected ROK-impelled creation of a consortium of shipping and other trade-involved firms to operate a U.S.-based firm. Some commenters indicate that they expect the consortium to undertake NVOCC, warehouse and freight forwarder operations in addition to providing customshouse brokerage. Without dealing with the merits of the issues with respect to the consortium raised by many of the commenters, we would observe that the creation and operation of any such enterprise in the United States highlights the discriminatory nature of the restrictive practices complained of by DCL. Such an undertaking would not be possible if provisions mirroring those of the Korean Act were applicable in this country.

Petitioner is not a vessel operating common carrier, and the discrimination about which it complains is not based on the registry of the vessels competing in the Trade, unlike the cases in which the Commission historically has been called upon to act under section 19. The Commission has, nevertheless, addressed discriminations suffered by similar concerns. In proposing a rule to adjust conditions unfavorable to shipping in the U.S. trade with Ecuador, the Commission acted on behalf of Overseas Enterprise, Inc., a U.S. company engaged in arranging and coordinating shipping transactions between vessel owners and operators and U.S. exporters. In response to a jurisdictional challenge seeking a narrow reading of section 19, the Commission ruled that it did:

> Not view OEI's activities as making it any less engaged in the business of 'shipping in the foreign trade,' as that term is used in section 19. It participates in such 'shipping' in much the same way as non-vessel-operating common carriers * * * and ocean freight forwarders do.

Inquiry Into Laws, Regulations and Policies of the Government of Ecuador Affecting Shipping in the United States/Ecuador Trade, Notice of Proposed Rulemaking, 54 FR 34,914 (August 18, 1989). We note, in addition, that any doubt as to the inclusion of NVOCCs, forwarders and similar enterprises among these maritime businesses to which the protections of Section 19 apply was removed by the 1990 amendment of that Section, which added specific reference to non-vessel-operating common carriers and freight forwarders. 104 Stat. 2979, Public Law 101–595 (November 16, 1990).

The Korean Act is on its face "discriminatory or unfair as between carriers, * * * "freight forwarders or others, within the meaning of the Section 19 Regulations at 46 CFR 585.3(d). In addition, the Korean Act precludes non-Korean-owned non-vessel-operating common carriers and freight forwarders from competing in the Trade on the same basis as Korean-owned non-vessel-operating common carriers and freight forwarders, and denies these non-Korean-owned maritime businesses effective and equal access to cargo moving in the Trade.[2] The Commission therefore finds that conditions unfavorable to shipping in the U.S. trade with Korea exist as a result of that Act.

All of the U.S.-based commenters, including organizations representing the firms most affected by the Korean laws in question, support both the finding of conditions unfavorable to shipping in the Trade and the need for Section 19 sanctions. Only the two Korean-flag ocean common carriers, a Korean member of the planned consortium and the Korean International Freight Forwarders Association oppose the Petition.

The latter group of commenters represents that the issue of discriminatory treatment of non-Korean NVOCCs and freight forwarders has never been raised in government-to-government shipping discussions and urges the Commission to delay action on this matter based on the bilateral talks originally scheduled to take place this month.[3] It appears, however, that the matter has been raised in the past by both the USTR and the U.S. embassy, with no positive results. While these discussions may not rise to the formality of the government-to-government talks currently scheduled, they nevertheless represent attempts by U.S. representatives to pursue this matter with appropriate officials of the ROK Government and to bring about a resolution.

Although the upcoming talks are expected to include this issue, the Commission has pending before it a request for formal action on an issue which has not been amenable to

[2] Paragraphs (a) and (b) of 46 CFR 585.3, define conditions unfavorable to shipping which result from the discriminatory treatment of vessels based on national registry, by denying them effective and equal access to cargo or precluding them from competing in the trade on the same basis as others. While these paragraphs refer specifically to "vessels," their focus is the unfair and discriminatory impact of foreign laws, rules and regulations on maritime transportation businesses seeking to participate in trade. The conditions described in paragraphs (a) and (b) therefore also exist where a non-vessel-operating common carrier or freight forwarder is discriminatorily treated based on the nationality of the company or citizenship of its owners.

[3] We understand that those talks are now scheduled to take place July 7 and 8, 1992.

informal resolution. The Commission finds little reason to delay or refuse action on DCL's Petition. The Commission therefore initiates this rulemaking proceeding.

The findings of conditions unfavorable to shipping made herein are based on current conditions brought to our attention by DCL and others. However, the Commission acts today on a proposed rule only; further proceedings, including the receipt and analysis of comments on the proposed rule, will be necessary prior to entry of any final rule. Of course, a resolution of these issues which might emerge from the July talks would be taken into consideration by the Commission in the course of this proceeding.

While all of the commenting parties do not agree that the matter is appropriate or ripe for Commission action, they concur that sanctions imposed on vessel operating common carriers in the Trade are inappropriate, specifically mentioning per voyage fees. The form of sanctions preferred by commenters appears to be the suspension of operating rights, i.e. freight forwarding licenses and NVOCC tariffs, for the Korean-based or Korean-owned-and-controlled firms which are the counterparts of the U.S. firms being disadvantaged by the laws and practices of the ROK.[4]

The rule proposed herein is based on this approach. It is an attempt to create for Korean firms, which are the beneficiaries of the Korean Act's protections from competition from U.S. and other non-Korean firms, conditions which mirror the detrimental effects of those provisions.

Firms owned by U.S. citizens are prohibited from doing business in Korea as freight forwarders on shipments from Korea to the U.S., thus depriving them of the opportunity to earn freight forwarder compensation and other revenue in connection with such shipments, and to compete in the Trade on the same basis as other firms offering to perform the same services. The proposed rule addresses this condition by prohibiting common carriers from paying freight forwarder compensation to Korean firms acting as freight forwarders, consolidators, freight brokers or other transportation intermediaries who provide services that facilitate arrangements between shipper and carrier incidental to the ocean transportation on bills of lading for shipments from Korea to the United States, whether directly or by transshipment.[5] This prohibition does not apply to payments made by an ocean common carrier for which it is legally responsible as part of its obligation under its intermodal bills of lading. Thus, for example, payments to an inland carrier who provides the inland movement pursuant to a joint through bill of lading would not be prohibited.

Firms owned by U.S. citizens report that they are detrimentally affected by the Korean Act because they are unable to establish contacts with shippers in Korea which might produce business in the U.S. export trade. Korean frieght forwarders, however, face no similar barriers to establishing operations in both countries. The proposed rule therefore provides that, upon notice to individual freight forwarders to be made upon publication of the final rule, the Commission proposes to suspend the ocean freight forwarder license presently held by, and to deny the pending or future application for an ocean freight forwarder license of, any firm which is majority-owned or controlled by citizens of the Republic of Korea.

The Commission will review its freight forwarder files, including information required to be filed pursuant to 46 CFR 510.12(e) and 510.19, and Part I and Schedule B of Form FMC–18, Application for License as an Ocean Freight Forwarder, to determine those licensees and applicants which appear to be Korean-owned or controlled. A licensee or applicant which is majority owned or controlled by non-U.S. citizen Korean nationals is deemed ineligible to perform the duties of an ocean freight forwarder, under § 586.4(c)(1) of this rule, in the same manner that non-Korean nationals are deemed by the Korean Maritime Business Act to be ineligible to own or operate as freight forwarders in the Republic of Korea.[6]

Each such licensee or applicant will be notified by publication in the **Federal Register** of appendix B (appendix B to be published in the final rule) and by certified mail of the Commission's intent to suspend its license or deny its application and may submit a written request for a hearing on the proposed suspension or denial within twenty (20) days after receipt of the notification. Each request for a hearing must be accompanied by a statement of the specific basis on which the Commission's determination of Korean ownership or control is challenged. Such suspension or denial proceedings will be limited to the issue of whether the licensee or applicant is majority Korean-owned or controlled. If no request for hearing is received, each licensee or applicant will be notified by **Federal Register** publication and registered mail, return receipt requested, that its license has been suspended or its application denied. In addition, effective 60 days after publication of the FMC notice identifying those firms which are Korean-owned or controlled ocean freight forwarders, discussed above, ocean carriers are prohibited in § 586.4(d) of the proposed rule, from paying freight forwarder compensation to such freight forwarders in connection with shipments from the United States to Korea.

Several commenters suggest that the Commission suspend or cancel the tariffs of Korean-owned or controlled NVOCCs. Nothing in the Commission's existing files provides information on the ownership of companies operating as NVOCCs sufficient to identify those which are more than 50% Korean-owned. However, a number of commenters suggested that NVOCCs, which are now required to file an annual certification of their policies and actions to prevent rebating, pursuant to 46 CFR 510.25 and 582.3, respectively, also be required to certify that they are not Korean citizens or owned or controlled by citizens of Korea. This suggestion has merit. But, rather than tying such a requirement to an NVOCC's annual anti-rebating certification, the Commission will, in conjunction with any final rule issued in this proceeding, issue orders pursuant to section 19(6) of the Merchant Marine Act, 1920, 46 U.S.C. app. 876(6), directing NVOCCs to

[4] One commenter suggests, in the alternative, that the Commission suspend the bond of any Korean-based or Korean-owned NVOCC, to the same effect: To deny them authority to operate in the United States. Although the existence and filing of such a contract is required as a prerequisite to lawful operation, the bond is a contract between private parties. Suspension of tariffs, on the other hand, more directly achieves the desired result and is, as well, a statutorily recognized form of sanction.

[5] We recognize that such a rule could adversely affect those few U.S.-owned forwarders and NVOCCs which have succeeded in establishing Korean operations through minority investment in a Korean-owned forwarder in compliance with the Korean Act. The rule, however, operates by prohibiting ocean carriers from paying freight forwarder compensation and necessarily applies across the board to all Korean-based freight forwarders. There appears to be no appropriate means to identify each such firm and to provide an exception for those few who succeeded in entering into such an arrangement prior to issuance of the proposed rule.

[6] The Commission acknowledges the concern of KFCBA and others that we avoid the imposition of sanctions on freight forwarders or NVOCCs which are owned and operated by U.S. citizens of Korean extraction. We believe the proposed rule adequately addresses this concern.

provide information which would allow the Commission to identify those which are more than 50 percent owned by citizens of Korea or otherwise controlled by such citizens. NVOCCs so identified would then have their tariffs suspended.

In the interim and as an additional measure, the rule issued this date would suspend the tariffs of NVOCCs having a principal place of business in Korea. The Commission's rules at 46 CFR 580.5(c)(2)(i), presently require that common carrier tariffs contain "the full legal name of each participating carrier, appropriately identified as a Non-Vessel-Operating Common Carrier or Vessel Operating Common Carrier and the address of its principal office." NVOCCs are also required to identify their principal place of business in their annual anti-rebate certifications filed pursuant to 46 CFR part 582. Examination of NVOCC tariffs and anti-rebate certifications on file with the Commission has revealed 54 NVOCCs whose tariffs state that their principal offices are in Korea. Appendix A is a list of these NVOCCs. It is presumed that a firm whose principal place of business is in Korea is Korean-owned or controlled. The rule proposed today would therefore suspend the tariffs of each of the NVOCCs named in Appendix A. The suspension would remain in effect indefinitely, until terminated by the Commission.

Conclusion

The Commission finds, pursuant to section 19 of the Merchant Marine Act, 1920, and § 585.3 (a), (b), (c), and (d) of its section 19 Regulations, that conditions unfavorable to shipping exist in the foreign oceanborne trades between the United States and Korea, as alleged in Direct Container Line's Petition. As a direct result of Korean laws, regulations, policies and practices, conditions exist which: (1) Preclude or tend to preclude non-Korean non-vessel-operating common carriers and freight forwarders from competing in the Trade on the same basis as Korean non-vessel-operating common carriers and freight forwarders; (2) deny non-vessel-operating common carriers and freight forwarders owned and operated by non-Korean nationals equal and effective access to cargo moving from Korea to the United States; (3) discriminate between non-vessel-operating common carriers and freight forwarders owned and operated by Korean nationals and non-vessel-operating common carriers and freight forwarders owned and operated by non-Korean nationals; and (4) are otherwise unfavorable to shipping in the foreign trade of the United States.

Therefore, pursuant to section 19 of the Merchant Marine Act, 1920, as amended, and the Commission's regulations at 46 CFR Part 585, the Commission hereby grants the Petition of Direct Container Line, Inc. and issues a proposed rule to address the existence of unfavorable shipping conditions in the foreign oceanborne trade between the United States and Korea and prescribes an appropriate remedy or remedies to adjust or meet those conditions. Interested parties are invited to comment on the rule proposed herein.

The Petition of Direct Container Line, Inc. as well as the comments on the Petition are hereby made a part of the record in this proceeding.

List of Subjects in 46 CFR Part 586

Cargo vessels; Exports; Foreign relations; Imports; Maritime carriers; Penalties; Rates and fares; Tariffs.

Therefore, pursuant to section 19(1)(b) of the Merchant Marine Act, 1920, 46 U.S.C. app. 876(1)(b), as amended, Reorganization Plan No. 7 of 1961, 75 Stat. 840, and 46 CFR part 585, it is proposed to amend part 586 of title 46 of the Code of Federal Regulations as follows:

PART 586—[AMENDED]

1. The authority citation for part 586 continues to read as follows:

Authority: 46 U.S.C. app. 876(1)(b); 46 U.S.C. app. 1710a; 46 CFR part 585; Reorganization Plan No. 7 of 1961, 26 FR 7315 (August 12, 1961).

2. A new § 586.4 is added to read as follows:

§ 586.4 Conditions unfavorable to shipping in the United States/Korea Trade ("Trade").

(a) *Conditions unfavorable to shipping in the trade.* (1) The Federal Maritime Commission has determined that the Government of Korea ("ROK") has created conditions unfavorable to shipping in the foreign trade of the United States by enacting, implementing and enforcing laws and regulations which unreasonably restrict non-Korean citizens and companies from competing as freight forwarders or non-vessel-operating common carriers to participate in the carriage of general import and export cargoes, in the trade between the United States and Korea on the same basis as Korean citizens and firms owned by Korean citizens.

(2) Korean law unilaterally prohibits the participation of non-Korean citizens and firms owned by non-Korean citizens from operating as freight forwarders, or non-vessel-operating common carriers or other shoreside maritime transportation businesses in the import and export of general cargoes between the United States and Korea. The enforcement of this system discriminates against U.S. maritime companies desirous of participating in the Trade through the operation of businesses in Korea and denies to these transportation firms effective and equal access to import and export general cargoes in the Trade. It also discriminates against shippers whose opportunities to employ these entities and to select a carrier of their choice are restricted and whose ability to compete in international markets is hampered.

(b) *Korean non-vessel-operating common carriers—suspension of tariffs.* (1) Each non-vessel operating common carrier whose tariff or anti-rebate certification on file with the Federal Maritime Commission reflects as its principal place of business a place in Korea, named in appendix A of this section, is hereby presumed to be a Korean-owned or controlled non-vessel-operating common carrier.

(2) The tariff of each non-vessel-operating common carrier named in appendix A of this section is hereby suspended until further action of the Federal Maritime Commission to terminate the suspension.

(c) *Korean freight forwarders—suspension or revocation of licenses.* (1) Pursuant to section 19(1)(b) of the Merchant Marine Act, 1920, 46 U.S.C. app. 876(1)(b), any holder of an ocean freight forwarder license issued by the Federal Maritime Commission pursuant to the Shipping Act of 1984, 46 U.S.C. 1718, and any applicant for such a license, in which a majority interest is held by non-U.S. citizen Korean nationals, is hereby deemed to be ineligible to render forwarding services in the same manner that non-Korean nationals are deemed by the Korean Maritime Business Act to be ineligible to own or operate as freight forwarders in the Republic of Korea.

(2) Any ocean freight forwarder holding a license pursuant to the Shipping Act of 1984, 46 U.S.C. app. 1718, and 46 CFR part 510, and any applicant for such a license, which appears to be owned or controlled by non-U.S. citizen Korean nationals, listed in appendix B of this section (appendix B to be published with the final rule), will be notified by certified mail, return receipt requested, that its license will be suspended until further notice, or, in the case of an applicant, that its application will be denied, unless it is able to show that it is not and was not on the date of publication of this Proposed Rule owned or controlled by non-U.S. citizen Korean-nationals.

(3) Each such notice shall be served on the individual licensee or applicant at its last known business address and shall include notification of the opportunity to request a hearing on the suspension or denial of a license within 20 days from the receipt of such notification pursuant to the Commission's rules at 46 CFR 510.15 or 510.16 and the rules of practice and procedure at 46 CFR part 502. Failure to respond to such notice shall be deemed to constitute admission that the respondent licensee or applicant is owned or controlled by non-U.S. citizen Korean-nationals, and the licensee or applicant shall be notified by **Federal Register** publication and certified mail, return receipt requested that its license has been suspended, or its application denied.

(4) Each request for a hearing must be accompanied by a statement of the specific basis on which the Commission's determination of Korean ownership or control of the licensee or applicant is challenged.

(d) *Ocean common carriers—prohibition of payment of freight forwarder compensation or brokerage.* (1) Notwithstanding any provisions in its tariff or tariffs in which it participates to the contrary, each common carrier operating in the U.S. foreign trade with Korea is prohibited from making freight forwarder compensation, brokerage or other payments to freight forwarders, consolidators, cargo brokers or other transportation intermediaries who provide services that facilitate arrangements between shipper and carrier incidental to the ocean transportation on export shipments from Korea to the United States.

(2) Notwithstanding any provisions in its tariff or tariffs in which it participates to the contrary, each common carrier operating in the U.S. foreign trade with Korea is prohibited from paying freight forwarder compensation to any ocean freight forwarder which has been notified by the Commission that its license is subject to suspension pursuant to this Rule and whose name appears in appendix B of this section (the list to be published as appendix B to the final rule).

(e) *Effective date.* This section is effective on (insert date 30 days from publication of the final rule in the **Federal Register**), except that § 586.4(d)(2) is effective (insert date 60 days from publication of the final rule in the **Federal Register**).

Joseph C. Polking,

Secretary.

Appendix A to § 586.4 Korean Non-Vessel Operating Common Carriers

1. Auto-Multimodal Express Line Inc. Dba/Amex Line Inc. 18th fl., Jeil Bldg. 31–1 2–KA, Myung-Dong, Chung-Ku Seoul, Republic of Korea.
2. Bogo Shipping Co., Ltd. Bogo Bldg. 988–15 Daechi-Dong, Kangnam-Ku Seoul, Republic of Korea.
3. Bonex Shipping Corporation Dba/Bonex Line Rm. 1503, Sam Koo Bldg., 70 Sokong-Dong Chung-Ku Seoul, Republic of Korea.
4. Bum Han Shipping Co., Ltd. 24th Floor International Insurance Bldg. 1205–KA Namdaemunuro Chung-Ku, Seoul, Republic of Korea.
5. Daeil Shipping Co., Ltd. Soon Hwa Bldg., Suite 1501 #5–2 Soon Hwa-Dong, Choong-Ku Seoul 110–030, Republic of Korea.
6. Daeyoo Shipping Co., Ltd. Rm. 504 Mocksan Bldg. #156 Joekseon-Dong, Jongro-Ku Seoul, Republic of Korea.
7. Dong Joo Int'l Shipping Co., Ltd. Rm. 1210, Marine Center Bldg. 118, 2–KA, Namdaemoon-Ro, Chung-Ku Seoul, Republic of Korea.
8. Dong Shin Shipping Co., Ltd. International Insurance Bldg., #120 5–KA Namdaemun-Ro Chunk-Ku Seoul, Republic of Korea.
9. Doo Ran Shipping Co., Ltd. Rm. 905, Sam Jung Bldg. 69–5, 2–GA Taepyung-Ro, Chung-Ku Seoul, Republic of Korea.
10. Eastern Van Express Co., Ltd. 16th Kyungki Bldg. 115 Samkag-Dong, Chung-Ku Seoul 100–200, Republic of Korea.
11. Express Cargo Service Co., Ltd. 602 Rm, Korea YWCA 1–3 1–KA Myung-Dong, Chung-Ku Seoul, Republic of Korea.
12. First Express International 394–44, Seo-Gyo-Dong, Mapo-Ku Seoul, Republic of Korea.
13. Glory Shipping Co., Ltd. Jangkyo Bldg., #1703 1, Jangkyo-Dong, Choong-Ku Seoul, Republic of Korea.
14. Goldmarine Co., Ltd. 3rd Fl, Tae Rim Bldg., 85–13, 4–KA Chungang-Dong, Chung-Ku Busan, Republic of Korea.
15. Gyro Shipping Co., Ltd. Il-Jin Bldg., Room 302 #85–11, 4–KA, Chungang-Dong, Chung-Ku Busan, Republic of Korea.
16. Haewoo Air & Shipping Co., Ltd. Fl. 7, Taepyung Bldg. 69–20 Taepyung-Ro, 2–KA Choong-Ku, Seoul, Republic of Korea.
17. Hanjoo Shipping Int'l Co., Ltd. Dba/Hanex Line 18, 1–KA, Nandaemoon-Ro, Chung-Ku Seoul, Republic of Korea.
18. Hero Shipping Co., Ltd. Rm 901, Taepyung Bldg. 69–20, 2–KA Taepyung-Ro, Seoul, Republic of Korea.
19. Kana Shipping Co. Ltd. Rm #901, Paik Nam Bldg. 188–3, 1–KA, Euljiro Chung Ku Seoul, Republic of Korea.
20. Kenney Transport (Korea), Ltd. Mapo Changkang Bldg., 18–1, Dohwa-Dong Mapo-Ku Seoul, Republic of Korea.
21. Kheeryoong Commerce & Transport Co., Ltd 25–5, 1–KA, Chungmu-Ro, Chung-Ku Seoul, Republic of Korea.
22. Korea Express Corp. Suite #301, Han-Kwang Bldg. 82–1 4–KA Jungang-Dong, Jung-Ku Busan, Republic of Korea.
23. Korea Intermodal Transport Co., Ltd. 15th Fl, Marine Center Bldg., #118 2–KA Namdaemun-Ro, Chung-Ku Seoul 100–770, Republic of Korea.
24. Korea Logistics Systems Inc. 12th Fl., Jung Suck Bldg. 89–14, 4–KA, Chungang-Dong Chung-Ku, Busan, Republic of Korea.
25. Korea Marine Transport Co., Ltd. 15th Fl., Marine Center Bldg. #118 2–KA, Namdaemun-Ro, Chung-Ku Seoul, Republic of Korea.
26. Kunyoung Shipping Co., Ltd. Taeyang B/D 3F, 158–25 Dongkyo-Dong Mapo-Gu Seoul, Republic of Korea.
27. Masters World Trans Co. Ltd. Dba/Masters Container Line Rm 810, Il Jin Bldg. 50–1 Dowha-Dong Mapo-Ku, Seoul, Republic of Korea.
28. Nama Air Cargo & Shipping Co., Ltd. Jinhak Bldg, 201–1 Chungjin Dong Jongro-Ku Seoul 110–130, Republic of Korea.
29. New World Shipping Co., Ltd. 17–7, 4–Ka Namdaemoon-Ro Choong-Ku, Seoul, Republic of Korea.
30. Orient Express Container (Korea) Ltd., 168–4 Dongkyo-Dong, Mapo-Ku, Seoul, Republic of Korea.
31. Orient Express, Ltd., Rm 1102, Jeil Bldg., 31–1 2–KA, Myung-Dong, Chung-Ku, Seoul, Republic of Korea.
32. Orion Express Line, 3th Fl., Sujin Bldg., 167–1 Dangju-Dong, Chongro-Ku, Seoul 110–071, Republic of Korea.
33. Pan Asia Maritime Inc., Room 301, New Seoul Bldg., 62–7 2–KA, Chungmu-Ro, Chung-Ku, Seoul, Republic of Korea.
34. Pan Trans International Freight Service Co., L, Rm #602 Bokchang Bldg., 80 Sokong-Dong Chung-Ku, Seoul, Republic of Korea.
35. Prime Consolidation Limited, Rm 905, Sun Shine Bldg., 11–1 2–GA, Choongmu-Ro Chung-Ku, C.P.O. Box 7125, Seoul, Republic of Korea.
36. Pum Yang Shipping Co., Ltd., 4th Floor, Soon HWA Bldg., 5–2 Soon HWA Dong, Choong-Ku, Seoul, Republic of Korea.
37. Pusan Shipping Co., Ltd., 6th Floor KCCI Building, 4–45 Namdaemun-Ro, Jung-Ku, Seoul, Republic of Korea.
38. Regent Express Korea, Inc., RM 1405, Sam Yoon B/D, 63–2 2nd Street, Chungmu-Ru, Chung-Ku, Seoul, Republic of Korea.
39. Sea-Road Trans Corporation, DBA/SEA-Road International, 7th Floor, Paik Nam Bldg 188–3, 1–GA, Euljiro Choong-Ku, Seoul, Republic of Korea.
40. Seil Shipping Col, Ltd., 51–1 Namchang-Dong, Chung-Ku, Seoul 100–060, Republic of Korea.
41. Selim Shipping Co., Ltd., Rm. 703, Youdong Bldg., 546, Dohwa-Dong, Mapo-Ku, Seoul, Republic of Korea.
42. Shinwoo Shipping Inc., Rm. 401, Sam Yang Bldg. 85–8, 4–KA Jungang-Dong, Jung-Ku, Busan, Republic of Korea.
43. Ssangyong Shipping Co., Ltd., 60–1, 3–GA, Chungmu-Ro, Jung-Gu, Seoul 100–175, Republic of Korea.
44. Sun Express Corporation, 780–1, 5–KA, Namdaemoon-Ro, Jung-Ku, Seoul, Republic of Korea.

45. Sungwoo Shipping Co., Ltd., 2nd Fl., Samheung Bldg, 10–4 Bukchang-Dong Chung-Ku, Seoul 100–080, Republic of Korea.
46. Sunjin Shipping & Air Cargo Co., Ltd., 80 Chokson-Dong (Hyundai Cheil Bldg.), Chongro-Ku, Seoul, Republic of Korea.
47. Tae Jung Express Co., Ltd., Room No. 521 Baejac Building 55–4 Seosomoon-Dong Chung-Ku, Seoul, Republic of Korea.
48. Uni-Sea & Air Freight Co., Ltd. RM #405 EUI LIM Bldg., 16–48, 3–GA, Hangkang-Ro, Yongsan-Gu, Seoul, Republic of Korea.
49. Union Express, Ltd., 392–33, Sokyo-Dong, Mapo-Ku, Seoul, Republic of Korea.
50. Vantrans Service Inc., 2nd Fl., Hae Yang Bldg., 87–5, 4 KA Chungang-Dong, Chung-Ku, Seoul, Republic of Korea.
51. Woo Shin International Transport Co., Ltd., 9th Floor Royal Bldg 5., Dangju-Dong Chongro-Gu, Seoul, Republic of Korea.
52. World Trans Corporation, Rm 1803–5 Samjung Bldg., 69–5, 2–KA Taepyung-Ro, Chung-Ku, C.P.O. Box 7197 Seoul, Republic of Korea.
53. Worldstar Shipping & Trading Co., Ltd., DBA/Worldstar Shipping Co. Ltd., Namdo Bldg. 1Fl., Kwanhoon-Dong, Chongno-Ku, Seoul, Republic of Korea.
54. YKL Express Limited, 18FL, Byucksan 125 Bldg., 12–5 Dongja-Dong, Yongsan-Gu, Seoul, Republic bf Korea.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 92–15872 Filed 7–7–92; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[CC Docket No. 92–137; FCC 92–263]

Air-Ground Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This proposal would assign the allocation of working channel 3 (454.850 MHz) to Schaller, Iowa, to provide air-ground service to the Storm Lake Municipal Airport, which does not currently have reliable air-ground service. Schaller is in Sac county in northwest Iowa, south of the Storm Lake Recreation Region, about 57 miles east of Sioux City and 105 miles northwest of Des Moines.

DATES: Comments must be filed by August 21, 1992. Reply comments are due by September 7, 1992.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Andrew L. Nachby, Mobile Services Division, Common Carrier Bureau at (202) 632–6450.

SUPPLEMENTARY INFORMATION:

Summary of Notice of Proposed Rulemaking

In view of the apparent need for air-ground communications service the Commission proposes to amend 47 CFR 22.521(b) to assign the allocation of working channel 3 (454.850 MHz) to Schaller, Iowa.

Procedures for Amendment of Air-Ground Table of Allotments

The Commission invites comments on this proposal. The procedures to be followed in submitting comments in this proceeding are similar to those followed in proceedings to amend the FM or Television Table of Assignments in § 1.420 of the Commission's rules. The procedures are discussed below.

Cut-off Procedures

The following procedures govern the consideration of filings in this proceeding:

(a) Counterproposals made in this proceeding will be considered if they are made in initial comments so that parties may comment on them in reply comments. Counterproposals will not be considered if made in reply comments (See § 1.420(d) of the Commission's rules).

(b) Petitions for Rulemaking which conflict with the proposal of this Notice will be considered as comments. Public notice of such treatment will be given so long as the petitions are filed before the date for filing initial comments. If they are filed after that date, they will not be considered in connection with the decision in this proceeding.

Dates and Service

Under the procedures set out in Section 1.415 and 1.420 of the Commission's rules, interested parties may file comments on or before August 21, 1992, and reply comments on or before September 7, 1992. All submissions made by parties to this proceeding or in behalf of such parties must be made in written comments, reply comments or other appropriate pleadings. These comments and reply comments must be accompanied by a certificate of service (See § 1.420(a)–(c) of the Commission's rules). Reply comments must be served on the person(s) who filed comments.

Number of copies

Under § 1.420 of the Commission's rules, an original and four copies of all comments, reply comments, pleadings, briefs or other documents must be submitted to the Commission.

Public Inspection of Filing

All findings made in this proceeding are available for inspection during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, DC. Copies may be purchased from International Transcription Service, 2100 M Street, NW. First Floor Washington, DC 20036, (202) 857–3800.

List of Subjects in 49 CFR Part 22

Communications Common Carriers, Radio, Reporting and recordkeeping requirements, Rural areas, Table of air ground radiotelephone service.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92–15929 Filed 7–7–92; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 92–33; Notice 1]

RIN 2127—AE36

Federal Motor Vehicle Safety Standards Lamps, Reflective Devices, and Associated Equipment

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

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes identification markings for lenses on round sealed beam headlamps that would be an alternative to those markings presently required. This will allow manufacture of replacement headlamps for old cars that replicate the appearance of the original headlamps. The rulemaking action implements the grant of a petition for rulemaking filed by a manufacturer of such headlamps. The notice also proposes transferring some existing requirements for replacement equipment from S5.1, the section on new vehicle equipment, to S5.7, the section on replacement equipment. The notice also proposes deletion of the footnotes and associated references from the Tables.

DATES: The comment closing date for the proposal is September 8, 1992. The proposed effective date for the final rule is 30 days after its publication in the Federal Register.

ADDRESSES: Comments should refer to the docket number and the notice number, and be submitted to: Docket Section, room 5109, 400 Seventh Street, SW., Washington, DC 20590 (Docket hours are from 9:30 a.m. to 4 p.m.).

FOR FURTHER INFORMATION CONTACT: Patrick Boyd, Office of Rulemaking, (202-366-6346).

SUPPLEMENTARY INFORMATION: This rulemaking action affects only the marking of lenses of replacement equipment headlamps of 7-inch and 5¾ inch diameters.

Until 1974, the only types of headlamp systems permitted by Standard No. 108 were a two headlamp system of lamps with lens diameters of 7 inches, and a four headlamp system of lamps with lens diameters of 5¾ inches. The headlamps were required to be designed to conform to SAE Standard J579a Sealed Beam Headlamp Units for Motor Vehicles, August 1965. In 1978, headlamps designed to conform to the newer photometrics of SAE Standard 7579c (December 1974) were added to the list of permissible frontal lighting systems, and, effective July 1, 1979, their lenses were required to be marked in accordance with a three-digit code established by the standard. At the same time, NHTSA incorporated by reference SAE Standard J571d Dimensional Specifications for Sealed Beam Headlamp Units, June 1976, which contained a single digit code applicable to headlamps designed to conform to SAE J7579a. In 1989, in a move towards regulatory simplification, Standard No. 108 was amended to eliminate SAE J571d, and SAE j579a as a permissible headlighting option as these lamps were no longer being manufactured.

Under the nomenclature adopted effective from 1979 to the present, a 7-inch diameter sealed beam headlamp designed to conform to the photometrics of SAE J579c is known as Type 2D1, and the 5¾-inch diameter headlamps as Types 1C1 and 2C1. These alpha-numeric type designations are required to be placed on the headlamp lenses in order to facilitate replacement of headlamps with those of like performance.

Lectric Limited Inc., and Wagner Lighting Division of Cooper Industries Inc., have petitioned for rulemaking to allow use of "1", "2", and "Top" as markings to identify Type 1C1, 2C1, and 2D1 headlamps. The designators "1" and "2" were required for headlamps designed to conform to SAE Standards J571d and J579a. The headlamps contemplated by the petitioners would be designed to conform to the contemporary photometrics of SAE J579c.

Thus, the headlamps would have the appearance of those which were standard equipment on all passenger cars of 1974 and previous model years (as well as those of subsequent model years intended to meet SAE J579a), but have the performance required today. The purpose of this request is to allow the petitioners "to satisfy a previously unaddressed need in the classic and collector car market." This need is for replacement headlamps on older vehicles to replicate the appearance of the original headlamps. According to the petitioners, the owners of such vehicles will not accept a replacement headlamp with descriptive lettering which is incorrect in appearance with descriptive lettering which is incorrect in appearance for the era in which the car was manufactured. General Motors has granted the petitioners a license to use GM's "Guide T-3" marking on the lamps as it was in effect during the 1950s to 1970s. If Standard No. 108 is amended to permit the alternative identification, the petitioners will be able to address this need.

Petitioners state that the headlamps to be produced will be sold only through wholesalers and retailers who service the classic and restored car market. Their low volume and consequent high cost is not likely to attract the average consumer who simply owns and drives an old car.

NHTSA has granted the petition and is proposing the removal of a regulatory barrier to the manufacture of new headlamps for vehicles of special interest to collectors. S5.7 Replacement Equipment would be amended to allow the requested marking as an alternative to that presently required (that specified by SAE Standard J1383 APR 85 which adopted the NHTSA nomenclature).

In reviewing Standard No. 108, NHTSA finds that a number of the exceptions of S5.1 Required Motor Vehicle Lighting Equipment in fact apply to individual items of replacement equipment rather than equipment comprised in new vehicle lighting systems. From the standpoint of regulatory consistency and logic, the agency is proposing a transfer of these provisions to S5.7. The agency is also proposing to delete all footnotes and associated references in the Tables. These footnotes originated in the early days of Standard No. 108 as a guide to manufacturers unfamiliar with the standard. Their continued presence is tentatively deemed no longer necessary for regulatory clarity.

Effective Date

Because the amendment would relieve a regulatory barrier not required for safety and would impose no additional burden upon any regulated party, it is tentatively found for good cause shown that an effective date earlier than 180 days after issuance of the final rule would be in the public interest, and the rule would be effective 30 days after its publication in the **Federal Register**.

The proposed rule would not have any retroactive effect. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1392(d)), whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. Section 105 of the Act (15 U.S.C. 1394) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Rulemaking Analyses

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

NHTSA has considered the impacts of this rulemaking action and has determined that it is neither major within the meaning of Executive Order 12291 "Federal Regulation", nor significant under Department of Transportation regulatory policies and procedures. The amendment to the identification mark requirements would not affect the cost of producing headlamps. The agency concludes that the impacts are so minimal as not to warrant the preparation of a full regulatory evaluation.

Regulatory Flexibility Act

The agency has also considered the effects of this rulemaking action in relation to the Regulatory Flexibility Act. I certify that this rulemaking action would not have a significant economic effect upon a substantial number of small entities. Motor vehicle manufacturers and lighting manufacturers are generally not small businesses within the meaning of the Regulatory Flexibility Act. Further, small organizations and governmental jurisdictions would not be significantly affected as the price of new motor vehicles should not be impacted.

Accordingly, no Regulatory Flexibility Analysis has been prepared.

Executive Order 12612 (Federalism)

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

National Enviromental Policy Act

NHTSA has analyzed this rulemaking action for purposes of the National Environmental Policy Act. The rulemaking action would not have a significant effect upon the environment. There is no environmental impact associated with the marking of headlamp lenses. The rulemaking action would not have an effect upon fuel consumption.

Request for Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notifed upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

In consideration of the foregoing, it is hereby proposed that 49 CFR part 571 be amended as follows:

1. The authority citation for part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401,1403, 1407; delegations of authority at 49 CFR 1.50.

§ 571.108 [Amended]

2. Section S5.7 *Replacement equipment* would be amended as follows:

(a) Revising S5.7.1 to read:

S5.7.1 Except as provided below, each lamp, reflective device, or item of associated equipment manufactured to replace any lamp, reflective device, or item of associated equipment on any vehicle to which this standard applies, shall be designed to conform to this standard.

(b) Redesignating S5.7.2 as S5.7.10.

(c) Adding new paragraph S5.7.2 to read:

S5.7.2 A Type C replacement headlamp designed to conform to the requirements of paragraph S7.3.2(a) through (d) of this standard may be marked "1" and "2" rather than "1C1" and "2C1" respectively. A Type D replacement headlamp designed to conform to S7.3.2 (a) through (c) and S7.3.5(b) of this standard may be marked "TOP" or "2" rather than "2D1".

3. S5.1.1.6(a) and (b) would be redesignated S5.7.3(a) and (b), and S5.1.1.6(c) would be removed.

4. S5.1.1.7(a) and (b) would be redesignated S5.7.4(a) and (b), and S5.1.1.7(c) would be removed.

5. S5.1.1.11 would be redesignated S5.7.5.

6. S5.1.1.12 would be redesignated S5.7.6.

7. S5.1.1.26 would be removed.

8. New section S5.7.7 would be added to read:

S5.7.7 Note 6 of Table 1 in SAE Standard J588e, *Turn Signal Lamps*, September 1970, does not apply.

9. S5.1.1.23 would be redesignated S5.7.8.

10. S5.1.1.24 would be redesignated S5.7.9.

11. S5.1.1.8, S5.1.1.9, S5.1.1.10, S5.1.1.13, S5.1.1.14, S5.1.1.15, S5.1.1.16, S5.1.1.17, S5.1.1.18, S5.1.1.19, S5.1.1.20, S5.1.1.21, S5.1.1.22, S5.1.1.25, S5.1.1.27, S5.1.1.28, S5.1.1.29, S5.1.1.30, S5.1.1.31, and would be redesignated, respectively, S5.1.1.6, S5.1.1.7, S5.1.1.8, S5.1.1.9, S5.1.1.10, S5.1.1.11, S5.1.1.12, S5.1.1.13, S5.1.1.14, S5.1.1.15, S5.1.1.16, S5.1.1.17, S5.1.1.18, S5.1.1.20, S5.1.1.21, S5.1.1.22, S5.1.1.23, S5.1.1.24.

12. New S5.1.1.19 would be added to read:

S5.1.1.19 A stop lamp that is not optically combined as defined by SAE Information Report J387 *Terminology—Motor Vehicle Lighting* NOV 87, with a turn signal lamp shall remain activated when the turn signal lamp is flashing.

13. Tables I, II, III, and IV would be amended to remove all footnotes and associated references in the text thereof.

Issued on: July 2, 1992.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 92-15917 Filed 7-7-92; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB56

Endangered and Threatened Wildlife and Plants; Proposal to List the Duskytail Darter, Palezone Shiner, and Pygmy Madtom as Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service proposes to list three fishes—the duskytail darter (*Etheostoma* (*Catonotus*) sp.), palezone shiner (*Notropis* sp., cf. *procne*), and pygmy madtom (*Noturus stanauli*)—as endangered species under the Endangered Species Act (Act) of 1973, as amended. The duskytail darter is presently known to inhabit only five short stream reaches: the Little River, Blount County, Tennessee; Citico Creek, Monroe County, Tennessee; Big South Fork Cumberland River, Scott County, Tennessee; and Copper Creek and

Clinch River, Scott County, Virginia. Two other historic duskytail darter populations are extirpated. The palezone shiner is presently known from only two stream reaches: the Paint Rock River, Jackson County, Alabama, and the Little South Fork Cumberland River, Wayne and McCreary Counties, Kentucky. Two other historic palezone shiner populations are extirpated. The pygmy madtom has been collected from only two short stream reaches: The Duck River, Humphreys County, Tennessee, and the Clinch River, Hancock County, Tennessee. The madtom may no longer exist in the Duck River. All three fishes presently coexist with other federally listed species in all stream reaches, except the Duck River. All these fishes and their habitat are impacted by deteriorated water quality primarily resulting from poor land use practices. The limited distribution of these fishes also makes them very vulnerable to toxic chemical spills. Comments and information are sought from the public on this proposal.

DATES: Comments from all interested parties must be received by September 8, 1992. Public hearing requests must be received August 24, 1992.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, Asheville Field Office, 330 Ridgefield Court, Asheville, North Carolina 28806 (704/665-1195). Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Richard G. Biggins at the above address.

SUPPLEMENTARY INFORMATION:

Background

The duskytail darter (*Etheostoma* (*Catonotus*) sp.) is being scientifically described by Robert Jenkins (Roanoke College, personal communication, 1990). This small (2-inch) fish, which coexists with other federally listed species in all stream reaches it inhabits, is straw to olivaceous in color. It inhabits rocky areas in gently flowing, shallow pools and eddy areas of large creeks and moderately large rivers in the Tennessee and Cumberland River systems (Starnes and Etnier 1980; Burkhead and Jenkins, in press; Layman, in press; and Clyde Voigtlander, Tennessee Valley Authority, *in litt.*, 1991). Historically, the duskytail was likely more widespread. However it presently has a very fragmented distribution (Etnier and Starnes, in press; Jenkins and Burkhead, in press). The Tennessee Wildlife Resources Agency and the Tennessee Heritage Program of the Tennessee Department of Conservation recognize this fish as a threatened species (Starnes and Etnier 1980). Effective January 1, 1992, the species was listed by the Department of Game and Inland Fisheries as endangered in Virginia (Karen Terwilliger, Virginia Department of Game and Inland Fisheries, *in litt.*, 1991).

Although the fish fauna of the Tennessee and Cumberland River systems has been extensively surveyed, the duskytail has been collected from only seven short river reaches: Little River, Blount County, Tennessee; Citico Creek, Monroe County, Tennessee; Big South Fork Cumberland River, Scott County, Tennessee; Abrams Creek, Blount County, Tennessee; South Fork Holston River, Sullivan County, Tennessee; and Copper Creek and Clinch River, Scott County, Virginia. The duskytail is apparently extirpated from Abrams Creek and South Fork Holston River as it has not been found in either area in recent years (Jenkins and Burkhead, in press).

The Little River population inhabits about 9 river miles (Layman, in press). Layman (in press) stated that the duskytail in the lower reaches of the Little River was undoubtedly lost when the area was impounded. This population is potentially threatened by water withdrawal and increasing residential and commercial development in the watershed (Clyde Voigtlander, *in litt.*, 1991).

The duskytail exists downstream of U.S. Forest Service lands in about 0.5 river miles of Citico Creek (Peggy Shute, Tennessee Valley Authority, personal communication, 1991). Although the majority of the Citico Creek watershed is controlled by the Forest Service, much of the populated reach is privately owned, and stream-side habitat destruction has been observed in the area (Clyde Voigtlander, *in litt.*, 1991).

The duskytail inhabits about 17 river miles of Copper Creek. Although the duskytail is characterized as generally rare or uncommon in Copper Creek (Burkhead and Jenkins, in press), this creek probably supports the largest population of the fish (Clyde Voigtlander, *in litt.*, 1991). According to the Virginia Department of Game and Inland Fisheries (Bud Bristow, *in litt.* 1991), this population is threatened by siltation, riparian erosion, and agricultural pollution.

One duskytail specimen was collected from the Clinch River in 1980, about 1 river mile below the mouth of Copper Creek (Burkhead and Jenkins, in press). This area has been well sampled since 1980, but no additional specimens have been encountered. This one fish may represent periodic downstream movement from Copper Creek, and no viable duskytail population may exist in the Clinch River.

Duskytail darters have only been taken from one site on the Big South Fork of the Cumberland River. Although other collections have been made in the Big South Fork, no other populations have been found (Jack Collier, National Park Service, personal communication, 1990; and Melvin Warren, Southern Illinois University, personal communication, 1990). This population, although within the Big South Fork National Recreational Area (BSFRA), is potentially threatened by runoff from coal mines in the upper watershed above the BSFRA (Jack Collier, personal communication, 1990).

The duskytail darter populations are threatened by the general deterioration of water quality resulting from siltation and other pollutants from poor land use practices, coal mining, and waste discharges. Etnier and Starnes (in press) stated that this darter"

* * * and other darters dependent upon slit free, rocky pools in large streams and rivers, such as the ashy darter, have apparently suffered more from the effects of siltation than have darters typical of swift riffles."

On November 27, 1990, the Service notified by mail (50 letters) Federal and State agencies within the species' historic range, local governments within the species' present range, and interested individuals that a status review of the duskytail darter was being conducted. Seven comments were received as a result of this notification. No objections to the potential listing of the duskytail darter were received, and much information on the species' status and distribution was provided and incorporated into this proposed rule. The species was upgraded to a Category 1 status as a result of this information.

The palezone shiner (*Notropis* sp., cf. *Procne*) is being scientifically described by Melvin Warren (personal communication, 1990). This small (2-inch), slender fish, which coexists with other federally listed species in all stream reaches it inhabitats, has a translucent and straw-colored body with a dark mid-lateral stripe. It occurs in large creeks and small rivers in the Tennessee and Cumberland River systems and inhabits flowing pools and runs with sand, gravel, and bedrock substrates (Warren and Burr 1990).

This fish is listed by the Kentucky State Nature Preserves Commission

(Warren et al. 1986) as an endangered species. In Alabama, the species is considered threatened (Pierson 1990). Although the species is believed to be extirpated from Tennessee, the Tennessee Wildlife Resources Agency and the Tennessee Heritage Program of the Tennessee Department of Conservation recognize this fish as a species in need of management (Starnes and Etnier 1980).

Although numerous and extensive fish collections have been made in the Tennessee and Cumberland River systems, the palezone shiner has been taken from only four rivers: The Paint Rock River, Jackson County, Alabama; the Little South Fork Cumberland River, Wayne and McCreary Counties, Kentucky; Marrowbone Creek, Cumberland County, Kentucky; and Cove Creek, Clinch River drainage, Campbell County, Tennessee (Starnes and Etnier 1980; Warren and Burr 1990; and Richard Hannan, Kentucky State Nature Preserves Commission, *in litt.*, 1990). Based on the results of a recent status survey (Warren and Burr 1990), only two palezone populations remain. No palezone shiners were found in either Marrowbone or Cove Creek. However, the fish still exists in about 3 river miles of the Paint Rock River and in about 30 river miles of the Little South Fork Cumberland River.

The palezones shiner's distribution has apparently been reduced by such factors as impoundments and the general deterioration of water quality from siltation and other pollutants contributed by coal mining, poor land use practices, and waste discharges. Richard Hannan (*in litt.*, 1990) stated that the palezone possibly inhabited the main stem of the Cumberland River in Kentucky prior to impoundment. Warren and Burr (1990) reported that diversity and density of the benthic fish community in the Little South Fork of the Cumberland River has been severely reduced. Anderson (1989) found that nearly all freshwater mussels in the lower third of the South Fork were eliminated in the 1980s and attributed the loss to toxic runoff from surface coal mines. Warren and Burr (1990) stated, "The limited distribution of the species in the Paint Rock River definitely appears correlated with increasing agriculture and associated increase in stream siltation * * *".

In the **Federal Register** (54 FR 554) of January 6, 1989, the Service announced that the palezone shiner was a category 2 species. (A category 2 species is one that is being considered for possible addition to the Federal List of Endangered and Threatened Wildlife and Plants.) On October 30, 1990, the Service notified by mail (63 letters) Federal and State agencies within the species' historic range, local governments within the species' present range, and interested individuals that a status review of the palezone shiner was being conducted. Eleven comments were received as a result of this notification. No objections to the potential listing of the palezone shiner were received, and much information on the species' status and distribution was provided and incorporated into this proposed rule. As a result of the information gathered, the species was upgraded to a Category 1 status.

The pygmy madtom (*Noturus stanauli*) was described by Etnier and Jenkins (1980). This species, which is known from two populations separated by about 600 river miles, was once likely more widespread (O'Bara 1991). However, like some other catfish in the genus *Noturus*, the pygmy madtom is presently rare and has a fragmented distribution (Etnier and Jenkins 1980). The pygmy madtom is the smallest (maximum length 1.5 inches) of the known madtoms (Etnier and Jenkins 1980). It has a very distinctive pigmentation pattern—very dark above the body midline and light below. The species is found in moderate to large rivers on shallow, pea-size gravel shoals with moderate to strong current. The Tennessee Wildlife Resources Agency and the Tennessee Heritage Program of the Tennessee Department of Conservation recognize this fish as a threatened species (Starnes and Etnier 1980).

The fish fauna of the Tennessee River Valley has been extensively surveyed (O'Bara 1991); however, the pygmy madtom has only been collected from two short river reaches. It has been taken from the Duck River, Humphreys County, Tennessee, and from the Clinch River, Hancock County, Tennessee. Based on the results of recent surveys (O'Bara 1991), the fish still exists in the Clinch River, and it is possibly extirpated from the Duck River. Five specimens were taken at one of the two known historic sites in the Clinch River by O'Bara (1991) in the fall of 1990. O'Bara (1991) did not find the species in the Duck River during his 1990 survey, and he reported that the species had not been taken from the Duck River since 1974.

Etnier and Jenkins (1980), in their description of this species, report that it has been taken in only about one-half of the collections made at the Clinch River sites and only about one-fourth of the collections at the Duck River site. Thus, although the species has not been taken in recent years in the Duck River, it may still survive there.

The pygmy madtom, which coexists with other federally listed species in the Clinch River, is threatened by the general deterioration of water quality from siltation and other pollutants associated with poor land use practices and waste discharges. The section of the Duck where the species has been taken is being seriously threatened by streambank erosion. The aquatic resources of the Clinch River are potentially threatened by increased urbanization, coal mining, and poorly managed agricultural practices. Because the pygmy madtom may exist in only one short river reach, this population could easily be lost from a single toxic chemical spill.

The pygmy madtom was recognized by the Service in the January 6, 1989, **Federal Register** (54 FR 554) as a category 2 species. (A category 2 species is one that is being considered for possible addition to the Federal List of Endangered and Threatened Wildlife and Plants.) On October 30, 1990, the Service notified by mail (25 letters) Federal and State agencies within the species' historic range, local governments within the species' present range, and interested individuals that a status review of the pygmy madtom was being conducted. Five comments were received as a result of this notification. No objections to the potential listing of the pygmy madtom were received, and much information on the species' status and distribution was provided and incorporated into this proposed rule. The status of the species was upgraded to a Category 1, as a result of the information gathered.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *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 the duskytail darter (*Etheostoma* (*Catonotus*) sp.), palezone shiner (*Notropis* sp., cf. *procne*), and the pygmy madtom (*Noturus stanauli*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The Tennessee and Cumberland Rivers previously

supported one of the world's richest assemblages of temperate freshwater river fishes (Starnes and Etnier 1986), but these rivers are now two of our most severely altered river systems. Most of the main stem of both rivers and many of the tributaries are impounded (over 2,300 river miles, or about 20 percent, of the Tennessee River and its tributaries with drainage areas of 25 square miles or greater are impounded (Tennessee Valley Authority 1971)). In addition to the loss of riverine habitat within the impoundment, most impoundments also seriously alter downstream aquatic habitat. Coal mining related siltation and associated toxic runoff have adversely impacted many stream reaches. Numerous streams have experienced fish kills from toxic chemical spills, and poor land use practices have fouled many waters with silt. The runoff from large urban areas has degraded water and substrate quality. Because of the extent of habitat destruction, the aquatic faunal diversity in many of the basins' rivers has declined significantly. Many species that once existed throughout major portions of these basins now exist only as isolated remnant populations (Neves and Angermeier 1990). Because of this destruction of riverine habitat, 8 fishes and 24 mussels in the Tennessee and Cumberland River basins have already required Endangered Species Act protection, and numerous other aquatic species in these two basins are currently considered candidates for Federal listing.

The fish fauna of the Tennessee and Cumberland River systems have been extensively surveyed (Ronald Cicerello, Kentucky State Nature Preserves Commission; David Etnier, University of Tennessee; Robert Jenkins, Roanoke College; Christopher O'Bara, Tennessee Technological University; Charles Saylor, Tennessee Valley Authority; Melvin Warren and Brooks Burr, Southern Illinois University; personal communications, 1990). Yet, only a few isolated populations of the duskytail darter, palezone shiner, and pygmy madtom remain (see "Background" section for a discussion of the current and historic distribution of and threats to the remaining populations). These fishes have been and are presently adversely impacted by the factors described above. Unless steps are taken to protect these fishes, the number and size of their populations are expected to decline.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* The specific areas inhabited by these fishes are presently unknown to the general public. As a result, their overutilization has not been a problem. However, there is the potential for vandalism to become a problem, especially if the specific inhabited reaches are revealed during the sometimes controversial listing process. Although scientific collecting is not presently identified as a threat, these fishes exist in small isolated populations. If these populations continue to decline, take by private and institutional collectors could pose a threat. Federal protection could help to minimize illegal or inappropriate take.

C. *Disease or predation.* Although these fishes are undoubtedly consumed by predators, there is no evidence that predation is a threat to them.

D. *The inadequacy of existing regulatory mechanisms.* States within these species' ranges prohibit the taking of fishes and wildlife for scientific purposes without a State collecting permit. However, the species are generally not protected from other threats. Federal listing will provide additional protection for the species under the Endangered Species Act by requiring Federal permits to take the species and by requiring Federal agencies to consult with the Service when projects they fund, authorize, or carry out may adversely affect the species.

E. *Other natural or manmade factors affecting its continued existence.* Because the existing duskytail darter, palezone shiner, and pygmy madtom populations inhabit only short river reaches, they are vulnerable to extirpation from accidental toxic chemical spills. As the populated stream reaches of all three fish species are isolated from each other by impoundments, recolonization of any extirpated population would not be possible without human intervention. Absence of natural gene flow among populations of these fishes is also a threat, making the long-term genetic viability of these isolated populations questionable.

Additionally, several madtom species have, for still unexplained reasons, been extirpated from portions of their range. Etnier and Jenkins (1980) speculated that this may "* * * in addition to visible habitat degradation, be related to their being unable to cope with olfactory 'noise' being added to riverine ecosystems in the form of a wide variety of complex organic chemicals that may occur only in trace amounts." If madtoms are adversely impacted by increased concentrations of complex organic chemicals, increase in these materials could be a problem for the pygmy madtom.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these three fishes in determining to propose these rules. Based on this evaluation, the preferred action is to propose the duskytail darter (*Etheostoma*) (*Catonotus* sp.), palezone shiner (*Notropis* sp., cf. *procne*, and pygmy madtom (*Noturus stanauli*) as endangered. Presently, the dusktail darter inhabits only five short stream reaches, the palezone shiner is known from only two stream reaches, and the pygmy madtom possibly occurs in only one short stream reach. All three fishes and their habitat have been and continue to be impacted by water quality deterioration resulting from poor land use practices and by water pollution. The limited distribution of these fishes also makes them vulnerable to toxic chemical spills. Because of the restricted nature of these populations and their vulnerability, endangered status appears to be the most appropriate classification for the species. (See "Critical Habitat" section for a discussion of why critical habitat is not being proposed for these fishes.)

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Section 7(a)(2) of the Act and regulations codified at 50 CFR, part 402 require Federal agencies to insure, in consultation with and with the assistance of the Service, that activities they authorize, fund or conduct are not likely to jeopardize the continued existence of a listed species or result in the destruction or the adverse modification of critical habitat, if designated. The Service's regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species; or, (2) such designation of critical habitat would not be beneficial to the species. 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 these three species.

As part of the development of these proposed rules, Federal and State

agencies were notified of these fishes' distribution, and they were requested to provide data on proposed Federal actions that might adversely affect the species. No specific projects were identified. Should any future projects be proposed in regions inhabited by these fishes, the involved Federal agency will already have the distributional data needed to determine if the species may be impacted by their action. Each of these species occupies a very limited range, and any adverse modification of these river stretches would be likely to jeopardize the continued existence of the species. Therefore, habitat protection for these species will be best accomplished through the section 7 jeopardy standard and the section 9 prohibition against take. Thus, no additional benefits would accrue from critical habitat designation that would not also accrue from the listing of these species.

In addition, these species are rare, and taking for scientific purposes and private collection could be a threat. The publication of critical habitat maps in the **Federal Register** and local newspapers, and other publicity accompanying critical habitat designation could increase the collection threat and increase the potential for vandalism during the critical habitat designation process. The locations of populations of these species have consequently been described only in general terms in these proposed rules. Any existing precise locality data would be available to appropriate Federal, State, and local governmental agencies from the Service office described in the "ADDRESSES" section.

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, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required by Federal agencies and the prohibitions against taking and harm 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 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 a listed 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.

The Service notified Federal agencies that may have programs affecting these species. No specific proposed Federal actions were identified that would likely affect any of these species. Federal activities that could occur and impact the species include, but are not limited to, the carrying out or the issuance of permits for hydroelectric facility construction and operation, coal mining, reservoir construction, steam alterations, wastewater facility development, pesticide registration, and road and bridge construction. It has been the experience of the Service, however, that nearly all section 7 consultations can be resolved so that the species is protected and the project objectives are met.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been take illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. In some instances, permits may be issued for a specified time to relieve undue economic hardship that would be suffered if such relief were not available. These species are not in trade, and economic hardship permit requests are not expected.

Public Comments Solicited

The Service intends that any final action resulting from these proposals 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 these proposed rules 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 areas and their possible impacts on these species.

Final promulgation of the regulations on these species will take into consideration the comments and any additional information received by the Service, and such communications may lead to final regulations that differ 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 (see "Addresses" section of these rules).

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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Warren, M.L., Jr., W.H. Davis. R.R. Hannan, M. Evans, D.L. Batch, B.D. Anderson, B. Palmer-Ball, Jr., J.R. MacGregor, R.R. Cicerello, R. Athey, B.A. Branson, G.J. Fallo. B.M. Burr, M.E. Medley, and J. M. Baskin. 1986. Endangered, threatened, and rare plants and animals of Kentucky. Transactions of the Kentucky Academy of Sciences, 47(3–4):83–98.

Author

The primary author of this proposed rule is Richard G. Biggins, U.S. Fish and Wildlife Service, Asheville Field Office, 330 Ridgefield Court, Asheville, North Carolina 28806 (704/665–2782).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping 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 § 17.11(h) by adding the following, in alphabetical order under FISHES, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*		*	*	
Fishes:							
*	*	*	*		*	*	
Darter, duskytail	*Etheostoma (Catonotus)* sp..	U.S.A. (TN and VA)	Entire	E		NA	NA
*	*	*	*		*	*	
Madtom, pygmy	*Noturus stanauli*	U.S.A. (TN)	Entire	E		NA	NA
*	*	*	*		*	*	
Shiner, palezone	*Notropis* sp.	U.S.A. (AL, KY, and TN)	Entire	E		NA	NA
*	*	*	*		*	*	

Dated: June 22, 1992.

Richard N. Smith,

Director, Fish and Wildlife Service.

[FR Doc. 92–15977 Filed 7–7–92; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 217 and 227

Revisions To Enhance and Facilitate Compliance With Sea Turtle Conservation Requirements Applicable to Shrimp Trawlers; Restrictions Applicable to Shrimp Trawlers and Other Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rules; notice of public hearings.

SUMMARY: On April 30, 1992 (57 FR 18446), NMFS issued a proposed rule that would amend the regulations protecting sea turtles (50 CFR parts 217 and 227, subpart D). Under the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations implemented thereunder, it is unlawful to take sea turtles. The incidental taking of turtles during scientific research and fishing is exempted from the prohibitions in certain specified circumstances. Shrimp trawlers in the southeastern Atlantic and Gulf of Mexico are so exempted if they employ specified measures (sea turtles conservation measures) to reduce the mortality of sea turtles incidentally taken.

NMFS has revised the schedule for public hearings on this proposed rule to include an additional hearing in Texas.

DATES: Comments on the proposed rule will be accepted until July 29, 1992. Public hearings are scheduled as follows:

1. June 22, 1992, at 7 p.m.—11 p.m., Port Aransas, TX.
2. June 23, 1992, at 7 p.m.—11 p.m., Pasadena, TX.
3. June 24, 1992, at 2 p.m.—6 p.m., Thibodaux, LA.
4. June 25, 1992, at 7 p.m.—11 p.m., Mobile, AL.
5. June 30, 1992, at 7 p.m.—11 p.m., St. Petersburg, FL.
6. July 9, 1992, at 7 p.m.—11 p.m., Charleston, SC.
7. July 10, 1992, at 7 p.m.—11 p.m., Brunswick, GA.
8. July 16, 1992, at 7 p.m.—11 p.m., Morehead City, NC.
9. July 17, 1992, at 7 p.m.—11 p.m., Manteo, NC.
10. July 22, 1992, at 7 p.m.—11 p.m., S. Padre Island, TX.
11. July 23, 1992, at 7 p.m.—11 p.m., Lake Charles, LA.
12. July 24, 1992, at 7 p.m.—11 p.m., Biloxi, MS.

ADDRESSES: Send written comments to Dr. Nancy Foster, Director, Office of Protected Resources, National Marine Fisheries Service, 1335 East West Highway, Silver Spring, MD 20910.

The hearings will be held at the following locations:

1. Port Aransas Civic Center, 710 West Avenue A, Port Aransas, TX
2. San Jacinto College, Slocomb Auditorium, 8060 Spencer Highway, Pasadena, TX
3. Thibodeaux Civic Center, 310 North Canal Boulevard, Thibodaux, LA
4. Mobile Civic Center, 401 Civic Center Drive, Mobile, AL
5. University of South Florida, Bayboro Campus, Campus Activities Center, 104 7th Avenue South (Corner of 2nd Street & 6th Avenue South), St. Petersburg, FL
6. South Carolina Wildlife & Marine Resource Dept., 217 Fort Johnson Road, Charleston, SC
7. National Guard Armory, 3100 Norwich Street, Brunswich, GA
8. West Carteret High School, Route 2, Box 390, Country Club Road, Morehead City, NC
9. North Carolina Aquarium, Box 967, Airport Road, Manteo, NC
10. South Padre Island Civic Center, 7355 Padre Blvd., South Padre Island, TX
11. Burton Coliseum, 6400 South Common, Lake Charles, LA
12. J.L. Scott Marine Educational Center, 115 Beach Blvd., Biloxi, MS

FOR FURTHER INFORMATION CONTACT: Charles A. Oravetz, Chief, Protected Species Program, NMFS Southeast Regional Office, 813–893–3366, or Phil Williams, NMFS National Sea Turtle Coordinator, 301–713–2322.

Dated: July 1, 1992.

Charles Karnella,

Deputy Director, Office of Protected Resources.

[FR Doc. 92–15900 Filed 7–7–92; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 57, No. 131
Wednesday, July 8, 1992

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

World Wildlife Fund; Intent to Award a Grant

AGENCY: Office of International Cooperation and Development (OICD).

ACTION: Notice of intent.

ACTIVITY: OICD intends to award a Grant to the World Wildlife Fund (WWF) to provide partial funding support for the project entitled "People, Parks, and Participation: Creating Effective Linkages."

AUTHORITY: Section 1458 of the National Agricultural Research, Extension and Teaching Policy Act of 1977, as amended (7 U.S.C. 3291), and the Food Security Act of 1985 (Public Law 99-198).

OICD anticipates the availability of funds in fiscal year 1992 (FY92) to support transportation/per diem for three participants at the WWF workshop, "People, Parks, and Participation: Creating Effective Linkages." The workshop will link those with experience in grassroots development and local participation (i.e., the experts in rural development), with the international conservation and donor organizations implementing such projects.

Based on the above, this is not a formal request for application. An estimated $8,734 will be available in FY92 as partial project support.

Information on proposed Grant #59-319R-2-025 may be obtained from: USDA/OICD Administrative Services, 0324—South Bldg., Washington, DC 20250-4300.

Dated: July 1, 1992.

Nancy J. Croft,

Contracting Officer.

[FR Doc. 92-15866 Filed 7-7-92; 8:45 am]

BILLING CODE 3410-DP-M

Soil Conservation Service

Monroe Annabella Watershed; Sevier County, Utah

AGENCY: Soil Conservation Service, U.S. Department of Agriculture.

ACTION: Notice of finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council of Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Monroe Annabella Watershed, Sevier County, Utah.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Holt, State Conservationist, Soil Conservation Service, PO Box 11350, Salt Lake City, Utah 84147, (810) 524-5050.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Francis T. Holt, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

This project concerns conservation of agricultural water. Planned actions include installation of 225,330 feet of irrigated pipeline, 5.5 miles of canal enlargement, 5 wildlife watering facilities, and 75 acres of upland wildlife planting. Conservation treatment elements of the resource management systems include improved irrigation water management on 4,402 acres.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Francis T. Holt. A limited number of copies of the FONSI are available to fill single copy requests at the above address.

Implementation of the proposal will not be initiated until August 7, 1992.

This activity is listed in the Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials.

Dated: July 1, 1992.

Norm Priest,

Deputy State Conservationist.

[FR Doc. 92-15902 Filed 7-7-92; 8:45 am]

BILLING CODE 3410-16-M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Minnesota Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a factfinding meeting of the Minnesota Advisory Committee to the Commission will be held from 8 a.m. until 6 p.m. on Thursday, July 30, 1992 and Friday, July 31, 1992 at the Crown Sterling Suites, 425 S. Seventh Street, Minneapolis, Minnesota. The purpose of this meeting is for the Committee to study media stereotyping of minorities.

Persons desiring additional information should contact Mary Ryland, Committee Chairperson at (313) 727-3673 or Constance M. Davis, Regional Director of the Midwestern Regional Office, U.S. Commission on Civil Rights, at (312) 353-8311. Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, June 30, 1992.

Carol Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 92-15916 Filed 7-7-92; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

International Trade Administration, Commerce

Export Trade Certificate of Review

ACTION: Notice of Issuance of an Export Trade Certificate of Review, Application No. 92-00006.

SUMMARY: The Department of Commerce has issued an Export Trade Certificate of Review to Chris D. McFarland d/b/a McChris International (hereinafter referred to as "McChris International"). This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: George Muller, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing title III are found at 15 CFR part 325 (1991) (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs ("OETCA") is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

Export Trade

1. *Products.* All products.
2. *Services.* All services.
3. *Technology Rights.* Intellectual property rights including, but not limited to, patents, trademarks, copyrights, and trade secrets that relate to the Products and Services.
4. *Export Trade Facilitation Services (as They Relate to the Export of Products, Services, and Technology Rights).* Consulting; foreign market research; marketing and trade promotion; financing; insurance; licensing; services related to compliance with customs documentation and procedures; transportation and shipping; warehousing and other services to facilitate the transfer of ownership and/or distribution; and communication and processing of export orders.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

1. With respect to the sale of Products and Services and the licensing of Technology Rights in the Export Markets, McChris International may:

a. Provide and/or arrange for the provision of Export Trade Facilitation Services;

b. Engage in promotional and marketing activities;

c. Enter into exclusive and non-exclusive agreements with individual Suppliers and Export Intermediaries for the export of Products and Services to and the licensing of Technology Rights in the Export Markets;

d. Enter into exclusive and non-exclusive agreements with distributors in the Export Markets;

e. Establish the price of Products and Services for sale and Technology Rights for license in the Export Markets; and

f. Allocate export orders and divide the Export Markets among the Suppliers for the sale of Products and Services and the licensing of Technology Rights.

2. McChris International and individual Suppliers may regularly exchange information on a one-to-one basis regarding that Supplier's inventories and near-term production schedules in order that the availability of Products for export can be determined and effectively coordinated by McChris International with its distributors in the Export Markets.

Definitions

Export Intermediary means a person who acts as a distributor, sales representative, sales or marketing agent, or broker, or who performs similar functions, including providing or arranging for the provision of Export Trade Facilitation Services for sales to the Export Markets.

Supplier means a person who produces, provides, licenses, or sells a Product, Service, or Technology Right.

A copy of each certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: July 2, 1992.

George Muller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 92-16084 Filed 7-7-92; 8:45 am]

BILLING CODE 3510-DR-M

National Oceanic and Atmospheric Administration

Coastal Zone Management; Federal Consistency Appeal by Joseph Rushton and Francis Codd from an Objection by the State of Maryland

AGENCY: National Oceanic and Atmospheric Administration; DOC.

ACTION: Notice of appeal and request for comments.

On October 11, 1991, the Secretary of Commerce (Secretary) received a notice of appeal from Joseph Rushton and Francis Codd (Appellants). The Appellants are appealing to the Secretary under section 307(c)(3)(A) of the Coastal Zone Management Act (CZMA) and the Department's implementing regulations, 15 CFR part 930, subpart H. The appeal is taken from an objection by the State of Maryland Department of Natural Resources (State) to the Appellants' consistency certification for a U.S. Army Corps of Engineers (Corps) permit to construct an elevated house and a gravel driveway on a 0.25 acre waterfront lot having frontage along Sullivan's Cove, off of the Severn River, in Anne Arundel County, Maryland. The project site is located within the Chesapeake Bay Critical Area.

The CZMA provides that a timely objection by a state to a consistency certification precludes any Federal agency from issuing licenses or permits for the activity unless the Secretary of Commerce finds that the activity is either "consistent with the objectives" of the CZMA (Ground I) or "necessary in the interest of national security" (Ground II). Section 307(C)(3)(A). To make such a determination, the Secretary must find that the proposed project satisfies the requirements of 15 CFR 930.121 or 930.122.

The Appellants request that the Secretary override the State's consistency objections based on Ground I. To make the determination that the proposed activity is "consistent with the objectives" of the CZMA, the Secretary must find that: (1) The proposed activity furthers one or more of the national objectives or purposes contained in section 302 or 303 of the CZMA, (2) the adverse effects of the proposed activity

do not outweigh its contribution to the national interest, (3) the proposed activity will not violate the Clean Air Act or the Federal Water Pollution Control Act, and (4) no reasonable alternative is available that would permit the activity to be conducted in a manner consistent with the State's coastal management program. 15 CFR 930.121.

Public comments are invited on the findings that the Secretary must make as set forth in the regulations at 15 CFR 930.121. Comments are due within 30 days of the publication of this notice and should be sent to Glenn E. Tallia, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1825 Connecticut Avenue, NW., suite 603, Washington DC 20235. Copies of comments will be forwarded to the Appellant and State.

All nonconfidential documents submitted in this appeal are available for public inspection during business hours at the offices of the State and the Office of the Assistant General Counsel for Ocean Services.

FOR ADDITIONAL INFORMATION CONTACT: Glenn E. Tallia, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1825 Connecticut Avenue, NW., suite 603, Washington, DC 20235, (202) 606-4200.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance)

Dated: July 1, 1992.

Thomas A. Campbell,

General Counsel.

[FR Doc. 92-15873 Filed 7-7-92; 8:45 am]

BILLING CODE 3510-08-M

Dean John A. Knauss Marine Policy Fellowship Program; Grants Availability

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Dean John A. Knauss Marine Policy Fellowship; Open for Applications.

SUMMARY: In 1979, the National Sea Grant College Program Office (NSGCPO), in fulfilling its broad educational responsibilities, initiated a program to provide educational experience in the policies and processes of the Legislative and Executive Branches of the Federal Government to graduate students in marine related fields. The Fellowship program accepts applications once a year during the month of September. All applicants must submit an application to one of the state Sea Grant College Programs in their area.

FOR FURTHER INFORMATION CONTACT: Dr. Bernard Griswold, Director, National Sea Grant Federal Fellows Program, National Sea Grant College Program, 1335 East-West Highway, Silver Spring, Maryland 20910, telephone (301) 713-2431 or call your nearest Sea Grant program:

University of Alaska—(907) 474-7086.
University of California—(619) 534-4440.
University of Connecticut—(203) 445-3457.
University of Delaware—(302) 451-2841.
University of Florida—(305) 392-5870.
University of Georgia—(706) 542-7671.
University of Hawaii—(808) 956-7031.
University of Illinois—(217) 333-1824.
Louisiana State University—(504) 388-6710.
University of Maine—(207) 581-1436.
University of Maryland—(301) 405-6371.
Massachusetts Institute of Technology—(617) 253-7131.
University of Michigan—(313) 763-1437.
University of Minnesota—(612) 625-2765.
Mississippi-Alabama Sea Grant Consortium—(601) 875-9341.
University of New Hampshire—(603) 749-1565.
New Jersey Marine Sciences Consortium—(908) 872-1300.
University of North Carolina—(919) 515-2454.
Ohio State University—(614) 292-8949.
Oregon State University—(503) 737-3396.
University of Puerto Rico—(809) 832-3585.
Purdue University—(317) 494-3622.
University of Rhode Island—(401) 792-6800.
South Carolina Sea Grant Consortium—(803) 727-2078.
University of Southern California—(213) 740-1961.
Texas A&M University—(409) 845-3854.
Virginia Graduate Marine Science Consortium (804) 924-5965.
University of Washington—(206) 543-6600.
University of Wisconsin—(608) 262-0905.
Woods Hole Oceanographic Institution—(508) 548-1400 x2578.

SUPPLEMENTARY INFORMATION:

Dean John A. Knauss Marine Policy Fellowship, National Sea Grant College Federal Fellows Program, Purpose of the Fellowship Program

In 1979, the National Sea Grant College Program Office (NSGCPO), in fulfilling its broad educational responsibilities, initiated a program to provide educational experience in the policies and processes of the Legislative and Executive Branches of the Federal Government to graduate students in marine related fields. The U.S. Congress recognized the value of this program and in 1987, Public Law 100-220 stipulated that the Sea Grant Federal Fellows Program was to be a formal part of the National Sea Grant College Program Act. The recipients are designated Dean John A. Knauss Marine Policy Fellows.

Announcement

Fellows program announcements are sent annually to all participating Sea Grant institutions and campuses by the state Sea Grant Director upon receipt of a notice from the National Sea Grant College Program Office (NSGCPO). A brochure describing the program is also available from the NSGCPO for distribution by both that office and the state Sea Grant programs.

Eligibility

Any student who, at the time of application, is in a master's, doctoral or professional program in a marine related field from any accredited institution of higher education may apply to the NSGCPO through any state Sea Grant program.

Deadlines

- Students must submit applications to a state Sea Grant Director, who will be the applicants sponsor, by the date set by the Directors in their individual program announcement (usually early to mid-September).
- Applications are to be submitted to the NSGCPO by the sponsoring state Sea Grant Director, no later than close of business on September 30th of any given year.
- The selection process and subsequent notification will be completed by October 31st of any given year.

Stipend and Expenses

For 1993 a Fellow will receive a stipend amount of $24,000.

Application

An application will include:

- Personal and academic resume or curriculum vitae.

• Education and career goal statement from the applicant with emphasis on what the prospective Fellow expects from the experience in the way of career development. (not to exceed 2 pages)

• No more than two letters of recommendations with at least one being from the student's major professor. Thesis papers are not desired.

• A letter of endorsement from the sponsoring state Sea Grant Director.

• Copy of undergraduate and graduate student transcripts.

It is our intent that all applicants be evaluated only on their ability, therefore letters of endorsements from members of Congress, friends, relatives or others will not be considered.

Placement preference in the Executive or Legislative Branches of the Government may be stated, and will be honored to the extent possible.

Selection Criteria

The selection criteria will include:

• Strength of Academic Performance.

• Communication Skills (both written and verbal).

• Diversity of Academic Background.

• Work Experience.

• Support of Major Professor.

• Support of Sea Grant Director.

• Ability to Work with People.

Selection

Selection of finalists will be made by a panel chaired by the Director of Federal Fellowships of the NSGCPO and include representation from (1) the Council of Sea Grant Directors, (2) the Office of the Assistant Administrator for Oceanic Atmospheric Research, and (3) the current and possibly past groups Fellows. The individuals representative of these groups will be chosen on a year by year basis according to availability, timing, and other exigencies. Selection of finalists by the panel will be done according to the criteria outlined above. After selection, the panel will group applicants into the two categories, legislative and executive, based upon the applicant's stated preference and/or the judgment of the panel based upon material submitted. The number of fellows assigned to the Congress will be limited to 10.

Dated: July 1, 1992.

Ned A. Ostenso,

Assistant Administrator, Oceanic and Atmospheric Research.

[FR Doc. 92-15895 Filed 7-7-92; 8:45 am]

BILLING CODE 3510-12-M

Marine Mammals; Report to Congress

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of Report Availability.

SUMMARY: Title XI of Public Law 101-627, the Fishery Conservation Amendments of 1990, requires NMFS to provide a report to Congress on an assessment of the effectiveness of the Marine Mammal Protection Act provisions for waivers of the moratorium on takings, and state and Federal authorizations with regard to the management of the marine mammal populations for responding to conflicts between marine mammals and human activities in the State of Washington. The report is also to provide information on the status and trends of four marine mammal species in Washington: California sea lions, harbor seals, Steller sea lions and sea otters. This report is now available for distribution to the general public from the locations listed below (See **ADDRESSES**).

ADDRESSES: A copy of the report is available from either: (1) Director, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910, or (2) Regional Director, National Marine Fisheries Service, 7600 Sand Point Way NE, BIN C15700—Bldg. 1, Seattle, WA 98115-0070.

FOR FURTHER INFORMATION CONTACT: Mr. Ken Hollingshead, F/PR2, NMFS, 301/713-2055 or Mr. Joe Scordino, F/NWR, NMFS, 206/526-6143.

Dated: June 30, 1992.

Charles Karnella,

Deputy Director, Office of Protected Resources.

[FR Doc. 92-15850 Filed 7-7-92; 8:45 am]

BILLING CODE 3510-22-M

Florida Keys National Marine Sanctuary Advisory Council Meeting

AGENCY: Sanctuaries and Reserves Division (SRD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Florida Keys National Marine Sanctuary Advisory Council Notice of Open Meeting.

SUMMARY: The Council was established in December 1991 to advise and assist the Secretary of Commerce in the development and implementation of the comprehensive management plan for the Florida Keys National Marine Sanctuary.

TIME AND PLACE: July 23 and 24, 1992 from 9 a.m. until adjournment. The meeting location will be at the Buccaneer Resort, 2600 Overseas Highway, Mile Market 48.5, Marathon, Florida.

AGENDA: 1. Discussion of water use zoning scheme.

2. Discussion of Management Strategies.

PUBLIC PARTICIPATION: The meeting will be open to public participation and the last thirty minutes will be set aside for oral comments and questions. Seats will be set aside for the public and media. Seats will be available on a first-come first-served basis.

FOR FURTHER INFORMATION CONTACT: Pamala James at (305) 743-2437 or Ben Haskell at (202) 606-4016.

Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program.

Frank W. Maloney,

Acting Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 92-15979 Filed 7-7-92; 8:45 am]

BILLING CODE 3510-08-M

Marine Mammals

AGENCY National Marine Fisheries Service, NOAA, Commerce.

ACTION: Modification of Scientific Research Permit (P129F).

Notice is hereby given that pursuant to the provisions of § 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), and § 222.25 of the regulations governing endangered fish and wildlife permits (50 CFR part 222), Scientific Research Permit No. 492 issued to Dr. Bruce Mate, Marine Science Center, School of Oceanography, Oregon State University, Newport, OR 97365, on March 1, 1985, to take by inadvertent harassment, up to 200 bowhead whales (*Balaena mysticetus*) while attempting to tag ten (10), is modified to extend the expiration date to December 31, 1992.

This modification is effective from January 1, 1992 to December 31, 1992.

Documents pertaining to this Modification and Permit are available for review, by appointment, in the Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East-West Hwy., Room 7324, Silver Spring, MD 20910 (301/713-2289); Director, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, NE BIN C15700, Seattle, WA 98115 (206/526-6150); and

Director, Alaska Region, National Marine Fisheries Service, NOAA, Federal Annex, 9109 Mendenhall Mall Road, suite 6, Juneau, AK 99802 (907/ 568-7221).

Dated: June 30, 1992.

Charles Karnella,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 92-15849 Filed 7-7-92; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in India

July 1, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: July 9, 1992.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-6705. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being increased for carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Also see 57 FR 1905, published on January 16, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 1, 1992.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on January 13, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in India and exported during the twelve-month period which began on January 1, 1992 and extends through December 31, 1992.

Effective on July 9, 1992, you are directed to amend further the directive dated January 13, 1992, to increase the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and India:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
314	5,475,022 square meters.
342/642	939,600 dozen.
363	29,016,185 numbers.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1991.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92-15859 Filed 7-7-92; 8:45 am]

BILLING CODE 3510-DR-F

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Pakistan

July 1, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: July 9, 1992.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-6714. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted, variously, for swing and special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Also see 57 FR 14563, published on April 21, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 1, 1992.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on April 15, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Pakistan and exported during the twelve-month period which began on January 1, 1992 and extends through December 31, 1992.

Effective on July 9, 1992, you are directed to amend the directive dated April 15, 1992 to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and Pakistan:

Category	Adjusted twelve-month limit [1]
239	943,738 kilograms.
338	4,093,748 dozen.
339	994,262 dozen.
351/651	191,795 dozen.
638/639	98,670 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1991.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92-15858 Filed 7-7-92; 8:45 am]

BILLING CODE 3510-DR-F

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Policy Board Advisory Committee; Meeting

ACTION: Notice of Advisory Committee meeting.

SUMMARY: The Defense Policy Board Advisory Committee will meet in closed session on 21 July 1992 from 0900 until 1700 and on 22 July 1992 from 0800 until 1700 in the Pentagon, Washington, DC.

The mission of the Defense Policy Board is to provide the Secretary of Defense, Deputy Secretary of Defense and the Under Secretary of Defense for Policy with independent, informed, advice and opinion concerning major matters of defense policy. At this meeting the Board will hold classified discussions on national security matters.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law 92-463, as amended [5 U.S.C. app. II, (1982)], it has been determined that this Defense Policy Board meeting concerns matters listed in 5 U.S.C. 552b (c)(1)(1982), and that accordingly this meeting will be closed to the public.

Dated: July 2, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Office Department of Defense

[FR Doc. 92-15933 Filed 7-7-92; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense 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).

Title, Applicable Form, and Applicable OMB Control Number: Defense FAR Supplement, 223.570, Drug-Free Work Force, and the clause at 252.223-7004: OMB Control Number 0704-3336.

Type of Request: Revision.

Average Burden Hours/Minutes Per Response: 80 hours.

Responses Per Respondent: 1.

Number of Respondents: 20,608.

Annual Responses: 20,608.

Annual Burden Hours (Including Recordkeeping): 2,637,824.

Needs and Uses: Defense FAR Supplement 252.223-7004 requires the maintenance of appropriate records attendant to a program for achieving a drug free work force. The program includes random drug testing of contractor employees working in sensitive positions.

Affected Public: Businesses or other for-profit, Non-profit institutions, and Small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Mr. Peter N. Weiss.

Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, Virginia 22202-4302.

Dated: July 2, 1992.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92-15932 Filed 7-7-92; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Re-emphasis for Participation in the Joint Military Astray, Freight Program (JMAFP)

AGENCY: Military Traffic Management Command (MTMC), DOD.

ACTION: Reprint of FR 28489, Re-emphasis for participation in the Joint Military Astray Freight Program (JMAFP).

SUMMARY: This JMAFP is being reprinted in its entirety from the 25 June 1992 **Federal Register** (57 FR 28489), to correct spelling and other minor errors.

Request all mode carriers make a thorough search of their freight terminals and warehouses to help in locating government frustrated property or astray freight.

The Military Traffic Management Command announces a re-emphasis upon the need for the carrier industry to participate in the Joint Military Astray Freight Program (JMAFP).

Once again the Commander of the Military Traffic Management Command is asking the transport carrier industries for their help. According to Major General Richard G. Larson, MTMC Commander, the Department of Defense (DOD) needs the carriers to help locate frustrated and astray freight shipments.

MTMC officials say that they are encouraging the carrier industries to cooperate in the Joint Military Astray Freight Program because doing so can help both DOD and all carriers. If industry and DOD cooperate, says the MTMC Program Management Office (PMO), they will have a more effective astray freight program that will save the carriers millions of dollars in claims as well as recover valuable DOD cargo.

The JMAFP relies on the active participation of all government transportation offices in contacting every carrier terminal warehouse storage area for shipments that cannot be properly delivered for any reason. MTMC officials stress, however, that the full cooperation of all carriers is necessary to make the program work properly.

The location and return of astray or frustrated freight is an important element of the DOD Cargo Loss and Damage Prevention Reporting and Analysis System. Information obtained from the recovery of astray cargo is used to assist all government traffic and transportation managers in instituting preventive action programs to help reduce and eliminate the number of future incidents.

During the recent Desert Shield/Desert Storm operations in Southwest Asia, more government shipments were present in the Defense Transportation System (DTS) than at any time since the height of the Vietnam war years.

With the termination of actions in the Gulf region, much of the government property once again was inserted into the DTS as part of the retrograde shipments returning to the United States, or to the military units relocating back to their European stations.

At the height of the Gulf campaign more than 500 ships carrying 945,000 pieces of cargo weighing 6.5 million measurement tons were moved to support the military forces involved. Sustainment supplies alone filled 37,000 40-foot containers.

Records indicate some of this freight is still located somewhere in the DTS, with the majority of undelivered military shipments believed to be in hands of same carrier to whom the cargo was initially tendered. It is important to appreciate that this program covers all government agency shipments, not only those of DOD.

As an example of the magnitude of this program, JMAFP personnel located government property valued at $1 million in 1991, and shipments valued over $5 million in the first three months of fiscal year 1992.

Major General Larson has directed a revitalization of the JMAFP with the goal of locating and returning 100 percent of the shipments that have gone astray or are frustrated in a carrier's terminal or warehouse.

This effort can be of substantial benefit to the carrier by freeing up storage space that is occupied by nonrevenue shipments, and by helping the carrier obtain property documentation to receive reimbursement for services already rendered in the movement of the shipments to their present locations.

Toll free lines are open for both industry and government agencies to report astray or frustrated freight. All callers east of the Mississippi River can call 1-800-631-0434. All callers west of the Mississippi River can call 1-800-331-1822.

According to the HQ MTMC PMO, their goal is to make sure every shipment is delivered safety, in undamaged condition, and on time. Should any cargo go astray, MTMC's objective is to recover 100 percent of those shipments as quickly as possible.

FOR FURTHER INFORMATION CONTACT: For further information on the JMAFP, the HOTLINE numbers, and how you can participate, please contact Robert O. Saxton or Crystal Hunter at (703) 756-1680 or HQ, Military Traffic Management Command, 5611 Columbia Pike, Falls Church, VA 22041-5050. This document was submitted for publication in the **Federal Register** by the HQ, MTMC Office of Public Affairs, Mona Lee Goss.

Kenneth L. Denton,

Army Federal Register Liaison Officer

[FR Doc. 92-15927 Filed 7-7-92; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before August 7, 1992.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Cary Green, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Cary Green (202) 708-5174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Management Service, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Cary Green at the address specified above.

Dated: July 1, 1992.

Cary Green,

Director, Information Resources Management Service.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.

Title: Performance Report for Removal of Architectural Barriers to Individuals with Disabilities (Formerly cited as the Removal of Architectural Barriers to the Handicapped).

Frequency: Annually.

Affected Public: State or local governments.

Reporting Burden:

Responses: 57

Burden Hours: 29.

Recordkeeping Burden:

Recordkeepers: 0

Burden Hours: 0

Abstract: This performance report will be used by State educational agencies who receive grants under the Removal of Architectural Barriers to the Handicapped Program. The Department uses of the information to monitor the performance of the grantees.

Office of Postsecondary Education

Type of Review: Extension.

Title: Financial Report for the Endowment Challenge Grant Program.

Frequency: Recordkeeping.

Affected Public: Non-profit institutions.

Reporting Burden:

Responses: 280.

Burden Hours: 280.

Recordkeeping Burden:

Recordkeepers: 280.

Burden Hours: 560.

Abstract: This report requires data from institutions for the purpose of assessing their progress in increasing their endowment fund and monitoring their compliance with regulatory provisions.

Office of Postsecondary Education

Type of Review: Extension.

Title: Reporting/Recordkeeping for Perkins Loan Program Subpart C—Due diligence.

Frequency: Occasionally.

Affected Public: Individuals or households, businesses or other for-profit, and non-profit institutions.

Reporting Burden:

Responses: 2,796,530.

Burden Hours: 68,502.

Recordkeeping Burden:

Recordkeepers: 718,588.

Burden Hours: 11,929.

Abstract: The Perkins Loan Program regulations require institutions to maintain records in order to administer

the program. These regulations establish proper administrative standards and loan collection procedures which protect the Federal fiscal interest and stipulate disclosure and recordkeeping requirements.

Office of Postsecondary Education

Type of Review: Reinstatement.

Title: Ability-to-Benefit Testing.

Abstract: The Secretary will publish an initial list of tests which are approved as measures of a student's ability-to-benefit from a postsecondary educational program. In order to receive Title IV student financial assistance, students who do not have a high school diploma or its equivalent must submit evidence that they passed an independently administered test which was approved by the Secretary of Education. Test developers may follow the procedures for submitting their tests for consideration on the Secretary's approved list.

Additional Information: An expedited review is requested to enact the provisions of Higher Education Technical Amendments of 1991 (Pub. L. 102-26, enacted April 9, 1991) which provides that, in order for a student who does not have a high school diploma or its recognized equivalent, the student must pass an independently administered examination approved by the Secretary of Education to be eligible for Title IV student financial assistance for periods on enrollment beginning on or after July 1, 1991. Due to this critical need, the Secretary must publish a list of approved tests and establish a mechanism for test developers to submit their tests for review and inclusion in the approved list. Test developers will need to submit to the Secretary: (1) A copy of the test; (2) test documentation; (3) technical manual that contains recommended procedures for security, administration, and scoring the test; and (4) the history of use of the test. The Secretary is seeking OMB approval by June 30, 1992.

The Secretary is also establishing a procedure whereby students who have already successfully taken one of the approved tests within the past twelve months can submit that score as their proof of ability-to-benefit.

Frequency: One-time-only.

Affected Public: Individuals or household, Businesses or other for-profit, Non-profit institutions.

Reporting Burden:

Responses: 196,750.

Burden Hours: 19,695.

Recordkeeping Burden:

Recordkeepers: 0.

Burden Hours: 0.

[FR Doc. 92-15888 Filed 7-7-92; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Proposed Consent Order With Robert J. Martin

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of proposed consent order and opportunity for public comment.

SUMMARY: The Economic Regulatory Administration (ERA) announces a proposed Consent Order between the Department of Energy (DOE) and Robert J. Martin, the president and a part owner of Western Refining Company (Western). The agreement proposes to resolve matters relating to Martin's compliance with the Federal petroleum price and allocation regulations for the period August 19, 1973 through January 27, 1981. If this Consent Order is approved, Martin shall pay to the DOE the principal sum of $560,000 plus interest from the effective date of the Consent Order, over three years. The DOE's Office of Hearings and Appeals will be petitioned to implement Special Refund Procedures pursuant to 10 CFR part 205 subpart V, in which proceedings any persons who claim to have suffered injury from the alleged overcharges would have the opportunity to submit claims for payment.

Pursuant to 10 CFR 205.199J, ERA will receive written comments on the proposed Consent Order for thirty (30) days following publication of this notice. ERA will consider all comments received from the public in determining whether to accept the settlement and issue a final Order, renegotiate the agreement and issue a modified agreement as a final Order, or reject the settlement. DOE's final decision will be published in the Federal Register, along with an analysis of significant written comments in response to this notice, as well as any other considerations that were relevant to the final decision.

FOR FURTHER INFORMATION CONTACT: Dorothy Hamid, Economic Regulatory Administration, Department of Energy, 820 First Street, NE., suite 810, Washington, DC 20002, (202) 523-3045.

SUPPLEMENTARY INFORMATION: During the period covered by the proposed Consent Order, August 19, 1973 through January 27, 1981 (when petroleum price and allocation controls were ended by the President on January 28, 1981, Executive Order 12287), Martin was an owner, officer, partner or employee of Western, Wesreco, Inc., Western Oil Marketing Company, Pioneer Trading Co., and Quad Energy. Western, of which Martin was president, was a "refiner" as that term was defined in the Federal petroleum price and allocation regulations and was subject to the jurisdiction of the DOE.

As a result of DOE's investigation of Western's compliance with the Federal petroleum price and allocation regulations during the period covered by the proposed Consent Order, ERA issued a Proposed Remedial Order (PRO) to Martin and four others on January 31, 1990. The PRO charges entitlements misreporting and circumvention violations in connection with certain crude oil and processing agreement transactions between Western (and affiliated entities), Betz Oil and Trading Company, and K.T. Trading Corp., both crude oil resellers, during the period January-December 1980. ERA seeks in the PRO to require Martin and four others to make restitution for alleged violations of 10 CFR 205.202, 210.62(c), 211.66(b), 211.66(h), and 211.67. The PRO charges entitlements violations totaling $23,144,485. With interest, the PRO respondents' maximum potential joint and several liability through June 30, 1992, is approximately $86,864,044.

The validity of the allegations in the PRO is currently the subject of litigation before DOE's Office of Hearings and Appeals. The participating PRO respondents have raised a number of objections to the manner in which ERA applied the entitlements reporting regulations in determining that violations occurred, as well as other defenses to the charges and to the liability of the individual respondents for any violations which may be found.

ERA has preliminarily agreed to the proposed settlement amount as resolution of Martin's potential liability for any violations of the Federal petroleum price and allocation regulations during the period covered by the proposed Consent Order, including but not limited to those alleged in the January 31, 1990 PRO. This agreement was reached after entering into settlement discussions with Martin on an ability-to-pay basis. Upon consideration of Martin's financial condition, based on documentation thereof provided to DOE by Martin, ERA has determined that Martin would not be able to satisfy a judgment in an amount approaching the potential maximum liability alleged in the PRO. The ERA has also considered that a

judgment in DOE's favor, even if obtained, would be a multiple of Martin's net worth, yet that liability might well be subordinate to secured creditors in the event of a bankruptcy which such a judgment could precipitate. Consideration of the foregoing factors has led ERA to tentatively conclude that the resolution of its claims against Martin for the principal sum of $560,000, plus interest, is an appropriate settlement and in the public interest.

If the settlement is made final, Martin will pay to DOE $560,000, plus interest over a period of three years in equal quarterly payments of $46,667. The first payment will be made thirty (30) days after the effective date of the Consent Order. In addition, Martin will waive any right to make claims for refunds in any proceedings concluded pursuant to 10 CFR part 205, subpart V.

To distribute the monies received by DOE under the settlement with Martin, ERA will petition OHA to implement Special Refund Procedures under subpart V. To ensured that OHA has sufficient information to evaluate refund claims, the proposed Consent Order requires Martin to provide customer identification and purchase volume information upon request.

If the settlement is not made final by the one hundred fiftieth (150th) day following execution, Martin may withdraw from the proposed agreement.

Submission of Written Comments

The proposed Consent Order cannot be made effective until the conclusion of the public review process, of which this notice is a part.

Interested parties are invited to submit written comments concerning this proposed Consent Order to: Robert J. Martin Consent Order Comments, RG-30, U.S. Department of Energy, Economic Regulatory Administration, 820 First Street, NE., suite 810, Washington, DC 20002. Any information or data considered confidential by the person submitting it must be identified as such in accordance with the provisions of 10 CFR 205.9(f).

All comments received by the thirtieth day following publication of this notice in the **Federal Register** will be considered before determining whether to adopt the proposed Consent Order as a final Order. Any modifications of the proposed Consent Order which significantly alter its terms or impact will be published for additional comments. If, after considering the comments it has received, ERA determines to issue the proposed Consent Order as a final Order, the proposed Order will be made final and effective by publication of a notice in the **Federal Register**.

Issued in Washington, DC, on June 30, 1992.

Milton C. Lorenz,

Chief Counsel for Enforcement Litigation Economic Regulatory Administration.

Consent Order With Robert J. Martin

I. Introduction

101. This Consent Order is entered into between Robert J. Martin ("Martin") and the Department of Energy ("DOE"). Except as otherwise provided herein, this Consent Order settles and finally resolves all civil and administrative disputes, claims and causes of action, whether or not heretofore asserted, between DOE, as hereinafter defined, and Martin, relating to Martin's compliance with the Federal petroleum price and allocation regulations (as defined herein) administered and enforced by DOE and its predecessor agencies during the period August 19, 1973 through January 27, 1981 ("the period covered by the Consent Order"). All the matters settled and resolved by this Consent Order are referred to as "the matters covered by this Consent Order."

II. Jurisdiction and Regulatory Authority

201. This Consent Order is entered into by DOE pursuant to the authority conferred upon it by sections 301 and 503 of the Department of Energy Organization Act ("DOE Act"), 42 U.S.C. 7151 and 7193; Executive Order 12009, 42 FR 46267 (1977); and Executive Order No. 12038, 43 FR 4957 (1978); and 10 CFR 205.199J.

202. References herein to "DOE" includes, besides the Department of Energy, the Cost of Living Council, the Federal Energy Office, the Federal Energy Administration, the Economic Regulatory Administration and all agencies succeeding to the DOE's authority to enforce the Federal petroleum price and allocation regulations. For purposes of this Consent Order, the phrase "Federal petroleum price and allocation regulations" means all pricing, allocation, reporting and recordkeeping requirements imposed by or under the Economic Stabilization Act ("ESA") of 1970, the Emergency Petroleum Allocation Act of 1973, the Federal Energy Administration Act of 1974, the DOE Act, any and all amendments to said Acts, Presidential Proclamation 3279, all applicable DOE regulations codified in 6 CFR parts 130 and 150, and 10 CFR parts 205, 210, 211, 212 and 213, including all rules, rulings, guidelines, interpretations, clarifications, manuals, decisions, orders, forms and reporting and certification requirements regarding such regulations. The provisions of 10 CFR 205.199J and the definitions under the federal price and allocation regulations shall apply to this Consent Order except to the extent inconsistent herewith.

III. Facts and Determinations

The stipulated facts upon which this Consent Order is based are as follows:

301. During the period covered by the Consent Order, Martin was president and a part owner of Western Refining Company ("Western"), as well as, an owner, officer, partner or employee in Wesreco, Inc., Western Oil Marketing Company, Pioneer Trading Co., and Quad Energy. Western was a "refiner" as that term was defined in the Federal Petroleum price and allocation regulations and was subject to the jurisdiction of the DOE.

302. As a result of DOE's investigation of Western's compliance with the price and allocation regulations, ERA issued a Proposed Remedial Order ("PRO") to Martin and four others on January 31, 1990. OHA Case No. LRO-0001. The PRO charges entitlements misreporting and anti-circumvention violations in connection with certain crude oil and processing agreement transactions between and among Western (and affiliated entities), Betz Oil and Trading Company (a reseller), and K.T. Trading Corp. (another reseller) during the period January–December 1980. ERA seeks in the PRO to require Martin and four others to make restitution for alleged violations of 10 CFR 205.202, 210.62(c), 211.66(b) and (h), and 211.67.

303. DOE and Martin agreed to enter into settlement discussions on an ability-to-pay basis in order to resolve DOE's claim against Martin as set forth in the PRO described above. Martin submitted to DOE certain financial information and documentation requested by DOE to permit it to evaluate Martin's financial ability to satisfy the aforementioned claim.

304. In reliance on the financial information and documentation that Martin has submitted to DOE, including his sworn statements that the information submitted is true and complete and includes all of his assets, and believing that it serves the public interest for DOE to compromise its enforcement claim on an ability-to-pay basis where, as here, the financial status of the party concerned can be satisfactorily determined, DOE has agreed to enter into this Consent Order.

305. In reliance on DOE's undertakings to consider settlement on an ability-to-pay basis, and in order to

resolve DOE's claims against Martin as set forth in the Proposed Remedial Order noted in Paragraph 302 hereof, without the expense and inconvenience of further administrative or judicial proceedings relating thereto, Martin has agreed to enter into this Consent Order.

IV. Remedial Provisions

401. In full and final settlement of all matters covered by this Consent Order and in lieu of all other remedies which have been or might be sought by the DOE against Martin for such matters under 10 CFR 205.199I or otherwise, Martin shall pay to DOE the principal sum of five hundred and sixty thousand dollars ($560,000), plus interest and in accordance with the schedule set forth in paragraphs 402 and 403.

402. The payment provided for in paragraph 401 shall be made over a three year period in equal quarterly payments of forty six thousand, six hundred and sixty seven dollars ($46,667) beginning thirty (30) days after the effective date of this Consent Order. In the event that any such payment date is not a business day, payment shall be due on the first business day following such date. Martin has the option to prepay all or any part of the outstanding unpaid balance at any time without penalty. Any payment that is less than the amount determined above, and any prepayment, shall be applied first to pay any interest that has accrued pursuant to paragraph 403, and any remaining portion of the payment shall be applied to reduce the outstanding principal balance.

403. Interest shall be computed from the date this Consent Order becomes effective at the rate of 6.74% per annum, compounded quarterly.

404. The payments pursuant to paragraph 401 of this Consent Order shall be certified or cashier's check made payable to the United States Department of Energy and delivered to the Office of Comptroller, Office of Washington Financial Services, Cash Management Division, P.O. Box 500, Germantown, Maryland 20874–0550.

405. If any quarterly payment provided for above becomes more than thirty days overdue, then the entire principal amount with interest to the date of payment, shall become immediately due and payable at DOE's option. Between the time that any payment or portion thereof is required to be paid under this Consent Order and the time the full payment is completed, interest shall accrue on the overdue quarterly amount at the rate of 13.48% per annum, compounded quarterly. Such interest shall be paid to DOE with the overdue quarterly payment(s). Any late payment that is less than the amount overdue shall be applied first to pay any interest that has accrued pursuant to this paragraph, and any remaining portion of the payment shall be applied to reduce the overdue balance.

406. Payments made by Martin pursuant to paragraph 401 of this Consent Order shall be distributed by the DOE pursuant to the special refund procedures prescribed by 10 CFR part 205, subpart V.

V. Issues Resolved

501. All pending and potential civil and administrative claims, demands, liabilities, causes of action or other proceedings by DOE against Martin regarding Martin's compliance with and obligations under the Federal petroleum price and allocation regulations during the period covered by this Consent Order, whether or not heretofore raised by an issue letter, Notice of Probable Violation, Proposed Remedial Order, Remedial Order, actions in courts or otherwise, are resolved and extinguished by this Consent Order. This Consent Order, however, does not resolve, extinguish, or otherwise affect DOE's claims against any other person or entity, except that DOE agrees to reduce the principal amount of its claim in OHA Case No. LRO–0001 by $560,000.00, as follows: The $560,000 reduction of the principal amount of the claim is applied to the two parts of the total of the alleged principal violation amount in the proportion that each part is to the total, *i.e.*, the $12,676,350 alleged violation amount for January-April 1980 is reduced by 54.77% of $560,000 or $306,712, to $12,369,646; the $10,468,127 alleged violation amount for May-December 1980 is reduced by 45.23% of $560,000 or $253,288, to $10,214,839.

502. Martin warrants that there is no litigation pending against the DOE initiated or participated in by Martin which in any way relates to or arises out of the matters covered by this Consent Order, or related claims arising under the Freedom of Information Act (5 U.S.C. 552). Martin hereby agrees to release any and all claims, demands, liabilities, or causes of action that Martin has asserted or might be able to assert against DOE, and any employee of DOE, in any matter related to the matters covered by this Consent Order.

503. (a) Compliance by Martin with this Consent Order shall be deemed by DOE to constitute full compliance for civil purposes with regard to the matters covered by this Consent Order. Except as explicitly excluded herein, in consideration for performance as required under this Consent Order by Martin, DOE hereby releases Martin completely and for all purposes from all administrative and civil judicial claims, demands, liabilities, or causes of action, including, without limitation, claims for civil penalties that the DOE has asserted or might otherwise be able to assert against Martin before or after the date of this Consent Order for alleged violations of the Federal petroleum price and allocation regulations with respect to the matters covered by this Consent Order. DOE will not initiate or prosecute any such administrative or civil judicial matter against Martin or cause or refer any such matter to be initiated or prosecuted, nor will DOE or its successors directly or indirectly aid in the initiation of any such administrative or civil judicial matter against Martin or participate voluntarily in the prosecution of such actions. DOE will not assert voluntarily in any administrative or civil judicial proceeding that Martin has violated the Federal petroleum price and allocation regulations with respect to the matters covered by this Consent Order, or otherwise take action with respect to Martin in derogation of this Consent Order. However, nothing contained herein shall preclude DOE from defending the validity of the Federal petroleum price and allocation regulations.

(b) The DOE will not seek or recommend any criminal fines or penalties based on information or evidence presently in its possession for the matters covered by this Consent Order; provided, however, that nothing in this Consent Order precludes the DOE from (1) seeking or recommending such criminal fines or penalties if information subsequently coming to its attention indicates, either by itself or in combination with information or evidence presently known to DOE, that a criminal violation may have occurred, or (2) otherwise complying with its obligations under law with regard to forwarding information of possible criminal violations to appropriate authorities. Nothing contained herein may be construed as a bar, an estoppel, or a defense: Against any criminal action or against any civil action brought by an instrumentality or agency of the United States other than DOE under (i) section 210 of the ESA or (ii) any statute or regulation other than the Federal petroleum price and allocation regulations.

(c) Martin releases the DOE completely and for all purposes from all administrative and civil judicial claims, or causes of action that Martin has asserted or may otherwise be able to

assert against the DOE relating to the DOE's administration of the Federal petroleum price and allocation regulations with respect to the matters covered by this Consent Order. This release, however, does not preclude Martin from asserting a factual or legal position or argument as a defense to any action, claim, or proceeding brought by the DOE, the United States, or any agency of the United States. Nor does it preclude Martin from asserting a defense, counterclaim or offset to any action, claim or proceeding brought by any other person.

(d) Martin hereby releases any and all claims that Martin may have for refunds pursuant to any special refund proceedings implemented pursuant to 10 CFR part 205, subpart V. Such proceedings include, but are not limited to, proceedings to distribute (i) consent order funds and (ii) crude oil overcharge funds.

504. Within ten (10) days after the effective date of this Consent Order, the DOE and Martin shall jointly dismiss any and all pending objections, motions, complaints, adversary proceedings, and appeals in any forum regarding the Proposed Remedial Order. Specifically, DOE shall file with the Office of Hearings and Appeals a motion to dismiss Martin as a respondent to the Proposed Remedial Order in OHA Case No. LRO-0001.

505. Execution of this Consent Order constitutes neither an admission by Martin nor a finding by DOE of any violation by Martin of any statute or of any regulation. DOE has determined that it is not appropriate to seek to impose civil penalties for the matters covered by this Consent Order, and DOE will not seek any such civil penalties. The payment by Martin pursuant to this Consent Order is not to be considered for any purpose as a penalty, fine, forfeiture, or as settlement of any potential liability for penalties, fines or forfeitures.

506. Notwithstanding any other provision herein, and in addition to the matters excluded herein, DOE reserves the right to initiate an enforcement proceeding, including, without limitation, an action for penalties, for any newly discovered regulatory violations committed by Martin during the period covered by this Consent Order, but only if Martin concealed facts relating to such violations. DOE also reserves the right to seek appropriate judicial remedies other than full rescission of this Consent Order, or to rescind this Consent Order, for any misrepresentation of fact material to this Consent Order made by Martin during the course of ERA's audit preceding issuance of the Proposed Remedial Order cited in paragraph 302 above, during any stage of the litigation relating to Martin's alleged liability for the violations asserted in OHA Case No. LRO-0001, or during the course of the negotiations that preceded this Consent Order.

VI. Reporting and Recordkeeping Requirements

601. Martin shall maintain such records as are necessary to demonstrate compliance with the terms of this Consent Order. To assist DOE in the distribution of the monies paid pursuant to paragraph 401, Martin shall also maintain any records in his possession for the time period covered by this Consent Order evidencing sales volume data for crude oil and refined products subject to controls and customers' names and addresses, until thirty (30) days after final distribution by DOE of the funds paid pursuant to paragraph 401, *supra*. If requested, Martin shall make such information available to DOE. Except as otherwise provided in this paragraph, upon timely payment to DOE of the amount required to be paid under paragraph 401 of this Consent Order, Martin is relieved of his obligation to comply with the recordkeeping requirements of the Federal petroleum price and allocation regulations relating to the matters settled by this Consent Order.

602. Except for formal requests for information regarding compliance by other firms with the Federal petroleum price and allocation regulations, Martin will not be subject hereafter to any audit requests, report orders, subpoenas, or other administrative discovery by DOE relating to Martin's activities subject to such regulations regarding the matters covered by this Consent Order.

603. This Consent Order is subject to disclosure by the DOE pursuant to the requirements of the Freedom of Information Act, as amended, 5 U.S.C. 552 ("FOIA"). Martin waives all claims he may have that some or all of the information contained in this Consent Order is exempt from the mandatory public disclosure requirements of the FOIA, as amended, is information referred to in 18 U.S.C. 1905, or is otherwise exempt by law from public disclosure.

VII. Contractual Undertaking

701. It is the understanding and express intention of Martin and DOE that this Consent Order constitutes a legally enforceable contractual undertaking that is binding on the parties and their successors and assigns. Notwithstanding any other provision herein, Martin and DOE each reserves the right to institute a civil action in an appropriate United States District Court, if necessary, to secure enforcement of the terms of this Consent Order, and DOE also reserves the right to seek appropriate penalties for any failure to comply with the terms of this Consent Order. Consistent with Departmental policy, DOE will undertake the defense of the Consent Order in response to any litigation challenging the Consent Order's validity in which the DOE is named as a party. Martin agrees to cooperate with the DOE in the defense of any such challenge.

VIII. Final Order

801. Subject to Article IX, this Consent Order is a final order of DOE having the same force and effect as a Remedial Order issued pursuant to section 503 of the DOE Act, 42 U.S.C. 7193, and 10 CFR 205.199B. Martin hereby waives his right to administrative or judicial appeal from this Order, but Martin reserves the right to participate in any such review initiated by a third party.

IX. Effective Date

901. This Consent Order shall become effective as a final order of the DOE upon notice to that effect being published in the **Federal Register**. Prior to that date, the DOE will publish notice in the **Federal Register** that it proposes to make this Consent Order final and, in that notice, will provide not less than thirty (30) days for members of the public to submit written comments. The DOE will consider all written comments to determine whether to adopt the Consent Order as a final order, to withdraw agreement to the Consent Order, or to attempt to renegotiate the terms of the Consent Order.

902. Until the effective date, the DOE reserves the right to withdraw consent to this Consent Order by written notice to Martin, in which event this Consent Order shall be null and void. If this Consent Order is not made effective on or before the one hundred fiftieth (150) day following execution by Martin, Martin may, at any time thereafter, but before the effective date, withdraw his agreement to this Consent Order by written notice to the DOE, in which event this Consent Order shall be null and void.

I, the undersigned, Robert J. Martin, hereby agree to and accept the foregoing Consent Order.

Dated: June 19, 1992.

Name: Robert J. Martin

I, the undersigned, a duly authorized representative for the Department of Energy, Economic Regulatory Administration, hereby

agree to and accept on behalf of said Administration the foregoing Consent Order.

Dated: June 16, 1992.

Name: M.C. Lorenz,

Chief Counsel.

[FR Doc. 92-15988 Filed 7-7-92; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Project No. 11168-000 Connecticut]

Summit Hydropower; Availability of Environmental Assessment

June 30, 1992.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for a minor license for the Dayville Pond Hydroelectric Project located on the Five Mile River in the town of Killingly, Windham County, Connecticut, and has prepared an Environmental Assessment (EA) for the project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed rehabilitation and operation of the project and has concluded that approval of the application for minor license, with appropriate mitigation and enhancement measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, room 3308, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 92-15890 Filed 7-7-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER92-478-000, et al.]

Tampa Electric Company, et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Tampa Electric Company

[Docket No. ER92-478-000]

June 29, 1992.

Take notice that on June 8, 1992, Tampa Electric Company (Tampa Electric) amended its prior filing in this docket by withdrawing the revised Service Schedules A and B between Tampa Electric and the Utilities Commission of the City of New Smyrna Beach (New Smyrna Beach) that had been tendered previously.

Tampa Electric continues to propose an effective date of June 23, 1992, for the Service Schedule J, Letter of Commitment under Service Schedule J, and Letter Agreement under Service Schedule D that were also tendered previously in this docket.

Copies of the filing have been served on New Smyrna Beach and the Florida Public Service Commission.

Comment date: July 13, 1992, in accordance with Standard Paragraph E at the end of this notice.

2. Florida Power & Light Company

[Docket No. ER92-622-000]

June 29, 1992.

Take notice that on June 8, 1992, Florida Power & Light Company (FPL) tendered for filing a Notice of Cancellation for the Partial Requirements Service to the City of Vero Beach, Florida (Vero Beach) and the Fort Pierce Utilities Authority (Fort Pierce).

Comment date: July 13, 1992, in accordance with Standard Paragraph E end of this notice.

3. Tampa Electric Company

[Docket No. ER92-545-000]

June 29, 1992.

Take notice that on June 8, 1992, Tampa Electric Company (Tampa Electric) amended its prior filing in this docket by withdrawing the Service Schedules A and B between Tampa Electric and the Oglethorpe Power Corporation (Oglethorpe) that had been tendered previously.

Tampa Electric continues to propose an effective date of the earlier of July 20, 1992, or the date of acceptance for filing, for the Contract for Interchange Service, the Service Schedules C, D, G, and J, and the Letters of Commitment under Service Schedules G and J that were also tendered previously in this docket.

Copies of the filing have been served on Oglethorpe and the Public Service Commissions of Georgia and Florida.

Comment date: July 13, 1992, in accordance with Standard Paragraph E at the end of this notice.

4. Interstate Power Company

[Docket No. ER91-687-000]

June 30, 1992.

Take notice that on June 25, 1992, Interstate Power Company tendered for filing an amendment to its September 30, 1991 filing in this docket.

Comment date: July 14, 1992, in accordance with Standard Paragraph E at the end of this notice.

5. Entergy Services, Inc.

[Docket No. ER92-665-000]

June 30, 1992.

Take notice that Entergy Services, Inc. (Entergy Services), as agent for Arkansas Power & Light Company, Louisiana Power & Light Company, Mississippi Power & Light Company, and New Orleans Public Service Inc., on June 26, 1992 tendered for filing an Interchange Agreement with East Kentucky Power Cooperative, Inc.

Entergy Services requests an effective date of May 1, 1992 for the Interchange Agreement. Entergy Services requests waiver of the Commission's notice requirement under Section 35.11 of the Commission's regulations.

Comment date: July 14, 1992, in accordance with Standard Paragraph E at the end of this notice.

6. Florida Power Corporation

[Docket No. ER92-658-000]

June 30, 1992.

Take notice that on June 23, 1992, Florida Power Corporation (Florida Power) tendered for filing a Notice of Cancellation of Rate Schedule FERC No. 90 and the supplements and amendments thereto. Florida Power requests that the cancellation become effective on August 24, 1992. Rate Schedule 90 was filed by Florida Power on April 22, 1980 with an effective date of February 1, 1980. Rate Schedule 90 consists of an Interchange Agreement between Florida Power and Sebring Utilities Commission.

Comment date: July 14, 1992, in accordance with Standard Paragraph E at the end of this notice.

7. Entergy Power, Inc.

[Docket No. ER92-664-000]

June 30, 1992.

Take notice that Entergy Power, Inc. (EPI), on June 26, 1992 tendered for filing an Interchange Agreement with East Kentucky Power Cooperative, Inc.

Comment date: July 14, 1992, in accordance with Standard Paragraph E at the end of this notice.

8. Interregional Transmission Coordination Forum

[Docket No. ER92-667-000]

June 30, 1992.

Take notice that on June 26, 1992, the Interregional Transmission Coordination Forum, a voluntary association of utilities and NUGs in the eastern United States for coordination and dispute resolution of transmission issues, submitted for filing under Section 205 of the Federal Power Act its charger, its

bylaws and other organizational documents, including a dispute resolution process. An effective date of May 29, 1992 is requested, with waiver of notice.

Comment date: July 14, 1992, in accordance with Standard Paragraph E at the end of this notice.

9. Public Service Company of Colorado

[Docket No. ER92-507-000]

June 30, 1992.

Take notice that on June 26, 1992, Public Service Company of Colorado (Public Service) tendered for filing an amendment in the above-referenced docket.

Comment date: July 14, 1992, in accordance with Standard Paragraph E at the end of this notice.

10. Entergy Services, Inc.

[Docket No. ER92-518-000]

June 30, 1992.

Take notice that Entergy Services, Inc., as agent for Entergy Power, Inc. (Entergy Power) on June 26, 1992, tendered for filing an amendment to an energy sale agreement between Etnergy Power and Oglethorpe Power Corporation previously filed with the Commission in Docket No. ER92-518-000. Entergy Power requests an effective date of July 1, 1992. Entergy Power also requests waiver of the Commission's notice requirements under Section 35.11 of the Commission's Rules and Regulations.

Comment date: July 14, 1992, in accordance with Standard Paragraph E end of this notice.

11. Arizona Public Service Company

[Docket No. ER92-660-000]

June 30, 1992.

Take notice that on June 18, 1992, Arizona Public Service Company (APS) tendered for filing a revised Exhibit B to the Wholesale Power Supply Agreement (Agreement) between APS and Citizens Utilities Company (Citizens) (APS-FERC Rate Schedule No. 149). Exhibit B lists Contract Demands applicable under the Agreement.

No change from the currently effective rate or revenue levels for the period June 1, 1992 through May 31, 1993 is proposed herein.

New facilities or modifications to existing facilities are required as a result of this revision.

A copy of this filing has been served on Citizens and the Arizona Corporation Commission.

Comment date: July 14, 1992, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-15947 Filed 7-7-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP92-554-000, et al.]

Florida Gas Transmission Company, et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Florida Gas Transmission Company

[Docket No. CP92-554-000]

June 29, 1992.

Take notice that on June 25, 1992, Florida Gas Transmission Company (FGT), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP92-554-000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to add a new point for delivery of natural gas to Lake Apopka Natural Gas District (LANG), an existing customer, under FGT's blanket certificate issued in Docket No. CP82-553-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

FGT proposes to construct and operate the LANG Orlando West meter station in Orange County, Florida, to accommodate gas deliveries to LANG under FGT's Rate Schedules "G" (general service), "I" (preferred sales service), and "WPPS" (winter peaking period service). FGT proposes to deliver up to 300 MMBtu equivalent of gas per day and 109,500 MMBtu equivalent per year. It is stated that the gas would be used for commercial purposes. FGT explains that the proposed quantities would be served from the total firm entitlements currently assigned to the Winter Garden Division; there would be no assignment or realignment of firm entitlements to the new delivery point.

It is stated that LANG would reimburse FGT for all construction costs, estimated to be $19,461.

Comment date: August 13, 1992, in accordance with Standard Paragraph G at the end of this notice.

2. Texas Eastern Transmission Corporation

[Docket No. CP92-546-000]

June 29, 1992.

Take notice that on June 22, 1992, Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, Houston, Texas 77056-5310, filed in Docket No. CP92-546-000, an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon Texas Eastern's obligations to provide firm transportation service and the related standby transportation service for Natural Gas Pipeline Company of American (Natural), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Texas Eastern states that by order issued February 24, 1981, in Docket No. CP80-504, 14 FERC ¶61,171, Texas Eastern was authorized to transport up to 1,000 dt per day equivalent of natural gas on a firm basis and up to 2,000 dt per day equivalent of natural gas on best efforts basis for Natural. Texas Eastern further states that it receives the gas in Pointe Coupee Parish, Louisiana and redelivers the gas to Natural in Brazoria or Kenedy Counties, Texas. By order issued October 30, 1985, in Docket No. CP80-504-003, 33 FERC ¶16,1143, Texas Eastern states it was authorized to add a new delivery point in Wharton County, Texas.

Texas Eastern indicates that Natural has requested termination of the transportation agreement dated April 21, 1980, as amended on September 15, 1983, as the service is no longer needed. Texas Eastern requests that the abandonment authorization be effective April 25, 1990. Texas Eastern states that it does not propose to abandon any facilities.

Comment date: July 20, 1992, in accordance with Standard Paragraph F at the end of this notice.

3. Panhandle Eastern Pipe Line

[Docket No. CP92-547-000]

June 29, 1992.

Take notice that on June 22, 1992, Panhandle Eastern Pipe Line Company (Panhandle), P. O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP92-547-000 an application pursuant to Section 7 (b) of the Natural Gas Act, for permission and approval of a sales service provided to Ohio Valley Gas Corporation (Ohio Valley), an existing jurisdictional sales customer, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Panhandle has stated in its application that pursuant to section 7(b) of the Natural Gas Act, it is requesting authorization to abandon firm sales service provided to Ohio Valley under Rate Schedule G-1 as a result of Ohio Valley's election to terminate its firm sales service with Panhandle effective November 1, 1992.

Panhandle also stated that it has filed revised tariff sheets at Docket Nos. RP91-53, RP91-52 and RP92-118, *et. al.*, to recover take-or-pay costs from each of its customers, including Ohio Valley. Additionally, Panhandle stated that it has filed revised tariff sheets to recover portions of other costs in Docket Nos. RP92-125, RP92-127 and RP92-128, *et. al.* The portion of such costs attributable to Ohio Valley are described therein, and may be amended, supplemented, revised or modified pursuant to Commission authorizations or as required by law. By this filing Panhandle is not waiving or relieving Ohio Valley from any of its cost responsibilities associated with these take-or-pay costs or any other costs properly attributable to Ohio Valley. It is stated that the abandonment authority sought herein should be expressly conditioned on and subject to the ultimate recovery by Panhandle of all such residual costs associated with service to Ohio Valley and Ohio Valley's continuing obligation to Panhandle in connection therewith until extinguished by full payment, in addition to any other amounts pursuant to the Gas Sales Contract.

Comment date: July 20, 1992, in accordance with Standard Paragraph F at the end of the notice.

4. Northern Natural Gas Company

[Docket No. CP92-551-000]

June 30, 1992.

Take notice that on June 23, 1992, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124-1000, filed in Docket No. CP92-551-000, a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act, for authority to upgrade an existing delivery point to accommodate increased natural gas deliveries to Circle Pines Utilities (Circle Pines) for redelivery to the City of Circle Pines, Minnesota, under Northern's blanket certificate issued in Docket No. CP82-401-000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northern states that the upgrade of these facilities will increase deliveries at the Circle Pines delivery point by 857 Mcf on a peak day and 4,000 Mcf on an annual basis. Northern also states that Circle Pines requested firm volumes to replace current interruptible volumes to assure Circle Pine's ability to meet its contractual and public service obligations to its customers at this delivery point.

Further, Northern explains that in addition to the upgrade of its delivery point, it will construct approximately .5 miles of 20" loop line on its Elk River branchline. Total estimated cost to upgrade this delivery point is $25,000.

Comment date: August 14, 1992, in accordance with Standard Paragraph G at the end of this notice.

5. Indian Oil Company

[Docket No. CS92-7-000]

June 30, 1992.

Take notice that on May 15, 1992, Indian Oil Company (Indian) of 925 Hightower Building., Oklahoma City, Oklahoma 73102 filed an application requesting a small producer certificate of public convenience and necessity. Indian requests authorization to make sale for resale of natural gas in interstate commerce, as set forth in the application which is on file with the Commission and open to public inspection.

Comment date: July 12, 1992, in accordance with Standard Paragraph J at the end of this notice.

6. Virginia Electric and Power Company

[Docket No. CI92-92-60-000

June 30, 1992.

Take notice that on June 19, 1992, Virginia Electric and Power Company (VEPCO) of One James River Plaza, Richmond, Virginia 23261 filed an application under Section 4 and 7 of the Natural Gas Act (NGA) for a unlimited-term blanket certificate with pregranted abandonment. VEPCO requests authority to make sales for resale in interstate commerce without rate restriction of all Natural Gas Policy Act categories of natural gas subject to the Commission's NGA jurisdiction, gas purchased from non-first sellers such as intrastate pipelines and local distribution companies, imported natural gas, gas purchased form interstate pipelines, including gas sold under blanket certificates authorizing interruptible sales of surplus system supply, and gas purchased form end-users. VEPCO also requests waiver of the Commission's regulations concerning the filing and maintenance of rate schedules. VEPCO's application is on file with the Commission and open for public inspection.

Comment date: July 20, 1992, in accordance with Standard Paragraph J at the end of the notice.

7. Atlanta Gas Light Company

[Docket No. CI92-59-000

June 30, 1992.

Take notice that on June 18, 1992, Atlanta Gas Light Company (Atlanta) of 235 Peachtree Street, NE, Atlanta, Georgia 30303 filed an application under Section 7 of the Natural Gas Act (NGA) for an unlimited-term blanket certificate with pregranted abandonment. Atlanta requests authority to make sales for resale in interstate commerce without rate restriction (except for gas subject to the Natural Gas policy Act (NGPA) ceiling price) of all NGA categories of NGA gas subject to the Commission's jurisdiction, imported gas sold under pipeline interruptible sales certificates and gas purchased from non-first sellers, including intrastate pipelines and local distribution companies. Atlanta further requests the Commission state in any order granted here that Atlanta's exclusion under NGA Section 1(c) will not be impaired by activities under the requested authorization and grant waiver of the Commission's regulations concerning the filing and maintenance of rate schedules. Atlanta's application is on file with the Commission and open for public inspection.

Comment date: July 20, 1992, in accordance with Standard Paragraph J at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will

not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Section 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Standard Paragraph

J. Any person desiring to be heard or make any protest with reference to said filings should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedures (18 CFR §§ 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell

Secretary.

[FR Doc. 92-15948 Filed 7-7-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD92-07511T Wyoming-30]

State of Wyoming; NGPA Determination by Jurisdictional Agency Designating Tight Formation

July 1, 1992.

Take notice that on June 26, 1992, the Wyoming Oil and Gas Conservation Commission (Wyoming) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Baxter Formation underlying a portion of Sublette County, Wyoming, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978 (NGPA). The notice covers 640 acres described as all of Section 19, Township 27 North, Range 112 West.

The notice of determination also contains Wyoming's and the Bureau of Land Management's findings that the referenced portion of the Baxter Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-15950 Filed 7-7-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD92-07512T Wyoming-29]

State of Wyoming; NGPA Determination by Jurisdictional Agency Designating Tight Formation

July 1, 1992.

Take notice that on June 26, 1992, the Wyoming Oil and Gas Conservation Commission (Wyoming) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Baxter Formation underlying a portion of Lincoln County, Wyoming, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978 (NGPA). The notice covers approximately 5,200 acres described as follows:

Township 26 North, Range 112 West, 6th P.M.

Section 2: All
Section 3: All
Section 9: SE/4SE/4
Section 10: All
Section 11: All
Section 12: All
Section 13: All
Section 14: All
Section 15: All
Section 16: NE/4NE/4.

The notice of determination also contains Wyoming's and the Bureau of Land Management's findings that the referenced portion of the Baxter Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-15949 Filed 7-7-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER92-641-000]

Brazos River Authority; Filing

July 1, 1992.

Take notice that on June 12, 1992, Brazos River Authority tendered for filing a Notice of Cancellation regarding the sale of energy generated by Brazos River Authority at Possum Kingdom, Dam, Palo Pinto County, Texas Federal Power Project No. 1490.

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 Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before July 14, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to

the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-15898 Filed 7-7-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RS92-5-000, et al.; RS92-6-000, et al.]

Columbia Gas Transmission Corp.; Prefiling Conference

June 30, 1992.

Take notice that a prefiling conference will be convened in these proceedings on July 21, 1992, at 10 a.m., in Washington, DC at a location to be announced later. The conference will continue on July 22, if necessary. The conference will address the summaries of the proposals of Columbia Gas Transmission Corporation and Columbia Gulf Transmission Company to comply with Order No. 636. The two pipelines anticipate serving all parties in these proceedings with the summaries by July 7, 1992.

For additional information, contact Donald A. Heydt, (202) 208-0740.

Linwood A. Watson, Jr.,

Acting Secretary

[FR Doc. 92-15899 Filed 7-7-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-6-23-000]

Eastern Shore Natural Gas Co.; Proposed Changes in FERC Gas Tariff

July 1, 1992.

Take notice that Eastern Shore Natural Gas Company (ESNG) tendered for filing on June 26, 1992 certain revised tariff sheets included in appendix A attached to the filing. Such sheets are proposed to be effective August 1, 1992.

ESNG states that the above referenced tariff sheets are being filed pursuant to § 154.308 of the Commission's regulations and §§ 21.2 and 21.4 of the General Terms and Conditions of ESNG's FERC Gas Tariff to reflect changes in ESNG's jurisdictional rates. The sales rates set forth thereon reflect a decrease of $0.0527 per dt in the Commodity Charge and no change in the Demand Charge, all as measured against ESNG's Out-Of-Cycle Purchased Gas Adjustment in Docket No. TQ92-5-23-000, et. al., as filed on May 27, 1992 and requested to be effective June 1, 1992.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 and Rule 214 of the Commission's Rules of Practice and Procedure 18 CFR § 385.211 and § 385.214. All such motions or protests should be filed on or before July 8, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-15951 Filed 7-7-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER92-631-000]

Florida Power & Light Co.; Notice of Filing

June 24, 1992.

Take notice that on June 18, 1992, Florida Power & Light Company (FPL) tendered for filing Support Schedules C and F, which have been updated to reflect current costs of providing service under Schedules A and B of the referenced contract filed in Docket No. ER80-58, and Attachment No. 2, Support Information as described in Article III of the offer of Settlement in Docket No. ER80-58.

FPL requests that the revised rates be made effective on June 1, 1992.

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 Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before July 8, 1992. 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. 92-15952 Filed 7-7-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-5-46-000]

Kentucky West Virginia Gas Co.; Proposed Change in FERC Gas Tariff

July 1, 1992.

Take notice that Kentucky West Virginia Gas Company (Kentucky West) on June 26, 1992, tendered for filing with the Federal Energy Regulatory Commission (Commission) a Quarterly PGA filing, which includes Thirty-Eighth Revised Sheet No. 41 to its FERC GAs Tariff, Second Revised Volume No. 1, to become effective August 1, 1992. The revised tariff sheet reflects a current decrease of $0.0431 per Dth in the average cost of purchased gas resulting in a Weighted Average Cost of Gas of $1.1369 per Dth.

Kentucky West states that effective August 1, 1992, pursuant to its obligations under various gas purchase contracts, it has specified a total price of $1.1200 per Dth, inclusive of all taxes and any other production-related cost add-ons, that it would pay under these contracts.

Kentucky West states that, by its filing, or any request or statement made therein, it does not waive any rights to collect amounts, nor the right to collect carrying charges applicable thereto, to which it is entitled pursuant to the mandate of the United States Court of Appeals for the Fifth Circuit issued on March 6, 1986, in *Kentucky West Virginia Gas Co.* v. *FERC*, 780 F.2d 1231 (5th Cir. 1986), or to which it is or becomes entitled pursuant to any other judicial and/or administrative decisions.

Kentucky West states that a copy of its filing has been served upon each of its jurisdictional customers and interested state commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before July 8, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to

become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-15953 Filed 7-7-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-193-000]

Texas Eastern Transmission Corp., Request for Waiver

July 1, 1992.

Take notice that on June 26, 1992, Texas Eastern Transmission Corporation ("Texas Eastern"), pursuant to rule 212 of the Commission's Rules of Practice and Procedure, 18 CFR 385.212, requested authority to waive the facility reimbursement requirements of section 4.4 of its Rate Schedule FT-1 and 4.3 of its Rate Schedule IT-1, which, absent waiver, would require the City of Hamilton, Ohio ("Hamilton") to reimburse Texas Eastern for facilities it has constructed to transport and deliver gas for Hamilton pursuant to authority received in Docket No. CP91-2189-000.

In its request, Texas Eastern states that on June 6, 1991, it filed in Docket No. CP91-2189-000 a prior notice request to provide firm and interruptible transportation service for Hamilton. The prior notice request stated that Texas Eastern would construct and operate mainline tap and related regulation and measurement facilities to provide this service. Because no party protested Texas Eastern's request, the transportation was deemed authorized pursuant to Section 157.205 of the Commission's Regulations. Texas Eastern has since constructed the facilities to deliver gas to Hamilton at a cost of approximately $450,000.00.

Texas Eastern states that good cause exists for waiving the facility reimbursement provisions of its tariffs based on its willingness to pay for the first delivery point to provide firm transportation service for a new customer and on the benefits that will accrue to other customers on Texas Eastern's system as a result of the additional transportation.

Any person desiring to be heard or to protest should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214. All motions or protests should be filed on or before July 8, 1992. 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 the Request for Waiver are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-15954 Filed 7-7-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-6-18-000]

Texas Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

July 1, 1992.

Take notice that Texas Gas Transmission Corporation (Texas Gas), on June 26, 1992, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Fifty-seventh Revised Sheet No. 10
Fifty-seventh Revised Sheet No. 10A
Thirty-eighth Revised Sheet No. 11
Twenty-eighth Revised Sheet No. 11A
Twenty-eighth Revised Sheet No. 11B

Texas Gas states that these tariff sheets reflect changes in purchased gas costs pursuant to an Out-of-Cycle PGA Rate Adjustment and are proposed to be effective July 1, 1992. Texas Gas further states that the proposed tariff sheets reflect a commodity rate increase of $.1337 per MMBtu in purchased gas costs from those reflected in the rates set forth in the Out-of-Cycle PGA filed May 27, 1992 (Docket No. TQ92-5-18). No changes are proposed for the demand or SGN Standby rates.

Texas Gas states that copies of the filing were served upon Texas Gas's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests or motions should be filed on or before July 8, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-15955 Filed 7-7-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-165-001]

Trunkline Gas Co.; Compliance Filing

July 1, 1992.

Take notice that Trunkline Gas Company (Trunkline) on June 29, 1992 in compliance with Ordering Paragraph (C) of the Commission's Order dated May 29, 1992 in the above-referenced proceeding, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Sub Original Sheet No. 9-CC.3
Original Sheet No. 9-CC.4
Original Sheet No. 9-CC.5
Sub Original Sheet No. 9-DG.4
Original Sheet No. 9-DG.5
Original Sheet No. 9-DG.6
Second Revised Sheet No. 11
Third Revised Sheet No. 12

Trunkline states that Ordering Paragraph (C) of the May 29, 1992 Order required Trunkline to file revised tariff sheets by June 29, 1992 to: (i) Clarify that proposed changes to the gas quality standards are equally applicable to both transportation gas and to Trunkline's gas purchases, and (ii) assure that the benefits from retained volumes of unauthorized gas are provided to both sales and transportation customers.

Trunkline hereby requests waiver of § 154.22 of the Commission's Regulations and any other waivers which may be necessary to make these tariff sheets effective June 1, 1992 as provided in Ordering Paragraph (C) of the May 29, 1992 Order.

Trunkline also states that it is providing as part of the instant filing, workpapers in compliance with Ordering Paragraph (E) of the May 29, 1992 Order which required Trunkline to submit information to the Commission comparing the revenue responsibility of each customer class under the prior and proposed cost classification, cost allocation and rate design methodologies.

Trunkline further states that copies of this filing are being mailed to Trunkline's sales and transportation customers, affected state commissions and intervenors in this docket.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance

with rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before July 8, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-15956 Filed 7-7-92; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[Docket No. FE C&E 92-09, 10; Certification Notice—102]

Filing Certification of Compliance: Coal Capability of New Electric Powerplant Powerplant and Industrial Fuel Use Act

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of filing.

SUMMARY: EEA Three, Inc. and Fleetwood Cogeneration Associates, L.P. have submitted coal capability self-certifications pursuant to section 201 of the Powerplant and Industrial Fuel Use Act of 1978, as amended.

ADDRESSES: Copies of the self-certification filings are available for public inspection upon request in the Office of Fuels Programs, Fossil Energy, room 3F-056, FE-52, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Ellen Russell at (202) 586-9624.

SUPPLEMENTARY INFORMATION: Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended (42 U.S.C. 8301 *et seq.*), provides that no new baseload electric powerplant may be constructed or operated without the capability to use coal or another alternate fuel as a primary energy source. In order to meet the requirement of coal capability, the owner or operator of such facilities proposing to use natural gas or petroleum as its primary energy source shall certify, pursuant to FUA 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) on the day it is filed with the Secretary The Secretary is required to publish a notice in the Federal Register that a certification has been filed. The following owners/operators of proposed new baseload powerplants have filed self-certifications in accordance with section 201(d).

Docket C&E-09

Owner: EEA III, L.P., Arlington, VA.

Operator: EEA III, Bayonne Cogeneration Project.

Location: Hudson County, NJ.

Plant Configuration: Combined cycle cogeneration facility.

Capacity: 150 megawatts.

Fuel: Natural gas.

Utility Purchasing Electrical Output: Consolidated Edison Company of New York, NY.

Expected In-Service Date: October, 1994.

Docket C&E-10

Owner: Fleetwood Cogeneration Associates, L.P., Radnor, Pennsylvania.

Operator: LFC Power Systems Corporation.

Location: Sunsweet Growers plant, Fleetwood, Pennsylvania.

Plant Configuration: Topping-cycle cogeneration facility.

Capacity: 155 megawatts.

Fuel: Natural gas.

Utility Purchasing Electrical Output: Metropolitan Edison Company.

Expected In-Service Date: March 1, 1996.

Issued in Washington, DC on June 30, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-15992 Filed 7-7-92; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. FE C&E 92-11; Certification Notice—103]

Filing Certification of Compliance: Coal Capability of New Electric Powerplant, Powerplant and Industrial Fuel Use Act

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of filing.

SUMMARY: Brush Cogeneration Partners has submitted a coal capability self-certification pursuant to section 201 of the Powerplant and Industrial Fuel Use Act of 1978, as amended.

ADDRESSES: Copies of the self-certification filing are available for public inspection upon request in the Office of Fuels Programs, Fossil Energy, room 3F-056, FE-52, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Ellen Russell at (202) 586-9624.

SUPPLEMENTARY INFORMATION: Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended (42 U.S.C. 8301 *et seq.*), provides that no new baseload electric powerplant may be constructed or operated without the capability to use coal or another alternate fuel as a primary energy source. In order to meet the requirement of coal capability, the owner or operator of such facilities proposing to use natural gas or petroleum as its primary energy source shall certify, pursuant to FUA 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) on the day it is filed with the Secretary. The Secretary is required to publish a notice in the Federal Register that a certification has been filed. The following owner/operator of a proposed new baseload powerplant has filed a self-certification in accordance with section 201(d).

Owner: Brush Cogeneration Partners, Boulder, Colorado.

Operator: Colorado Cogen Operators Limited Liability Company.

Location: Brush, Colorado.

Plant Configuration: Topping-cycle cogeneration plant.

Capacity: 68 megawatts.

Fuel: Natural gas.

Purchasing Utility: Public Service Company of Colorado.

Expected In-Service Date: Early 1994.

Issued in Washington, DC on June 30, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-15993 Filed 7-7-92; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Cases Filed During the Week of June 12 Through June 19, 1992

During the Week of June 12 through June 19, 1992, the appeals and applications for exception or other relief listed in the appendix of this notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

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: July 1, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of June 12 through June 19, 1992]

Date	Name and location of applicant	Case No.	Type of submission
6/8/92	Gulf/Lacey Springs Gulf, Atlantic Beach, FL.	RR300-177	Request for Modification/Rescission in the Gulf Refund Proceeding. If granted: The April 24, 1992 Dismissal Letter (Case No. RF300-13929) issued to Lacey Springs Gulf regarding the firm's Application for Refund submitted in the Gulf refund proceeding would be modified.
6/12/92	Gulf/Griffin Gulf, Atlantic Beach, FL.	RR300-176	Request for Modification/Rescission in the Gulf Refund Proceeding. If granted: The June 21, 1991 Decision and Order (Case No. RF300-11504) issued to Griffin Gulf regarding the firm's Application for Refund submitted in the Gulf refund proceeding would be modified.
6/16/92	Encore Corporation, Washington, DC.	RR272-96	Request for Modification/Rescission in the Crude Oil Refund Proceeding. If granted: The August 4, 1989 Decision and Order (Case No. RF272-54561) issued to Encore Corporation regarding the firm's Application for Refund submitted in the crude oil refund proceeding would be modified.

REFUND APPLICATIONS RECEIVED

Date received	Name of refund proceeding/name of refund applicant	Case No.
6/12/92 thru 6/19/92	Crude Oil, applications received	RF272-92631 thru RF272-92720
6/12/92 thru 6/19/92	Texaco refund, applications received	RF272-18691 thru RF272-18716
6/12/92 thru 6/19/92	Gulf oil refund, applications received	RF300-20243 thru RF300-20300
6/10/92	Jerry's Clark Super 100	RF342-224
6/10/92	Owens Oil Service	RF342-225
6/15/92	Robert C. Brunette	RF304-13175
6/15/92	Swim Valley Farms Co.	RC272-159
6/15/92	Swim Valley Farms Co.	RC272-160
6/16/92	Esock Brothers Service Station	RF304-13176
6/16/92	Gene's Arco	RF304-13177
6/16/92	Toney's Arco	RF304-13178
6/16/92	Hiun U Kim	RF304-13179
6/16/92	Joe Cava's Arco	RF304-13180
6/16/92	Gordon Olson Clark Super 100	RF342-228
6/16/92	Jays Clark Super 100	RF342-229
6/17/92	Chuck's Owens Clark Super 100	RF342-230
6/18/92	Tourgard, Inc.	RF342-231
6/19/92	The Tennessean Truckstop	RF315-10214
6/19/92	Horry N. & Larry L. Brock	RF304-13181
6/19/92	Hinson Oil Company	RF304-13182
6/19/92	Gary's Arco	RF304-13183
6/19/92	Norman C. Brunelle	RF304-13184
6/19/92	Amos' Arco	RF304-13185
6/19/92	Cook's Service Station	RF342-232
6/19/92	James Cavanaugh Super 100	RF342-233
6/19/92	James Cavanaugh Super 100	RF342-234

[FR Doc. 92-15991 Filed 7-7-92; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of May 25 Through May 29, 1992

During the week of May 25 through May 29, 1992, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Glen Milner, 05/27/91, KFA-0270

Glen Milner filed an Appeal from a denial by the Deputy Director of the Office of Intergovernmental and External Affairs, Albuquerque Field Office, of a request for information that he filed under the Freedom of Information Act (FOIA). In his Appeal, Mr. Milner challenged Albuquerque's withholding of certain portions of documents on the grounds that they constitute Unclassified Controlled Nuclear Information (UCNI), as defined in the Atomic Energy Act of 1954, and withholdable under Exemption 3 of the FOIA. The DOE determined that it would now release a small portion of the documents that were initially withheld. Nevertheless, it determined that most of the withheld material continues to be properly identified as UCNI and are therefore exempt for mandatory disclosure pursuant to

Exemption 3. Accordingly, the Appeal was granted in part and denied in part.

Remedial Order

Revere Petroleum Corporation, Richard E. Dobyns, 05/29/92, HRO-0125

Revere Petroleum Corporation (Revere) and Richard E. Dobyns (Dobyns) (collectively, "the Respondents") filed a Statement of Objections to an Amended Proposed Remedial Order (Amended PRO) that was issued to the Respondents by the Economic Regulatory Administration (ERA). In the Amended Pro, the ERA charged that during the period April 1979 through March 1980, Revere was a reseller of crude oil which engaged in the practice known as "layering," prohibited under 10 CFR 212.186, and in violation of 10 CFR 210.62(c) and 10 CFR 205.202. The Amended PRO also asserted alternative violations of the reseller price rule, 10 CFR 212.183, and 10 CFR 212.10. In their Statement of Objections, the Respondents principally argues that: (i) The Amended PRO was procedurally invalid and denied due process, (ii) the enforcement proceeding was barred under the equitable doctrines of estoppel and laches, and by a state statute of limitations, (iii) the layering regulation was procedurally and substantively invalid and, in any event, wrongly applied by the ERA in this case, and (iv) Dobyns could not be held personally liable for any violations by Revere. In rejecting these contentions, the DOE determined that the Respondents' procedural challenges to the Amended PRO and the layering regulation were without basis, and that the Respondents had failed to show that the layering regulation had been misapplied by the ERA. The layering violation was therefore sustained. The DOE further determined that Dobyns should be held jointly liable for Revere's layering violation since, as President of Revere, he participated in and benefitted from the layering transactions. Accordingly, the Amended PRO was issued jointly to the Respondents as a final Remedial Order of the DOE. The final Remedial Order requires the Respondents to refund the principal overcharge amount, $54,163,195.85, plus interest.

Petitions for Special Redress

Arkansas, 05/29/92, LEG-0004

The DOE issued a Decision and Order denying a Petition for Special redress filed by the State of Arkansas which sought approval of a proposed Reactive Fuel Additive Research program that would use oil overcharge funds to underwrite research to develop a substance to reduce the volatility of stored motor fuel. The Decision upheld two earlier determinations by the Office of Financial and Technical Assistance denying the program as being inconsistent with the restitutionary goals of the Stripper Well Settlement Agreement.

Texas, 05/28/92, LEG-0003

The DOE issued a Decision and Order denying a Petition for Special redress filed by the State of Texas which sought approval of a proposed Reservoir Conservation Program that would use oil overcharge funds to subsidize the plugging of abandoned oil wells on State lands. The Decision upheld an earlier determination by the Office of Financial and Technical Assistance denying the program as being inconsistent with the restitutionary goals of the Stripper Well Settlement Agreement.

Refund Applications

Mazer Chemicals, Inc., 05/27/92, RF272-65794

The DOE issued a Decision and Order denying an Application for Refund submitted by Mazer Chemicals, Inc. in the Subpart V crude oil overcharge refund proceeding. The applicant applied for a refund based on fuel oil that it purchased and blended with other materials so that 60 percent of the total volume of the blend was fuel oil. The applicant then sold the blend. The DOE found that the applicant, by selling the blend, fell within the class of firms comprised of refiners, resellers, and retailers. Applicants from this class of firms must submit specific evidence of injury to receive a refund in the subpart V crude oil overcharge refund proceeding. The DOE denied the application because the applicant did not submit such evidence.

Texaco Inc./Dailey Oil Co., 05/28/92, RR321-9

Dailey Oil Company filed a Motion for Reconsideration of a Decision and Order that denied duplicate Texaco refund applications that were filed on its behalf. In the Motion, the firm's vice president stated that he had signed the second application, and certified in it that no other application had been filed, because he believed that this was in accordance with the instructions that he had received from Texaco, along with the second form. In considering the Motion, the DOE found the firm's vice president erroneously filed the second application, because he was confused by Texaco's sending him another application form, and not for the purpose of obtaining a duplicate refund. Accordingly, the Motion for reconsideration was approved and Dailey Oil Company was granted a refund of $13,119.

Texaco Inc./Leo's Texaco, 05/28/92, RR321-37

Leo Pugliese, the owner of Leo's Texaco, filed a Motion for Reconsideration of a Decision and Order that denied duplicate Texaco refund applications that he had filed. In the Motion, Mr. Pugliese stated that he had signed the second application, and certified in it that no other application had been filed, because he believed that this was in accordance with the instructions that he had received from Texaco, along with the second form. In considering the Motion, the DOE found Mr. Pugliese erroneously filed the second application, because he was confused by Texaco's sending him another application form, and not for the purpose of obtaining a duplicate refund. Accordingly, the Motion for Reconsideration was approved and Mr. Pugliese was granted a refund of $2,456.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Name of applicant	Case No.	Date
Acustar Chemical Division, New Castle Chassis Systems	RF272-66068 RF272-68194	05/26/92
Atlantic Richfield Company/Charles J. Schock III & J. F. Schock et al	RF304-106	05/27/92
Atlantic Richfield Company/Empire Gas Corporation et al	RF304-4812	05/28/92
Atlantic Richfield Company/Gary Burgin	RF304-12517	05/27/92
Gulf Oil Corporation/Denoco, Inc	RF300-12294	05/26/92
Gulf Oil Corporation/Sturdy Oil Corp., Sturdy Oil Corporation	RF300-11990 RF300-19808	05/26/92

Name of applicant	Case No.	Date
J.L.D.W. Enterprises, Inc., Johanson Construction Co., The Reynolds Construction Co	RF272-48268 RF272-48279 RF272-48341	05/26/92
Nobel/Sysco Food Services Co	RF272-67283	05/28/92
Pottstown Memorial Medical Center et al	RF272-78200	05/27/92
Texaco Inc./C&P Texaco et al	RF321-925	05/27/92
Texaco Inc./Granby Texaco, Schiff's Texaco	RF321-9498 RF321-13627	05/29/92
Texaco Inc./J.R. Holland Texaco et al	RF321-1081	05/26/92
Texaco Inc./James A. Gueho et al	RF321-11719	05/28/92
Texaco Inc./Jim's Texaco	RF321-4083	05/29/92
Texaco Inc./Lakeside Service Center	RF321-18628	05/29/92
Texaco Inc./University Texaco et al	RF321-3311	05/26/92
Texaco Inc./Wrobel's Texaco et al	RF321-9080	05/26/92

Dismissals

The following submissions were dismissed:

Name	Case No.
Arthur De Freese	RF304-12896
DBA Bettles Lodge	RF326-280
Flannery's Beltline Spur	RF309-1218
Howell's Texaco	RF321-8906
Lonestar Texaco	RF321-10347
Old Abilene Town Texaco	RF321-16648
Osborne's Shell Service	RF315-10132
Plaza Texaco	RF321-2143
Swann Oil, Inc	HRD-0269
Swann Oil, Inc	HRH-0269
Swann Oil, Inc	HRO-0267
Town Texaco	RF321-11839
Willow Springs Service Center	RF309-668

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E-234, Forrestal Building, 1000 Independence Avenue, SW. Washington, DC 20585, Monday through Friday, between the hours of 1 p.m., and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: July 1, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 92-15990 Filed 7-7-92; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4151-6]

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 August 7, 1992.

For further information, or to obtain a copy of this ICR, contact Sandy Farmer at EPA, (202) 260-2740.

SUPPLEMENTARY INFORMATION:

Office of Pesticides and Toxic Substances

Title: Recordkeeping Requirements for Producers of Pesticides (EPA ICR No: 0143.04; OMB No: 2070-0028). This is a reinstatement of a previously approved collection.

Abstract: This collection requires producers of pesticides to maintain records related to production and other operations. EPA may inspect these records to determine compliance with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Producers themselves may use the records to fulfill various FIFRA-mandated reporting requirements.

Burden Statement: The estimated annual recordkeeping burden for this collection of information is estimated to average 2 hours per pesticide producer. This estimate includes the time needed to review instructions, and review the collection of information.

Respondents: Pesticide producers.

Estimated No. of Respondents: 5,117.

Estimated Total Annual Burden on Respondents: 10,234 hours

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM 223Y), 401 M Street, SW., Washington, DC 20460.

and

Matthew Mitchell, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Dated: July 1, 1992.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 92-15969 Filed 7-7-92; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4151-8]

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 August 7, 1992.

For further information, or to obtain a copy of this ICR, contact Sandy Farmer at EPA, (202) 260-2740.

SUPPLEMENTARY INFORMATION:

Office of Pesticides and Toxic Substances

Title: Asbestos-Containing Material in Schools Rule (EPA ICR No.: 1365.01; OMB No.: 2070-0091). This is a reinstatement of a previously approved collection.

Abstract: The Asbestos-Containing Material in Schools Rule requires Local Education Agencies (LEAs) to inspect school buildings for friable and non-friable asbestos. The LEAs are also required to develop and implement asbestos management plans which must

include an accreditation plan at least as stringent as the accreditation plan develop by EPA. Asbestos abatement workers and laboratories performing asbestos analysis, must be accredited under the States' approved plan.

In terms of recordkeeping requirements, the LEAs must keep original inspection reports, as well as any subsequent inspection reports. They must also keep management planner recommendations; response actions records; and records of fiber release episodes, periodic surveillance, workers' training, and any operation and maintenance activities. The States use the information to ensure compliance with the Federally mandated asbestos rule.

Burden Statement: The burden for this collection of information is estimated to average 14.56 hours per response for reporting and 22.06 hours per recordkeeper annually. This estimate includes the time needed to review instructions, gather and maintain the data needed, and review the collection of information.

Respondents: Elementary and Secondary School Districts and all the States.

Estimated No. of Respondents: 107,550.

Estimated No. of Responses Per Respondent: 1.

Estimated Total Annual Burden on Respondents: 3,939,000 hours.

Frequency of Collection: On occasion.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM 223Y), 401 M Street, SW., Washington, DC 20460.

and

Matthew Mitchell, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Dated: July 1, 1992.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 92-15970 Filed 7-7-92; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4151-9]

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 August 7, 1992. To obtain a copy of this ICR contact Sandy Farmer at EPA, (202) 260-2740.

SUPPLEMENTARY INFORMATION:

Office of Water

Title: NPDES and Sewage Sludge Management of State Programs (ICR 0168.04).

Abstract: ICR 0168.04 seeks renewal of clearance for the information requirements approved under OMB control number 2040-0057. In addition, it incorporates State Sludge Management Program requirements currently approved under OMB control number 2040-0128.

Section 402 of the Clean Water Act (CWA) establishes the National Pollutant Discharge Elimination System (NPDES) and allows States to request authority from EPA to administer the NPDES permit program. Section 405 of the CWA sets out the sewage sludge program. As with the NPDES program, States may similarly request authority to administer the program themselves. ICR 168.04 describes three general categories of information requirements imposed upon States in conjunction with these two programs:

For State Program Requests, States must provide information to request a new NPDES or sludge program or to change an ongoing program.

For State program implementation, States which already have approved NPDES programs must fulfill certain recordkeeping and enforcement activities. States without approved NPDES programs must certify the permits which EPA has issued in their place.

For State Program Oversight, approved NPDES States must meet certain statutory requirements, such as submitting proposed permits and reports of permittee violations to EPA.

Burden Statement: The average burden associated with NPDES and Sewage Sludge Management of State Programs is 40 hours per response. This total includes time for searching existing data sources, gathering the data needed, and completing and reviewing the collection of information.

Respondents: States and Territories.

Estimated No. of Respondents: 57.

Estimated Total Annual Burden on Respondents: 1,050,036 hours.

Frequency of Collection: Variable, as needed.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223Y), 401 M Street, SW., Washington, DC 20460.

and

Matt Mitchell, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th St., NW., Washington, DC 20503.

Dated: July 1, 1992.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 92-15971 Filed 7-7-92; 8:45 am]

BILLING CODE 6560-50-M

[OPP-30338; FRL-4074-3]

Frost Technology Corporation; Applications to Register Pesticide Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments must be submitted by August 7, 1992.

ADDRESSES: By mail submit comments identified by the document control number [OPP-30338] and the registration/file number to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA

without prior notice to the submitter. All written comments will be available for public inspection in rm. 1128 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: PM 21, Susan Lewis, Registration Division (H7505C), Office of Pesticide Programs, rm. 227, CM #2, (703-305-1900).

SUPPLEMENTARY INFORMATION: EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Products Containing Active Ingredients Not Included In Any Previously Registered Products

1. File Symbol: 64004-R. Applicant: Frost Technology Corp., 6701 San Pablo Ave., Oakland, CA. 94608-1239. Product name: FROSTBAN™ A. Active ingredient: Pseudomonas fluorescens A506 23%, Pseudomonas syringae 742RS 24%, Pseudomonas fluorescens 1629RS 24%, inerts 29%. Proposed use: For prevention of frost-forming bacteria on plant leaves, blossoms, and fruit. (PM-21)

2. File Symbol: 64004-E. Applicant: Frost Technology Corp., 6701 San Pablo Ave., Oakland, CA. 94608-1239. Product name: FROSTBAN™ B. Active ingredient: Pseudomonas fluorescens A506 71%, inerts 29%. Proposed use: For prevention of frost-forming bacteria on plant leaves, blossoms, and fruit. (PM-21)

3. File Symbol: 64004-G. Applicant: Frost Technology Corp., 6701 San Pablo Ave., Oakland, CA. 94608-1239. Product name: FROSTBAN™ C. Active ingredient: Pseudomonas Syringae 742RS, 71%, inerts 29%. Proposed use: For prevention of frost-forming bacteria on plant leaves, blossoms, and fruit. (PM-21)

4. File Symbol: 64004-U. Applicant: Frost Technology Corp., 6701 San Pablo Ave., Oakland, CA. 94608-1239. Product name: FROSTBAN™ D. Active ingredient: Pseudomonas fluorescens 1629RS 71%, inerts 29%. Proposed use: For prevention of frost-forming bacteria on plant leaves, blossoms, and fruit. (PM-21)

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

Written comments filed pursuant to this notice, will be available in the Public Response and Program Resources Branch, Field Operations Division (FOD) office at the address provided from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. It is suggested that persons interested in reviewing the application file, telephone the FOD office (703-305-5805), to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

Dated: June 29, 1992.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 92-15828 Filed 7-7-92; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL DEPOSIT INSURANCE CORPORATION

Coastal Barrier Improvement Act; Property Availability: Hidden Harbor Condominium, Parcel A, Palmetto, FL

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice.

SUMMARY: Notice is hereby given that the property known as "Hidden Harbor Condominium, Parcel A" located in Palmetto, Florida is affected by section 10 of the Coastal Barrier Improvement Act of 1990, as specified below.

DATES: Written Notices of Serious Interest to purchase or effect other transfer of the property may be mailed or faxed to the Federal Deposit Insurance Corporation until October 6, 1992.

ADDRESSES: Copies of detailed descriptions of the property can be obtained by contacting the following person: James Hines, Federal Deposit Insurance Corporation, 285 Peachtree Center Avenue, suite 300, Atlanta, Georgia 30303, telephone (404) 880-3093, fax (404) 886-3119.

SUPPLEMENTARY INFORMATION: The 56.77 acre tract is located along West 10th Street, also known as County Road No. 22, approximately 800 feet east of the bridge crossing Cutoff Channel to Snead Island. The property is bounded to the west and north by Terra Ceia Bay and a small harbor know as Hidden Harbor, and on the east by Tropic Isle mobile home park.

Terra Ceia Bay has been labeled Terra Ceia Aquatic Preserve, Class III waters, by the Florida Department of Environmental Regulation under the Florida Aquatic Preserve Act of 1975. The property is raw, undeveloped land, which is thick with vegetation. The property is located within the municipality of Palmetto, Florida. A 34.5 acre portion of the property has been labeled conservation by the City of Palmetto's Comprehensive Plan due to the presence of protected plant species and other environmental considerations. The remaining 22.27 acre tract is zoned RM-6, multi-family. The giant leather fern (*Acrostichum danaeifolium*), a "threatened" plant species listed by the Florida Department of Agriculture and Consumer Services, exists on the property.

Written notice of serious interest in the purchase or other transfer of the property must be received on or before October 6, 1992 by James Hines at the above address.

Those entities eligible to submit written notices of serious interest are:

1. Agencies or entities of the federal government;

2. Agencies or entities of state or local government; and

3. "Qualified organizations" pursuant to section 170(h) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)(s)).

Form of Notice

Notices of serious interest should be in the following form:

Notice of Serious Interest re: Hidden Harbor Condominium, Parcel A, Palmetto, Florida

1. Name of eligible entity.

2. Declaration of eligibility to submit notice under criteria set forth in Public Law 101-591, section 10(b)(2).

3. Brief description of proposed terms of purchase or other offer (e.g. price and method of financing).

4. Declaration by entity that it intends to use the property primarily for wildlife refuge, sanctuary, open space, recreational, historical, cultural or natural resource conservation purposes.

Dated: July 2, 1992.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 92-15975 Filed 7-7-92; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL MARITIME COMMISSION

Port of Oakland et al.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–010974–010.

Title: Port of Oakland and International Transportation Services, Inc., Nonexclusive Preferential Assignment Agreement.

Parties:

The Port of Oakland ("Port")
International Transportation Services, Inc. ("ITS")

Synopsis: The Agreement extends the term of the basic Agreement to July 31, 1992, with a right for the Port to extend the term for an additional month upon written notice to ITS.

Agreement No.: 212–010386–023.

Title: Argentina/U.S. Atlantic and Gulf Ports Pool Agreement.

Parties:

American Transport Lines, Inc.
Empresa Lineas Maritimas Argentinas S.A.
A. Bottacchi S.A. de Navigacion C.F.I.I.
Companhia de Navegacao Lloyd Brasileiro
Companhia Maritima Nacional
Hamburg-Sudamerikanische Damppfschifffahrts-Gesellschoft Eggert & Amsinck (Columbus Line)
Empresa de Navegacao Alianca S.A. ("Alianca")

Synopsis: The proposed amendment provides for the withdrawal of Columbus Line and Alianca from the Agreement effective July 1, 1992, and the reallocation of their pool shares among the remaining parties. Columbus and Alianca will receive their former shares should they rejoin the Agreement. The parties have requested a shortened review period.

Agreement No.: 212–010388–018.

Title: U.S. Atlantic & Gulf Ports/Argentina Pool Agreement.

Parties:

American Transport Lines, Inc.
Empresa Lineas Maritimas Argentinas S.A.
A. Bottacchi S.A. de Navegacion C.F.I.I.
Companhia de Navegacao Lloyd Brasileiro
Companhia Maritima Nacional
Hamburg-Sudamerikanische Damppfschifffahrts-Gesellschaft Eggert & Amsinck (Columbus Line)
Empresa de Navegacao Alianca S.A. ("Alianca")

Synopsis: The proposed amendment provides for the withdrawal of Columbus Line and Alianca from the Agreement effective July 1, 1992, and the reallocation of their pool shares among the remaining parties. Columbus and Alianca will receive their former shares should they rejoin the Agreement. The parties have requested a shortened review period.

Date: July 2, 1992.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 92–15986 Filed 7–7–92; 8:45 am]

BILLING CODE 6730–01–M

United States Atlantic and Gulf Ports/Eastern Mediterranean and North African Freight Conference, et al.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW, room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–009548–044.

Title: United States Atlantic and Gulf Ports/Eastern Mediterranean and North African Freight Conference.

Parties:

Farrell Lines, Inc.
Levant Line, S.A.
Lykes Bros. Steamship Co., Inc.
Waterman Steamship Corporation.

Synopsis: The proposed amendment will add a new provision to the Agreement which provides that any member may disassociate itself from any Conference or Rate Committee action on a rate or service item by giving verbal or written notice of such disassociation.

Agreement No.: 224–200344–001.

Title: Oakland/Stevedoring Services of America Terminal Agreement.

Parties:

City of Oakland
Stevedoring Services of America

Synopsis: The amendment extends the term of the Agreement through August 6, 1992, or until a new management agreement between the parties becomes effective.

Agreement No.: 224–200426–001.

Title: Port Everglades/Sea-Land Terminal Agreement.

Parties:

Port Everglades Authority
Sea-Land Service, Inc. ("Sea-Land")

Synopsis: The amendment increases the amount of space leased by Sea-Land to a total of 31.71 acres and makes appropriate adjustments in Sea-Land's rental payments.

Agreement No.: 224–200447–005.

Title: Port of New Orleans/Coastal Cargo Terminal Agreement.

Parties:

The Port of New Orleans ("Port")
Coastal Cargo Company ("Coastal")

Synopsis: The amendment acknowledges Coastal's options to cancel fifteen sections of leased premises at the Mandeville Street Wharf located at the Port and to have Coastal's rent reduced proportionately.

Agreement No.: 224–200684.

Title: Maryland Port Administration/Guthrie Latex, Inc. Terminal Agreement.

Parties:

Maryland Port Administration ("MPA")
Guthrie Latex, Inc. ("Guthrie")

Synopsis: The Agreement permits MPA to lease to Guthrie 14,193 square feet of shed space on Pier 4–5 at the North Locust Point Marine Terminal for five years.

By order of the Federal Maritime Commission.

Dated: July 1, 1992.

Joseph C. Polking,

Secretary.

[FR Doc. 92–15871 Filed 7–7–92; 8:45 am]

BILLING CODE 6730–01–M

[Petition No. P4-92]

Castle & Cooke Worldwide, Ltd. and Philippines, Micronesia & Orient Navigation Company; Petition for Exemption From Filing Requirements of the Shipping Acts; Filing

Notice is hereby given that Castle & Cooke Worldwide, Ltd. and Philippines, Micronesia & Orient Navigation Company ("Petitioners") have petitioned for an exemption pursuant to section 16 of the Shipping Act of 1984 (46 U.S.C. app. 1715) and Section 35 of the Shipping Act, 1916 (46 U.S.C. app. 833a), from the filing requirements of section 8 of the Shipping Act of 1984 (46 U.S.C. app. 1707), section 18(a) of the Shipping Act, 1916 (46 U.S.C. app. 817), and sections 2 and 3 of the Intercoastal Shipping Act, 1933 (46 U.S.C. app. 844 and 845), and Commission regulations promulgated pursuant to those sections, for their shipping agreement between General Santos, Republic of the Philippines, and the West Coast of the United States.

In order for the Commission to make a thorough evaluation of the petition for exemption, interested persons are requested to submit views or arguments in reply to the petition no later than July 27, 1992. Replies shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573-0001 in an original and 15 copies.

Replies shall also be served on Edward J. Sheppard, Garvey, Schubert & Barer, 1000 Potomac Street, NW., Washington, DC 20007. Petitioners may respond to the replies no later than August 10, 1992.

Copies of the petition are available for examination at the Washington, DC office of the Commission, 1100 L Street, NW., room 11101.

Joseph C. Polking,

Secretary.

[FR Doc. 92-15886 Filed 7-7-92; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

[Program Announcement Number 266]

Cooperative Agreement to Support Interventions in Iron Deficiency Anemia Among Women

Introduction

The Centers for Disease Control (CDC), the Nation's prevention agency, announces the availability of fiscal year (FY) 1992 funds to implement a demonstration program directed at reducing the prevalence of iron deficiency anemia among low-income women of childbearing age. Two groups of women will be targeted: (1) Pregnant women served by the Supplemental Food Program for Women, Infants and Children (WIC) and; (2) non-pregnant mothers whose children are served by WIC.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of healthy People 2000, a PHS-lead national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority areas of Nutrition and Maternal and Child Health. (For ordering a copy of "Healthy People 2000," see the section "Where to Obtain Additional Information.")

Authority

This program is authorized under section 301(a) and 317(k)(3) of the Public Health Service Act, 42 U.S.C. 241(a) and 247(k)(3), as amended.

Eligible Applicants

Assistance will be provided only to the official public health agencies of states or their bona fide agents or instrumentalities. This includes the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana islands, the Republic of the Marshall Islands, the Republic of Palau, and federally recognized Indian Tribal governments. This project involves screening and intervention for iron deficiency anemia among low-income women served by the Supplemental Food Program for Women, Infants and Children (WIC). In each of the eligible jurisdictions, the official health agency administers the WIC program.

Availability of Funds

Approximately $120,000 is available in FY 1992 to fund one cooperative agreement award. It is expected that the award will begin on or about September 15, 1992, and is usually made for a 12-month budget period within a project period of up to 3 years. Funding estimates may vary and are subject to change. Continuation awards within the project period will be made on the basis of satisfactory performance and the availability of funds. At the request of the recipient, CDC may provide supplies in lieu of a portion of the financial assistance.

Purpose

The purpose of this project is to demonstrate the effectiveness of an intervention program to reduce the high prevalence of iron deficiency anemia among low-income pregnant women. Specifically, this project will test the following hypotheses:

A. Iron supplementation during pregnancy with slow-release, low-dose iron supplement capsules will reduce anemia more effectively than standard iron treatment. Pregnant women will receive either ferrous sulfate or slow-release, low-dose iron supplements.

B. Low-dose iron supplementation before pregnancy will reduce anemia more effectively during a subsequent pregnancy compared with iron supplementation during pregnancy alone. Non-pregnant mothers of WIC children will receive slow-release, low-dose iron supplements or no supplements and be followed through their next pregnancy.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for the activities under A., below, and CDC shall be responsible for conducting activities under B., below.

A. Recipient Activities

1. Develop a protocol for identifying participants and recruit pregnant women and non-pregnant mothers (based on informed consent) in cooperation with a local WIC program serving a minimum of 500 pregnant women per year.
2. Maintain data on an existing data system such as the Pregnancy Nutrition Surveillance System.
3. Test participants for iron status using hemoglobin and serum ferritin, and refer at risk women for appropriate medical follow-up.
4. Track pregnant women during their pregnancy and post-partum period.
5. Track non-pregnant WIC mothers in the project until their next pregnancy or the end of the project period.
6. Evaluate the effectiveness of the project.

B. CDC Activities

1. Collaborate in the design and provide technical support for the project methodology, protocols, data collection, and analysis.
2. Provide technical assistance and consultation regarding the development, implementation and management of the demonstration project.
3. Assist in analyzing, interpreting, and using data to monitor the effectiveness of the demonstration project.
4. Collaborate in preparing and presenting project findings to

appropriate state and national audiences.

5. Will assist the state with the selection and procurement of iron preparations (ferrous sulfate and slow-release, low-dose iron supplements).

Evaluation Criteria

Applications will be reviewed and evaluated according to the following criteria:

A. Potential for Public Health Impact (10 Points)

1. Evidence that there is a high rate of iron deficiency anemia among low-income women of childbearing age in the community selected as the project site.

2. Evidence that the local WIC program within that community serves a demographically diverse population, with a high prevalence of iron deficiency anemia among the pregnant women receiving services.

B. Project Development and Implementation Plan (15 Points)

The appropriateness of goals, objectives, and activities related to:

1. Pregnant Women

a. Recruiting, on a random basis, and tracking pregnant women served by the WIC program to receive routine ferrous sulfate supplements or slow-release, low-dose capsules.

b. Testing for hemoglobin levels early in pregnancy, during the third trimester, and the post-partum period.

c. Testing for serum ferritin using capillary tube blood samples obtained in the post-partum period.

d. Integrating an iron supplementation (ferrous sulfate and slow-release iron capsules) program into the local WIC program's existing intervention protocols for iron deficiency.

e. Determining compliance with the iron supplement prescription and reasons for non-compliance.

2. Non-Pregnant Women

a. Recruiting, on a random basis, and tracking WIC mothers to receive slow-release, low-dose iron capsules, or no supplements at all.

b. Testing hemoglobin and serum ferritin levels of all mothers (supplemented and non-supplemented) about 6 months after initiation of supplementation program, and medical referral of those found to be anemic.

c. Determining compliance with the iron supplement prescription and reasons for non-compliance.

C. Data Collection (15 Points)

The degree to which:

1. Data system is capable of tracking subjects in various groups, assessing their compliance with supplement prescriptions, monitoring iron blood test results, and evaluating project outcomes.

2. Quality assurance plans with regard to tracking iron supplementation, blood testing procedures, and data collection and management are adequate to assure reliability of data.

D. Program Evaluation (15 Points)

The degree to which the applicant describes an effective plan to assess the success of the project.

E. Capability (40 Points)

1. Evidence of the applicant's present or past experience in conducting and evaluating nutrition intervention programs, and carrying out surveillance or other data collection.

2. Evidence of the selection of an appropriate local WIC program that serves at least 500 pregnant women per year, and is able and committed to carry out a standard program of iron supplementation.

3. Evidence that collaborative arrangements with the local WIC program is conducive to accomplishing the stated objectives. Include written commitments from appropriate offices and personnel in the state health department and local WIC program.

4. Evidence of plans for adequate project coordination and management, including roles and responsibilities of the WIC/Nutrition Program staff within the state health department and those at the local WIC program. This should include qualifications of key project staff. Position descriptions may be included in the appendix, but should be referenced in the text.

5. Ability to accommodate serum ferritin testing using capillary tube blood specimens.

6. Feasibility of the mechanism by which the state will arrange project funding with the local WIC program.

F. Commitment (5 Points)

Evidence that the improvement of the outcome of pregnancy through intervention programs aimed at reducing iron deficiency anemia among pregnant women and women of childbearing age is an important priority.

G. Budget (Not Scored)

The extent to which the applicant describes the total amount of funds requested in each of the object class categories, and clearly links budget items to objectives and activities proposed for the budget period.

Executive Order 12372 Review

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order 12372. Executive Order 12372 sets up a system for state and local government review of proposed Federal assistance applications. Applicants (other than federally recognized Indian tribal governments) should contact their state Single Point of Contacts (SPOCs) as early as possible to alert them to the prospective applications and receive any necessary instructions on the state process. For proposed projects serving more than one state, the applicant is advised to contact the SPOC of each affected state. A current list of SPOCs is included in the application kit. If SPOCs have any state process recommendations on applications submitted to CDC, they should forward them to Edwin L. Dixon, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Atlanta, Georgia 30305. The due date for state process recommendations will be 30 days after the application deadline date for new and competing continuation awards. [A waiver for the 60 day requirement has been requested.] The granting agency does not guarantee to "accommodate or explain" for state process recommendations it receives after that date.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 93.283.

Other Requirements

Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by the cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations (45 Code of Federal Regulations 46) regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with

the appropriate guidelines and form provided in the application kit.

Application Submission and Deadline Date

The original and two copies of the application PHS Form 5161-1 must be submitted to Edwin L. Dixon, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Mail Stop E-14, Atlanta, Georgia 30305, on or before August 1, 1992.

1. *Deadline:* Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. *Late Applications:* Applications which do not meet the criteria in 1(a) or 1(b) above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where to Obtain Additional Information

A complete program description, information on application procedures, an application package, and business management technical assistance may be obtained from Leah Simpson, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Mail Stop E-14, Atlanta, Georgia 30305, (404) 842-6803.

Programmatic technical assistance may be obtained from Abe Parvanta, Division of Nutrition, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control, Mail Stop K-25, 1600 Clifton Road, NE., Atlanta, Georgia 30333, (404) 488-5099.

Please refer to "Announcement Number 266" when requesting information and submitting an application.

Potential applicants may obtain a copy of "Healthy People 2000" (Full Report, Stock No. 017-001-00474-0) or "Healthy People 2000" (Summary Report, Stock No. 017-001-00473-1) referenced in the "Introduction" through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325, (Telephone (202) 783-3238).

Dated: July 1, 1992.

Robert L. Foster,

Acting Associate Director for Management and Operations, Centers for Disease Control.

[FR Doc. 92-15903 Filed 7-7-92; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 92F-0237]

BASF Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that BASF Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of 1,1'-sulfonylbis[4-chlorobenzene] polymer with 4,4'-(1-methylethylidene)bis[phenol] (maximum 8 percent) and 4,4'-sulfonylbis[phenol] (minimum 92 percent) as repeat-use articles or components of repeat-use articles that contact food.

FOR FURTHER INFORMATION CONTACT: Vir Anand, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-254-9500.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 1B4263) has been filed by BASF Corp., 1600 Biddle Ave., Wyandotte, MI 48192-3799. The petition proposes to amend the food additive regulations in § 177.2440 *Polyethersulfone resins* (21 CFR 177.2440) to provide for the safe use of 1,1'-sulfonylbis[4-chlorobenzene] polymer with 4,4'-(1-methylethylidene)bis[phenol] (maximum 8 percent) and 4,4'-sulfonylbis[phenol] (minimum 92 percent) as repeat-use articles or components of repeat-use articles that contact food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: June 29, 1992.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 92-15995 Filed 7-7-92; 8:45 am]

BILLING CODE 4160-01-F

[Docket No. 92P-0205]

Sour Cream Deviating from Identity Standard; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to Land O'Lakes, Inc., to market test a product designated as "no-fat sour cream" that deviates from the U.S. standard of identity for sour cream (21 CFR 131.160). The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the product, identify mass production problems, and assess commercial feasibility.

DATES: This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than October 6, 1992.

FOR FURTHER INFORMATION CONTACT: Nannie H. Rainey, Center for Food Safety and Applied Nutrition (HFF-414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-205-5007.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of the standards of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to Land O'Lakes, Inc., 4001 Lexington Ave. North, Arden Hills, MN 55126.

The permit covers limited interstate marketing tests of a product that deviates from the U.S. standard of identity for sour cream in 21 CFR 131.160 in that: (1) The fat content of the product is reduced from 18 percent to less than 0.5 percent, (2) sufficient vitamin A palmitate is added in a suitable carrier to ensure that a 2-tablespoon serving of the product contains 4 percent of the U.S. Recommended Daily Allowance for vitamin A, and (3) safe and suitable coloring is added so that the product more closely resembles the color of

regular sour cream. The product meets all requirements of the standard with the exception of these deviations. The purpose of the variation is to offer the consumer a product that is nutritionally equivalent to sour cream but contains fewer calories and a negligible quantity of fat.

For the purpose of this permit, the name of the product is "no-fat sour cream." In accordance with FDA's current views, "no-fat" food labeling is acceptable because the product contains less than 0.5 gram of fat per serving and contains no added ingredient that is a fat or oil. The information panel of the label will bear nutrition labeling in accordance with 21 CFR 101.9.

This permit provides for the temporary marketing of 2,000,000 pounds (907,185 kilograms) of the test product. The product will be manufactured at the Land O'Lakes' facility (46-137), 1501 West 10th St., Sioux Falls, SD 57114, and distributed in Connecticut, Delaware, Florida, Georgia, Illinois, Maine, Massachusetts, New Hampshire, Pennsylvania, Rhode Island, West Virginia, and Wisconsin.

The agency would like to point out that the test product and labeling comply with FDA's current regulations. However, the agency proposed in the **Federal Register** of November 27, 1991 (56 FR 60421 and 60478), in response to the Nutrition Labeling and Education Act of 1990, to establish definitions for terms such as "light," "reduced calories," "reduced fat," "lowfat," "nonfat," "no fat," and "fat free," as well as criteria for the use of these terms on food labels. The test product may need to be reformulated or relabeled to comply with the relevant definition that the agency ultimately adopts.

Each of the ingredients used in the food must be declared on the label as required by the applicable sections of 21 CFR part 101. This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than October 6, 1992.

Dated: June 29, 1992.

Fred R. Shank,

Director, Center for Veterinary Medicine.

[FR Doc. 92-15996 Filed 7-7-92; 8:45 am]

BILLING CODE 4160-01-F

National Institutes of Health

Statement of Organization, Functions, and Delegations of Authority

Part H, chapter HN (National Institutes of Health) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (40 FR 22859, May 27, 1975, as amended most recently at 57 FR 24262-3, June 8, 1992) is amended to reflect the following organizational change in the Office of the Director, NIH (OD/NIH) (HNA): (1) In the Office of Administration (HNA7), establish the Office of Information Resources Management (HNA79). This organizational change will provide the NIH with a single organizational focal point for the management and oversight of all major IRM functions/activities.

Section HN-B, Organization and Functions, is amended as follows: (1) Under the heading Division of Management Survey and Review (HNA78), insert the following:

Office of Information Resources Management (HNA79). The Office of Information Resources Management (OIRM) shall direct and manage NIH IRM program activities under the Paperwork Reduction Act; the Computer Security Act; and OMB Circular A-130 by serving as a focal point for:

(1) Implementing, managing and overseeing NIH IRM activities related to: IRM policy, planning and budgeting; Federal Information Processing (FIP) resources user requirements; IRM reviews; clearance of FIP resources and monitoring compliance with Delegated Procurement Authorities (DPAs); FIP and automated systems inventories; capacity management and planning; security; FIP standards; and FIP resources obsolescence and excess equipment;

(2) Collaborating with NIH components responsible for: acquisition of FIP resources; major information systems; telecommunications management; printing management; computer matching; FIP accommodations for the disabled; records and forms management including the Privacy Act; information collection; and information dissemination;

(3) Serving as the NIH liaison to the Public Health Service and the Department on all IRM matters;

(4) Participating with appropriate NIH components in assessing and enhancing the level of knowledge and skill of users of FIP resources;

(5) Coordinating with appropriate NIH components in developing an NIH-wide plan for standardizing networking, cabling, and electrical facilities for FIP resources;

(6) Ensuring that oversight measures are appropriate for the diversity, complexity, and size of the major providers and the individual Institutes, Centers, and Divisions (ICD's);

(7) Overseeing and initiating necessary improvements in the FIP clearance and acquisition process;

(8) Assisting the major providers/individual ICDs in enhancing/strengthening their individual IRM program management to allow maximum delegation of FIP resources clearance authority.

Dated: June 22, 1992.

Bernadine Healy,

Director, NIH.

FR Doc. 92-15887 Filed 7-7-92; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. N-92-3362; FR-3190-N-05]

HOPE for Public and Indian Housing Homeownership Program; Extension of Cure Period

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of extension of cure period.

SUMMARY: HUD is extending from 14 to 30 calendar days the period for curing deficiencies contained in an implementation grant application under the HOPE 1 (Homeownership and Opportunity for People Everywhere) Program for Public and Indian Housing Homeownership.

FOR FURTHER INFORMATION CONTACT: Gary Van Buskirk, Office of Resident Initiatives, Department of Housing and Urban Development, room 4112, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708-4233.

To provide service for persons who are hearing- or speech-impaired, this number may be reached via TDD by dialing the Federal Information Relay Service on 1-800-877-TDDY, 1-800-877-8339, or 202-708-9300. (Telephone numbers, other than "800" TDD numbers, are not toll free.)

SUPPLEMENTARY INFORMATION: On January 14, 1992, HUD published a Notice of Amended Program Guidelines (57 FR 1522) and a Notice of Fund Availability (NOFA) (57 FR 1550) for the Hope for Public and Indian Housing Homeownership program (HOPE 1).

In both the Notice of Amended Program Guidelines and NOFA, HUD indicated that it would provide applicants with an opportunity to cure certain deficiencies contained in HOPE 1 implementation grant applications. The Guidelines stated that HUD's notification of deficiencies must:

require applicants to submit additional or correct material so it is received in the appropriate HUD office no later than close-of-business *on the 14th calendar day after the date of the notification* to the applicant giving it an opportunity to modify its application. (Emphasis added.)

In addition, the HOPE NOFA stated that:

The notification shall require an applicant to submit additional or corrected material so that it is received in the appropriate HUD Field Office no later than close-of-business on the 14th calendar day after the date of the written notification to the applicant to modify its application.

In this Notice, HUD is extending the period for curing deficiencies contained in HOPE 1 implementation grant applications from 14 to 30 calendar days following the date of HUD's written deficiency notification to the applicant. The reason for the extension is that HOPE 1 implementation grant applications are complex and technical documents, and HUD believes that a significantly longer period of time is required to cure deficiencies than was originally contemplated.

Dated: July 1, 1992.

Joseph G. Schiff,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 92-15897 Filed 7-7-92; 8:45 am]

BILLING CODE 4210-32-M

Office of Administration

[Docket No. N-92-3470]

Notice of Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Jennifer Main, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708-0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The notice lists the following information:

(1) The title of the information collection proposal;

(2) The office of the agency to collect the information;

(3) The description of the need for the information and its proposed use;

(4) The agency form number, if applicable;

(5) What members of the public will be affected by the proposal;

(6) How frequently information submissions will be required;

(7) An estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response;

(8) Whether the proposal is new or an extension, rein statement, or revision of an information collection requirement; and

(9) The names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: June 30, 1992.

John T. Murphy,

Director, Information Resources Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Multifamily Mortgage Insurance Premium Billing Statement and Reconciliation.

Office: Housing.

Description of the Need for the Information and its Proposed Use: These forms will be used to reconcile the financial records of the mortgagees of their regular or delinquent payments made to HUD for Mortgage Insurance Premiums on Multifamily Housing Projects.

Form Number: HUD-27032A and 27033A.

Respondents: Businesses or Other For-Profit.

Frequency of Submission: Monthly.

Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Form HUD-27032A	500		12		.05		300
Form HUD-27033A	150		12		.03		54

Total Estimated Burden Hours: 354.

Status: Extension.

Contact: George Russell, (202) 708-2022, Jennifer Main, OMB, (202) 395-6880.

Dated: June 30, 1992.

[FR Doc. 92-15973 Filed 7-7-92; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of a Draft Revised Recovery Plan for the Grizzly Bear (Ursus arctos horribilis) for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of the draft revised recovery plan for the grizzly bear (*Ursus arctos horribilis*). This threatened species occurs in several populations in the lower 48 States. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before August 24, 1992, to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting Dr. Chris Servheen, Grizzly Bear Recovery Coordinator, U.S.

Fish and Wildlife Service, NS312, University of Montana, Missoula, Montana 59812. Written comments and materials regarding this draft recovery plan should be sent to Dr. Chris Servheen at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Dr. Chris Servheen, (see ADDRESSES above) at telephone (406) 329-3223.

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the Fish and Wildlife Service's (Service) endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal Agencies also will take these comments into account in the course of implementing approved recovery plans.

The grizzly bear was listed under the Act as a threatened species in the 48 conterminous States on July 28, 1975 (40 FR 31734), due to current and potential threats to the species populations and habitat from human activities. The original recovery plan for the grizzly bear was approved on January 29, 1982. This is a revision of that document. The draft revision of the Grizzly Bear Recovery Plan was first made available for public review on October 4, 1990 (55 FR 40725). Over 2,000 comment letters were received and evaluated. Many of the suggested additions and changes have been incorporated into the new draft revision.

The plan addresses grizzly bear recovery in seven ecosystems. Populations of grizzly bear are known in five of the seven ecosystems—the Northern Continental Divide ecosystem in Montana; the Yellowstone ecosystem in Wyoming, Idaho, and Montana; the Cabinet-Yaak ecosystem in Idaho and Montana; the Selkirk ecosystem in Washington and Idaho; and the North Cascades ecosystem in Washington. As yet, there is no firm evidence of grizzly bear in the Bitterroot ecosystem in Montana and Idaho or the San Juan ecosystem in Colorado. Threats to the grizzly bear populations come from habitat modification caused by human activities such as logging, recreational development, subdivisions, and mining and energy development, and from direct human/bear conflicts as a result of recreational use, livestock operations, highway and railroad corridors, illegal mortality, etc.

Recovery efforts have focused on protecting the species populations and habitat from habitat-destroying activities through section 7 and section 9 of the Act and research on bear biology and habitat needs. Recovery criteria have been established for four of the ecosystems (Yellowstone, Cabinet-Yaak, Northern Continental Divide, and Selkirk). Recovery criteria are being developed for two other ecosystems (North Cascades and Bitterroot). The San Juan ecosystem is an evaluation area and no recovery criteria will be developed until the ecosystem's recovery potential has been evaluated. Delisting can be achieved independently for each of the grizzly bear populations.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the recovery plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533 (f).

Dated: June 26, 1992.

John L. Spinks, Jr.

Acting Regional Director.

[FR Doc. 92-15783 Filed 7-7-92; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Land Management

[WY-920-02-4120-14]

AGENCY: Bureau of Land Management, Interior, Wyoming.

ACTION: Notice of Competitive Coal Lease Sale; West Black Thunder Tract, WYW118907.

SUMMARY: Notice is hereby given that certain coal resources in the West Black Thunder Tract described below in Campbell County, Wyoming, will be offered for competitive lease by sealed bid in accordance with the provisions of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 *et seq.*).

DATES: The lease sale will be held at 2 p.m., on Wednesday, August 12, 1992. Sealed bids must be submitted on or before 4 p.m., on Tuesday, August 11, 1992.

ADDRESSES: The lease sale will be held in the Third Floor Conference Room of the Wyoming State Office, 2515 Warren Avenue, P.O. Box 1828, Cheyenne, Wyoming 82003. Sealed bids must be submitted to the Cashier, Wyoming State Office, at the address given above.

FOR FURTHER INFORMATION CONTACT: Laura Steele, Land Law Examiner, or Eugene Jonart, Coal Coordinator at (307) 775-6250.

SUPPLEMENTARY INFORMATION: This coal lease sale is being held in response to an application for a coal lease sale filed by Thunder Basin Coal Company of Wright, Wyoming. The coal resources to be offered consist of all reserves recoverable by surface mining methods in the following described lands located approximately 36 miles southeast of the city of Gillette, Wyoming:

T. 43 N., R. 70 W., 6th P.M., Wyoming
- Sec. 7: Lots 8 (S2), 13 (SW), 14 thru 18, and 19 (NW & S2);
- Sec. 18: Lots 5 thru 20;
- Sec. 19: Lots 5 thru 20;
- Sec. 29: Lots 3 thru 6 and 9 thru 16;
- Sec. 30: Lots 5 thru 20;
- Sec. 31: Lots 5 thru 12;
- Sec. 32: Lots 1 thru 8;
- Sec. 33: Lots 3 thru 6.

Containing 3,492.495 acres.

The tract, located adjacent to the existing Black Thunder Mine, contains Fort Union Formation coal found within three zones that can be mined as a single unit (main seam) over much of the tract. The main seam averages 74 feet thick on the eastern portion of the tract but splits in the western portion of the tract area. In the western portion of the tract, the upper split averages about 9 feet thick while the main seam averages about 61 feet thick. The tract contains an estimated 429,048,216 tons of in-place coal reserves (417,834,298 tons estimated recoverable coal reserves) at an average overall stripping ration of 2.72 BCY/Ton. The coal rank is subbituminous C with average in-place quality of 8,839 BTU/

LB, 0.25 percent sulfur, and 4.4 percent ash. This places the coal reserves in the tract near the top quality range for coal being mined in the southern Powder River Basin.

The tract in this lease offering contains split estate lands. The surface is not held by a qualified surface owner as defined in the regulations, 43 CFR 3400.0-5.

The tract will be leased to the qualified bidder of the highest cash amount provided that the high bid equals the fair market value of the tract. The minimum bid for the tract is $100 per acre or fraction thereof. No bid that is less than $100 per acre, or fraction thereof, will be considered. The bid should be sent by "Certified Mail, Return Receipt Requested", or be hand delivered. The Cashier will issue a receipt for each hand-delivered bid. Bids received after 4 p.m., on Tuesday, August 11, 1992, will not be considered. The minimum bid is not intended to represent fair market value. The fair market value of the tract will be determined by the Authorized Officer after the sale.

If identical high bids are received, the tying high bidders will be requested to submit follow-up sealed bids until a high bid is received. All tie-breaking sealed bids must be submitted within 15 minutes following the Sale Official's announcement at the sale that identical high bids have been received.

The lease issued as a result of this offering will provide for payment of an annual advance rental of $3.00 per acre, or fraction thereof, and of a royalty payment to the United States of 12½ percent of the value of coal produced by strip or augur mining methods and 8 percent of the value of the coal produced by underground mining methods. The value of the coal will be determined in accordance with 30 CFR 203.250(f).

Bidding instructions for the tract offered and the terms and conditions of the proposed coal lease are available from the Wyoming State Office at the addresses above. Case file documents WYW118907, are available for inspection at the Wyoming State Office

Lynn E. Rust,

Chief, Branch of Mining Law and Solid Minerals.

[FR Doc. 92-15904 Filed 7-7-92; 8:45 am]

BILLING CODE 4310-22-M

[UT-040-02-4410-08]

Notice of Plan Amendment; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice is to advise the public that an environmental assessment and proposed planning amendment for the Virgin River Management Framework Plan have been completed. The proposed plan amendment provides for the sale of a tract of public land in Washington County, Utah, comprising approximately .9 acres, described as follows:

Salt Lake Meridian

T.39 S., R. 16 W.,

Section 19, that portion of the SW¼SW¼SE¼NE¼ lying west of the county road.

DATES: The protest period for this proposed plan amendment will commence with the date of publication of this notice. Protests must be submitted on or before August 7, 1992.

ADDRESSES: Protests should be addressed to the Director of the Bureau of Land Management, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Dale Ross, Dixie Resource Area, 225 North Bluff Street, St. George, Utah 84770, telephone (801) 673-4654.

SUPPLEMENTARY INFORMATION: The plan amendment is necessary since the existing plan does not identify this land for disposal. The environmental assessment identifies no significant impacts. Resource values, public values and objectives involved, and the public interest would be served by providing this land for sale.

This action is announced pursuant to section 203 of the Federal Land Policy and Management Act of 1976 and 43 CFR, part 1610. The proposed planning amendment is subject to protest from any adversely affected party who participated in the planning process. Protests must be made in accordance with the provision of 43 CFR 1610.5-2.

Date: June 30, 1992.

William R. Papworth,

Acting State Director.

[FR Doc. 92-15905 Filed 7-7-92; 8:45 am]

BILLING CODE 4310-DQ-M

[ID-943-4214-10; IDI-29260]

Proposed Withdrawal and Opportunity for Public Meeting; ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw 309 acres of public land in Lincoln County to protect several unique geologic sites along the Big Wood River. This notice closes the land for up to 2 years from the mining laws, only. The land will remain open to mineral leasing.

DATES: Comments and requests for a public meeting must be received by October 6, 1992.

ADDRESSES: Comments and meeting requests should be sent to the Idaho State Director, BLM, 3380 Americana Terrace, Boise, Idaho 83706.

FOR FURTHER INFORMATION CONTACT: William E. Ireland, BLM Idaho State Office, (208) 384-3162.

SUPPLEMENTARY INFORMATION: On June 29, 1992, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described public land from the mining laws, only, subject to valid existing rights:

Lands to be withdrawn are those lying on either side of the center-line of the Big Wood River channel measured perpendicular to each center-line segment. Segments one (1) and three (3) are 200 feet wide (100 feet on either side of channel center-line). Segments two (2), four (4), five (5), six (6) and seven (7), are 300 feet wide (150 feet on either side of channel center-line). The following descriptions define the center-line of the Big Wood River channel for these segments to be withdrawn.

The point of beginning for each river segment is tied to the True Point of Beginning which is the corner common to Section 32 and 33, T. 2 S., R. 18 E., Boise Meridian, and Section 4 and 5, T. 3 S., R. 18 E., Boise Meridian.

From the True Point of Beginning, N. 88°15'51" E., 1068.05 ft. to the point of beginning of segment no. 1.

Thence: S. 43°59'19"E., 683.93 ft.;
S. 69°51'30"E., 407.84 ft.;
S. 13°27'17"E., 744.43 ft.;
S. 88°59'17"E., 735.49 ft.;
S. 22°59'45"E., 470.45 ft.;
S. 08°24'20"W., 404.92 ft.;
S. 55°26'40"E., 429.74 ft.;
S. 23°56'56"E., 491.71 ft.;
S. 27°56'04"E., 556.80 ft.;
S. 27°39'57"E., 365.95 ft.;
S. 38°30'53"E., 371.51 ft.;
S. 21°32'11"E., 295.66 ft.;
N. 83°11'03"E., 647.91 ft.;
S. 71°32'45"E., 387.64 ft.;
S. 05°27'59"E., 866.34 ft.;
S. 23°44'04"E., 536.87 ft.;
S. 49°27'34"E., 425.93 ft.;
S. 13°08'00"W., 535.89 ft.;
S. 15°13'25"W., 578.48 ft.;
S. 30°16'31"W., 426.33 ft.;
S. 28°12'50"W., 421.32 ft.; from which the True Point of Beginning bears N. 33°58'06"W., 9349.74 feet distant.

From the True Point of Beginning, S. 30°37'11" E., 10,442.10 feet to the point of beginning of segment no. 2.

Thence: S. 17°31'22"W., 551.58 ft.;

S. 48°12'40"W., 908.45 ft.;
S. 46°14'41"W., 404.50 ft.; from which the True Point of Beginning bears N. 21°47'54" W., 11,208.77 ft. distant.

From the True Point of Beginning, S. 20°35'09"E., 16,508.89 feet to the point of beginning of segment no. 3.

Thence: S. 07°44'43"E., 251.55 ft.;
S. 03°51'33"E., 449.90 ft.; from which the True Point of Beginning bears N. 19°55'41"W., 16,994.28 feet distant.

From the True Point of Beginning, S. 04°35'14"E., 23,660.56 feet to the point of beginning of segment no. 4.

Thence: S. 26°37'12"E., 593.24 ft.;
S. 15°23'08"W., 548.57 ft.;
S. 24°30'21"W., 509.82 ft.;
S. 03°43'11"E., 532.53 ft.;
S. 10°22'30"W., 624.26 ft.;
S. 46°42'22"E., 476.70 ft.;
S. 29°45'27"E., 399.96 ft.;
S. 30°54'21"E. 385.95 ft.; from which the True Point of Beginning bears N. 04°56'39"W., 27,368.43 feet distant.

From the True Point of Beginning, S. 08°54'35"E., 32,444.82 feet to the point of beginning of segment no. 5.

Thence: S. 84°59'22"E., 675.19 ft.;
N. 74°25'54"E., 697.25 ft.;
N. 65°32'30"E., 1205.49 ft.;
S. 86°44'40"E., 1041.29 ft.;
S. 66°51'26"E., 465.63 ft.; from which the True Point of Beginning bears N. 15°49'05"W., 32,915.05 feet distant.

From the True Point of Beginning, S. 16°56'04"E., 36,970.31 feet to the point of beginning of segment no. 6.

Thence: S. 28°41'46"E., 769.01 ft.;
S. 08°03'39"W., 868.29 ft.;
S. 44°41'51"E., 262.17 ft.;
S. 81°25'25"E., 432.36 ft.;
S. 05°48'32"E., 616.57 ft.;
S. 30°50'46"E., 358.83 ft.;
S. 13°33'15"W., 507.06 ft.;
S. 07°26'41"E., 495.92 ft.;
S. 11°33'16"E., 628.92 ft.; from which the True Point of Beginning bears N. 16°50'49"W., 41,313.36 feet distant.

From the True Point of Beginning, S. 17°38'22"E., 42,514.59 feet to the point of beginning of segment no. 7a.

Thence: S. 25°19'17" W., 818.16 ft.;
S. 10°38'18" E., 406.96 ft.;
S. 25°26'56" E., 311.54 ft.;
S. 47°35'28" W., 573.54 ft.;
S. 04°35'37" W., 339.23 ft.;
S. 51°35'25" W., 410.21 ft.;
S. 57°21'48" W., 330.74 ft.;
S. 04°27'18" W., 533.36 ft.;
S. 60°20'02" W., 574.09 ft.;
S. 81°02'43" W., 952.34 ft.;
S. 14°13'23" W., 1005.95 ft.;
S. 20°29'33" W., 744.18 ft.;
S. 53°05'46" W., 514.46 ft.;
S. 02°52'29" E., 607.70 ft.;
S. 10°05'41" W., 583.33 ft.;
S. 55°25'33" W., 658.18 ft.;
S. 16°45'53" E., 462.20 ft.;
S. 66°32'33" W., 527.00 ft.;
S. 77°24'38" W., 692.24 ft.;
S. 51°07'32" W., 472.41 ft.;
S. 67°22'31" W., 508.67 ft.;
S. 48°21'43" W., 783.98 ft.;
S. 42°33'53" W., 562.70 ft.; from which the True Point of Beginning bears N. 06°39'56" W., 50,181.07 feet distant.

From the True Point of Beginning, S. 12°32'21" E., 46,124.70 feet to the point of beginning of segment no. 7b.

Thence: S. 12°57'51" E., 393.87 ft.;
S. 49°34'36" E., 135.82 ft.;
S. 17°46'05" E., 388.98 ft.;
S. 02°35'03" E., 367.77 ft.;
S. 65°14'45" W., 323.55 ft.;
S. 42°37'11" E., 239.80 ft.;
S. 18°37'34" E., 373.38 ft.;
S. 60°29'42" W., 302.93 ft.;
S. 41°02'32" W., 313.36 ft.;
S. 54°32'06" W., 359.45 ft.;
S. 68°34'28" W., 456.99 ft.;
S. 11°35'07" W., 211.31 ft.;
S. 13°41'48" E., 377.90 ft.;
S. 08°03'06" W., 314.83 ft.;
S. 54°30'46" W., 359.10 ft.;
N. 77°39'24" W., 542.47 ft.;
S. 80°01'31" W., 417.66 ft.;
S. 38°03'01" W., 262.61 ft.;
S. 78°02'02" W., 285.49 ft.;
S. 66°14'09" W., 368.79 ft.;
S. 08°03'06" W., 314.83 ft.;
S. 19°21'03" W., 612.92 ft.;
N. 44°56'06" W., 291.74 ft.;
S. 48°25'32" W., 313.28 ft.;
N. 32°45'55" W., 299.89 ft.;
S. 81°19'19" W., 401.37 ft.; from which the True Point of Beginning bears N. 06°39'56" W., 50,181.07 feet distant.

The areas described aggregate 309 acres, more or less, in Lincoln County.

The purpose of the proposed withdrawal is to protect several unique geologic sites along the Big Wood River drainage. The sites contain a limited quantity of uniquely-shaped water worn lava boulders and beautiful stone sculptures. The sites have high public value for recreational pursuits in the form of viewing, photography, exploring and hiking.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Idaho State Director of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Idaho State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which may be permitted during this segregative period are all uses, other than location and entry under the mining laws.

Dated: July 1, 1992.

William E. Ireland,

Chief, Realty Operations Section.

[FR Doc. 92-15906 Filed 7-7-92; 8:45 am]

BILLING CODE 4310-GG-M

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related form maybe obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirements should be made directly to the bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1029-0007), Washington, DC 20503, telephone 202-395-7340.

Title: General Performance Standards 30 CFR 715.

OMB Approval Number: 1029-0007.

Abstract: This information is collected to meet the requirements of section 502 of the Surface Mining Control and Reclamation Act. The standards contained in the regulation are applicable at sites governed under the initial regulatory program.

Bureau Form Number: None.

Frequency: On occasion.

Description of Respondents: Coal Mine Operators.

Estimated Completion Time: One hour.

Annual Responses: One.

Annual Burden Hours: One.

Bureau Clearance Officer: Andrew DeVito (202) 343-5150.

Dated: June 2, 1992.

John Mosesso,

Chief, Division of Technical Services.

[FR Doc. 92-15884 Filed 7-7-92; 8:45 a.m.]

BILLING CODE 4310-05-M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701-TA-319-354 and 731-TA-573-620 (Preliminary)]

Certain Flat-Rolled Carbon Steel Products

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of preliminary countervailing duty and antidumping investigations.

SUMMARY: The Commission hereby gives notice of the institution of preliminary countervailing duty investigations Nos. 701-TA-319-354 (Preliminary) under section 730(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of certain flat-rolled carbon steel products, provided for in headings/subheadings 7208, 7209, 7210.31, 7210.39, 7210.41, 7210.49, 7210.60, 7210.70, 7210.90, 7211, 7212.21, 7212.29, 7212.30, 7212.40, 7212.50, and 7212.60 of the Harmonized Tariff Schedule of the United States, that are alleged to be subsidized by the Governments of the following countries:

Country	Cut-to-length plate	Hot-rolled sheet and strip	Cold-rolled sheet and strip	Corrosion-resistant sheet
Austria			701-TA-336	
Belgium	701-TA-319	701-TA-329	701-TA-337	
Brazil	701-TA-320	701-TA-330	701-TA-338	701-TA-347
France	701-TA-321	701-TA-331	701-TA-339	701-TA-348
Germany	701-TA-322	701-TA-332	701-TA-340	701-TA-349
Italy	701-TA-323	701-TA-333	701-TA-341	
Korea	701-TA-324	701-TA-334	701-TA-342	701-TA-350
Mexico	701-TA-325			701-TA-351
New Zealand		701-TA-335	701-TA-343	701-TA-352
Spain	701-TA-326		701-TA-344	
Sweden	701-TA-327			701-TA-353
Taiwan			701-TA-345	701-TA-354
United Kingdom	701-TA-328		701-TA-346	

The Commission also gives notice of the institution of preliminary antidumping investigations Nos. 731-TA-573-620 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from the following countries of certain flat-rolled carbon steel products, that are alleged to be sold in the United States at less than fair value:

Country	Cut-to-length plate	Hot-rolled sheet and strip	Cold-rolled sheet and strip	Corrosion-resistant sheet
Argentina			731-TA-597	
Australia			731-TA-598	731-TA-612
Austria			731-TA-599	
Belgium	731-TA-573	731-TA-588	731-TA-600	
Brazil	731-TA-574	731-TA-589	731-TA-601	731-TA-613
Canada	731-TA-575	731-TA-590	731-TA-602	731-TA-614
Finland	731-TA-576			
France	731-TA-577	731-TA-591	731-TA-603	731-TA-615
Germany	731-TA-578	731-TA-592	731-TA-604	731-TA-616
Italy	731-TA-579	731-TA-593	731-TA-605	
Japan	731-TA-580	731-TA-594	731-TA-606	731-TA-617
Korea	731-TA-581	731-TA-595	731-TA-607	731-TA-618
Mexico	731-TA-582			731-TA-619
Netherlands		731-TA-596	731-TA-608	
Poland	731-TA-583			
Romania	731-TA-584			
Spain	731-TA-585		731-TA-609	
Sweden	731-TA-586			
Taiwan			731-TA-610	731-TA-620
United Kingdom	731-TA-587		731-TA-611	

The Commission must complete preliminary countervailing duty and antidumping investigations in 45 days, or in these cases by August 14, 1992.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: June 30, 1992.

FOR FURTHER INFORMATION CONTACT: Valerie Newkirk (202-205-3190), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000.

SUPPLEMENTARY INFORMATION:

Background.

These investigations are being instituted in response to petitions filed on June 30, 1992, by counsel for Armco Steel Co., L.P.; Bethlehem Steel Corp.; Geneva Steel; Gulf States Steel, Inc. of Alabama; Inland Steel Industries, Inc.; Laclede Steel Co.; LTV Steel Co., Inc.; Lukens Steel Co.; National Steel Corp.; Sharon Steel Corp.; USX Corp./U.S. Steel Group; and WCI Steel, Inc. (not all companies are petitioners in all cases).

Participation in the Investigations and Public Service List.

Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven (7) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List.

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these preliminary investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made not later than seven (7) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Investigations has scheduled a conference in connection with these investigations for 9:30 a.m. on July 21, 1992, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Vera Libeau (202-205-3176) not later than July 14, 1992, to arrange for their appearance. Parties in support of the imposition of countervailing and antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated a specified time period within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submissions

As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before July 24, 1992, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three (3) days before the conference. In briefs or written testimony contain BPI, they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules.

Issued: July 1, 1992.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 92-15937 Filed 7-7-92; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-333]

Commission Determination to Reverse an Initial Determination Finding a Respondent in Default and to Remand the Matter to the Presiding Administrative Law Judge for Reconsideration of a Joint Motion to Terminate the Investigation as to the Respondent on the Basis of a Proposed Consent Order

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

In the Matter of Certain Woodworking accessories.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to reverse the presiding administrative law judge's (ALJ's) initial determination (ID) in the above-captioned investigation finding respondent Taiwan Zest Industrial Co., Ltd. ("Taiwan Zest") in default and to remand the matter to the ALJ for reconsideration of a joint motion to terminate the investigation as to Taiwan Zest on the basis of a proposed consent order.

FOR FURTHER INFORMATION CONTACT: Cynthia P. Johnson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-205-3098.

SUPPLEMENTARY INFORMATION: On January 23, 1992, complainant Cantlin, Inc. ("Cantlin") filed a motion for a default judgment against Taiwan Zest. On March 11, 1992, the ALJ issued an order (Order No. 23) giving Taiwan Zest until March 24, 1992, to show cause why it should not be found to have waived its right to appear, to be served with documents, and to contest the allegations at issue in the investigation. Taiwan Zest did not respond to the show cause order. On April 1, 1992, complainant and Taiwan Zest also filed a joint motion for termination of the investigation with respect to Taiwan Zest on the basis of a proposed consent order. On April 7, 1992, the ALJ issued an ID (Order No. 28) finding Taiwan Zest in default. In doing so, the ALJ found that Taiwan Zest had waived its right to appear, to be served with documents, and to contest the allegations at issue in the investigation In the ID, the ALJ noted that he had also issued an order (Order No. 29) denying the joint motion to terminate the investigation as to Taiwan Zest on the basis of the consent order as moot in view of his ID finding Taiwan Zest in default.

Because of the intervening filing of the joint motion to terminate the investigation on the basis of a consent order, the Commission determined to review the ID finding Taiwan Zest in default. The Commission requested submissions from the parties addressing the questions of (1) whether the joint motion to terminate the investigation on the basis of the proposed consent order is the current position of the parties and, if so, (2) whether there is any reason that the motion to terminate the investigation on the basis of a consent order should not therefore supersede the motion to find Taiwan Zest in default. The Commission also stated that it wished to determine whether Taiwan Zest, as distinct from Jaw-Hwa International Patent and Trademark Office, had received the order to show cause and the default ID. The Commission received written submissions from the Cantlin, the Commission investigative attorney, and Taiwan Zest. No reply submissions were received.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and the Commission interim rule 210.56 (19 CFR 210.56).

Copies of the Commission's order, the ID, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-205-2000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810.

Issued: July 1, 1992.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 92-15934 Filed 7-7-92; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. TA-406-12]

Oscillating Fans from the People's Republic of China

AGENCY: United States International Trade Commission.

ACTION: Termination of investigation.

SUMMARY: On June 30, 1992, the Commission received a letter from counsel to petitioner (Lasko Metal Products, Inc.) in the subject investigation stating that Lasko was withdrawing its petition and requesting that the Commission terminate the investigation. In his letter counsel said "there is a compelling reason for this withdrawal based on Lasko's interest in maintaining good relations with its customers. It has come to Lasko's attention that some customers find the time and effort needed to respond to the Commission's questionnaires burdensome. Lasko, of course, must be sensitive to its customers' concerns in a highly competitive market." Counsel separately indicated that the only other known domestic producer acquiesces in the request.

After carefully considering petitioner's request, the Commission has determined to grant the request and to terminate the investigation.

Notice of institution of the investigation was published in the **Federal Register** of June 16, 1992 (57 F.R. 26876).

EFFECTIVE DATE: July 2, 1992.

FOR FURTHER INFORMATION CONTACT: Woodley Timberlake (202-205-3188), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810.

Authority: This investigation is being terminated under authority of section 406 of the Trade Act of 1974 (19 U.S.C. 2436). This notice is published pursuant to section 201.10 of the Commission's rules (19 CFR 201.10).

By order of the Commission.

Issued: July 6, 1992.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 92-16174 Filed 7-7-92; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32036]

Wisconsin Central Transportation Corp., et al.—Continuance in Control—Fox Valley & Western Ltd.

Decided: July 1, 1992.

By notice served and published May 28, 1992, 57 FR 22489, the Commission accepted the application by Wisconsin Central Transportation Corporation (WCTC) and its subsidiaries to continue in control of Fox Valley & Western Ltd. (FVW) when FVW becomes a carrier through its acquisition and operation of certain rail lines in Wisconsin. The notice set July 13, 1992, as the due date for public comments on the application.

On June 22, 1992, Chicago and North Western Transportation Company (CNW) filed a motion for a 21-day extension of time in which to file comments in this proceeding. CNW states that, despite its diligence in pursuing discovery, the additional time is needed because of applicants' alleged delays in producing requested data to provide sufficient time for CNW to analyze voluminous traffic tapes and other documents belatedly provided to it.

Applicants oppose CNW's motion. They contend that CNW has had ample time to prepare its case and that the Commission should not accommodate what they characterize as CNW's attempt to turn a transaction of limited scope into a major regulatory proceeding.

CNW's extension request will be granted in part. As CNW indicates, an extension for filing comments will not affect the scheduled oral hearings if they are deemed necessary or the Commission's December 10, 1992, deadline for a final decision. Those dates, as well as the due date for briefs, will remain intact. A 14-day extension should be sufficient, however, to meet CNW's needs. With only a few exceptions, CNW indicates that it now possesses the information it seeks in this case. CNW has not shown that it requires the full 3-week extension sought.

It is ordered: 1. CNW's motion for extension is granted in part. The procedural schedule is extended as follows:

2. Written public comments are due July 27, 1992.

3. DOT's and Attorney General's comments are due August 11, 1992.

4. WCTC's reply to comments is due August 25, 1992. The remaining schedule will not be altered.

5. This decision is effective on July 8, 1992.

By the Commission, Sidney L. Strickland, Jr., Secretary.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-15980 Filed 7-7-92; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Tad E. Lonergan, M.D.; Revocation of Registrations

On March 11, 1992, the Deputy Assistant Administrator of the Drug Enforcement Administration (DEA), Office of Diversion Control, issued to Tad E. Lonergan, M.D., an Order to Show Cause proposing to revoke Dr. Lonergan's DEA Certificates of Registration, AL1418638 and BL1664641, and to deny any pending applications for renewal of such registrations. Prior to issuance of the Order to Show Cause, DEA received correspondence from Dr. Lonergan advising that his previous offices, at 1815 West Avenue, Fullerton, California 92633, had been closed and that his current address was Willow Springs Ranch, P.O. Box 731, Inyokern, California 93527. Dr. Lonergan's letter also advised that he was forwarding a copy thereof to an attorney who would act on his behalf. Accordingly, the Order to Show Cause was simultaneously mailed to Dr. Lonergan, at the Inyokern address, and to his attorney, Robert E. Smith, Esq., 1555 Palm Canyon Drive, Palm Springs, California 92264. While the Order to Show Cause mailed to Dr. Lonergan was returned to DEA unclaimed, the duplicate mailed to his attorney was received on March 20, 1992.

More than thirty days have elapsed since the Order to Show Cause was received by the attorney authorized to act on Dr. Lonergan's behalf and DEA has received no response thereto. Additionally, attempts by DEA personnel to contact Mr. Smith regarding his client's intentions have failed to elicit a response. Therefore, pursuant to the provisions of 21 CFR 1301.54(a) and 1301.54(d), Dr. Lonergan is deemed to have waived his opportunity for a hearing on any matters of law and fact involved herein. Accordingly, the Administrator now issues his final order in this matter without a hearing and based on the investigative file. 21 CFR 1301.57.

The Administrator finds that on or about June 3, 1988, in the Superior Court of California, in and for Orange County, Dr. Lonergan was convicted of three counts of issuing prescriptions for controlled substances without a legitimate medical purpose and two counts of prescribing controlled substances to a person not under treatment for a pathology other than addiction. The offenses of which Dr. Lonergan was convicted, violations of sections 11153 and 11154 of the California Health and Safety Code, respectively, are felonies relating to controlled substances. On March 26, 1990, the California Court of Appeal for the Fourth District affirmed the three section 11153 convictions.

The Administrator further finds that in an Order effective April 8, 1991, the Medical Board of California, Division of Medical Quality, revoked Dr. Lonergan's license to practice as a physician and surgeon in the State of California, thereby terminating his authority to dispense, administer, prescribe or otherwise handle controlled substances in the state in which he was registered by DEA.

Pursuant to 21 U.S.C. 824(a), the Administrator may revoke a registration if he finds that the registrant has been convicted of a felony relating to controlled substances, has had his state license revoked and is no longer authorized to dispense controlled substances or has committed such acts as would render his registration contrary to the public interest as determined by reference to the factors 21 U.S.C. 823(f). Those factors include the recommendation of the appropriate state licensing board, the applicant's experience in handling controlled substances, his conviction record under laws relating to the distribution of controlled substances, compliance with applicable Federal and state laws relating to controlled substances and such other conduct which may threaten the public health and safety.

Dr. Lonergan has been convicted of a felony offense relating to controlled substances; his license to practice medicine has been revoked and his authority to dispense controlled substances has been terminated by an appropriate state professional licensing board; the issuance of prescriptions for controlled substances without legitimate medical purpose is both a violation of Federal and state laws relating to controlled substances, and a threat to the public health and safety. Accordingly, the Administrator concludes that there are lawful bases for the revocation of Dr. Lonergan's registration and the denial of any pending applications for renewal thereof.

This agency has consistently held that the lack of a state license requires the revocation of the registrant's DEA Certificate of Registration. See Lawrence R. Alexander, M.D., Docket No. 92-22, 57 FR 22256 (1992); Bobby Watts, M.D., Docket No. 87-71, 53 FR 11919 (1988); Wingfield Drugs, Inc., Docket No. 87-13, 52 FR 27070 (1987), and cases cited therein.

There having been no evidence of mitigation or explanation submitted on behalf of the registrant, the Administrator concludes that Dr. Lonergan's registration must be revoked.

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), hereby orders that DEA Certificates of Registration, AL1418638 and BL1664641, previously issued to Tad E. Lonergan, M.D., be, and they hereby are, revoked. The Administrator further orders that any pending applications for renewal of such registrations be, and they hereby are, denied. This order is effective July 8, 1992.

Dated: June 29, 1992.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 92-15867 Filed 7-7-92; 8:45 a.m.]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-26,827]

Amerada Hess Corporation Houston, TX; Negative Determination Regarding Application for Reconsideration

By an application dated June 18, 1992, after being granted a filing extension, one of the petitioners requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on April 3, 1992 and was published in the Federal Register on April 20, 1992 (57 FR 14435).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The petitioner, on the basis of the company's annual report, states that the decreased sales or production and the increased import criteria of the Group Eligibility Requirements for certification under the Trade Act were met. Petitioner also alleges several certification inconsistencies where the

Department certified oil and gas workers from Dekalb Energy and Arco Oil & Gas while denying workers at Amerada Hess.

Investigation findings show that Amerada Hess is an integrated oil and gas producer with increased sales and production of crude oil, natural gas and natural gas liquids in 1990 compared to 1989 and in the first six months of 1991 compared to the same period in 1990. The Department's sales and production finding is actually supported by the company's 1991 annual report which also shows increased sales of crude oil and natural gas in 1991. The annual report specifically shows sales of crude oil increasing from $1.25 billion in 1990 to $1.45 billion in 1991. Sales of natural gas increased from $459 million in 1990 to $574 million in 1991. The petroleum products group used by the petitioner to show that the workers met the decreased sales or production criterion is not relevant since these are refined products—gasoline, aviation fuel, diesel fuel etc.

Further, the Dekalb and Arco petitions met declining sales or production criterion and the "contributed importantly" test while Amerada Hess did not, e.g., Dekalb had increased company imports of natural gas in 1991 compared to 1990 and Arco's customers increased their import purchases of natural gas while decreasing their purchases of natural gas from Arco.

Petitioner also states that the Department reconsidered a number of petitions for oil and gas service companies which included three exploration and production companies which, though smaller, are similar to Amerada Hess—Anschutz Corporation, TA-W-26,958; Leede Exploration TA-W-27,048 and Ashland Exploration TA-W-26,764.

A review of the investigation files shows no inconsistencies with the Leede's and Anschutz' investigation versus Amerada Hess. The findings show that Leede Exploration is an independent oil and gas exploration company with no divisions or subsidiaries. Leede evaluates and develops oil and gas projects for unaffiliated companies in the oil and gas industry. Anschutz is an integrated production company which met all the Group Eligibility Requirements of the Trade Act including the "contributed importantly" test—its customers reported declining purchases from Anschutz and increased import purchases in the period relevant to the petition.

The Department erred in its certification of workers at the Ashland Exploration Company. New findings show that Ashland Exploration explores only for its own account and is a producer of crude oil and natural gas. A termination of certification investigation is being instituted to appropriately correct that situation. However, this error would not provide a basis for a worker group certification for workers of another company.

The petitioner brought a printing error in the Federal Register to the Department's attention that incorrectly states that increases of imports contributed importantly to worker separations at Amerada Hess. The error appeared in the April 20, 1992 edition of the **Federal Register** (57 FR 14435) and is in the process of being corrected.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 26th day of June 1992.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Service, Unemployment Insurance Service.

[FR Doc. 92-15912 Filed 7-7-92; 8:45 am]

BILLING CODE 4510-30-M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of June 1992.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-27; Mertz, Inc., Ponca City, OK

TA-W-27; O & K Trojan, Inc., Batavia, NY

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA-W-27, 413; Sun Pipe Line Co., Longview, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-27, 206; Phillips Petroleum Co., Bellaire, TX

The investigation revealed that criterion (2) and criterion (3) have not been met. Sales or production did not decline during the relevant period as required for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

TA-W-27, 264; Union Texas Petroleum, Auroro, CO

The investigation revealed that criterion (2) and criterion (3) have not been met. Sales or production did not decline during the relevant period as required for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

TA-W-27, 233; Reckitt & Colman Household Products, Canton, OH

U.S. imports of soap and other detergents decreased in 1991 compared to 1990.

TA-W-27, 117; General Dynamics Corp., San Diego, CA

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-27, 117A & TA-W-27, 117B; General Dynamics Corp., Convair Div., San Diego, CA and Space Systems Div., San Diego, CA

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-27, 117C & TA-W-27, 117D; General Dynamics Corp., Pomona Div., Pomona, CA and Air Defense System Div., Pomona, CA

Increased imports did not contribute importantly to worker separations at the firm.

Affirmative Determinations

TA-W-27, 249; Moeller Manufacturing Corp., Lincoln, RI

A certification was issued covering all workers separated on or after May 5, 1991.

TA-W-27, 131 & TA-W-27, 135; Maxus Energy Corp., Dallas, TX and Amarillo, TX

A certification was issued covering all workers separated on or after January 1, 1992.

TA-W-27, 171; Patterson Drilling Co., Inc., Snyder, TX

A certification was issued covering all workers separated on of after March 20, 1991.

TA-W-27,194; Clarostat Mfg. Co., Inc., Dover, NH

A certification was issued covering all workers separated on or after April 15, 1991.

I hereby certify that the aforementioned determinations were issued during the month of June 1992. Copies of these determinations are available for inspection in room C-4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons to write to the above address.

Dated: June 23, 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92-15913 Filed 7-7-92; 8:45 am]

BILLING CODE 4510-30-M

Occupational Safety and Health Administration

[Docket No. NRTL-2-91]

GTE TestMark Laboratories

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Notice of application for recognition as a nationally recognized testing laboratory, and preliminary finding.

SUMMARY: This notice announces the application of the GTE TestMark Laboratories for recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7, and presents the Agency's preliminary finding.

DATES: The last date for interested parties to submit comments is September 8, 1992.

ADDRESSES: Send comments to: NRTL Recognition Program, Office of Variance Determination, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue, NW., room N3653, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: James J. Concannon, Director, Office of Variance Determination, NRTL Recognition Program, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue, NW., room N3653, Washington, DC 20210.

SUPPLEMENTARY INFORMATION:

Notice of Application

Notice is hereby given that the GTE TestMark Laboratories (TML) has made application pursuant to section 6(b) of the Occupational Safety and Health Act of 1970, (84 Stat. 1593, 29 U.S.C. 655), Secretary of Labor's Order No. 1-90 (55 FR 9033), and 29 CFR 1910.7 for recognition as a Nationally Recognized Testing Laboratory.

The addresses of the laboratories covered by this application are:

GTE TestMark Laboratories, 3050 Harrodsburg Road, Lexington, Kentucky 40503.

GTE Testmark Laboratories, 165 Trade Street, Lexington, Kentucky 40510.

Regarding the merits of the application, the applicant contends that it meets the requirements of 29 CFR 1910.7 for recognition in the areas of testing which it has specified.

The applicant states that for each item of equipment or material to be certified, it has the capability (including proper testing equipment and facilities, trained staff, written testing procedures, and calibration and quality control programs) to perform testing and examination of equipment and materials for workplace safety purposes to determine conformance with appropriate test standards. Where written test procedures for any of the subject test standards have not yet been developed because the applicant has not yet tested products to these standards for listing purposes, a test procedure for each product will be generated and maintained on file before filing or issuing a listing.

Exhibit 2. A., Appendix A, TestMark Quality Assurance Manual, contains sections dealing with manual administration including enforcement, change of procedure(s), and quality bulletins; quality audit; employee involvement including process improvement technique; shipping, storage, and receiving; supplier quality assurance; electrostatic discharge (ESD) precaution practices; work environment; evaluation report quality assurance; test data acquisition and recording; test plans including procedure; calibration; configuration control; confidentiality and security; and two appendices dealing with quality bulletins and TML instrument calibration practice.

Additional sections and appendices to TML's application include appeal procedures and reports; various project manager diagrams; samples of shipping and receiving documents; management organizational charts; resumes of key TML personnel; a list of testing equipment; a copy of a typical test report; an example of a test standard; a copy of the TML listing mark; the program for monitoring and assuring proper use of the listing mark; and the TML program for conducting factory inspections for product evaluation.

The applicant appears to maintain effective procedures for producing creditable findings or reports that are objective and without bias.

Exhibit 2.B. specifies that TML will conduct field inspections of both manufacturing facilities and other locations such as wholesale and retail establishments which are necessary to insure that TML's listing mark and listing service are not being abused and the intent of the program is followed. Further, the applicant states that it will conduct inspections at manufacturing facilities used by clients to produce products listed under its program at a minimum on a quarterly basis.

The applicant's dispute resolution process allows clients to seek redress for disagreements related to the listing process. The appeal process includes notification, documentation, review and final appeal and review. This procedure has also been expanded to include other interested parties as well.

The Laboratory facilities are in two locations: the main facility at Harrodsburg Road and the smaller Trade Street facility. The main facility includes an electronic testing laboratory, workmanship microscopic

inspection laboratory, and administrative and engineering offices. The outside plant equipment testing, materials testing, and storage facilities are in the Trade Street facility. The total floor space of both buildings is 51,000 square feet of which some 28,000 square feet are allocated for product testing, according to the applicant.

The main facility at Harrodsburg Road has natural gas, electric and water utilities available in the buildings used for product testing. Environmental conditions in the laboratory are controlled to 72 ± 4 degrees Fahrenheit and 40% relative humidity. The temperature and humidity variations throughout the laboratory are recorded as required by specific test requirements. Various environmental conditions for specific product testing are controlled and monitored by the use of environmental chambers. The laboratory has a shipping/storage/receiving department to control and mark incoming products submitted for testing. When products are received the quantity, description, part numbers and dates received are entered into a computerized data base, along with the physical storage location in the shipping/receiving area. The shipping clerk attaches an easily identifiable label to each unit, identifying the project to which the sample belongs.

The main entrance to the laboratory is monitored during normal working hours by a receptionist. Visitors are required to identify themselves and to sign in and out in a visitors's register log, wear a visitor's badge, and be escorted by laboratory personnel when in the laboratory. The laboratory has a key entry system at all locations. The system consists of "zones" with some areas restricted. The laboratory has a contract with a security service to monitor the alarm system. During weekend or non-regular office hours, employees are required to log in the time of entrance and exit. All employees are issued an entry security code.

The Trade Street facility addresses only minimal materials testing for the NRTL program.

Background

According to the applicant, the GTE TestMark Laboratories is owned by GTE Service Corporation and is a part of GTE Telephone Operations, which provides telecommunications services in many States and two foreign countries. GTE Service Corporation is not actively engaged in the manufacture of equipment of the type contemplated for testing under this application. While GTE affiliates are engaged in manufacturing, TML will not test their products for the purpose of listing.

TML is not owned or controlled by a manufacturer of equipment. TML was established in 1979 under a long-standing corporate policy that telecommunications operating units procure telecommunications equipment independently and on an equal basis without regard to manufacturer affiliation.

TML is primarily engaged in the testing and evaluation of telecommunication-related equipment. Security of employment for lab employees is not under the influence or control of manufacturers or suppliers.

The applicant states that in the mid-1970s, GTE realized that products had to be standardized to ensure consistency and productivity, and that vendor influence had to be controlled to ensure high quality products and service. To accomplish this, GTE created a testing division. The purpose was to: Test and evaluate products to industry and corporate standards; to ensure product compatibility within the GTE network of "Quality Products;" and to set standards for company-wide GTE purchasing procedures.

These primary goals, according to GTE, governed the formation, policies, and procedures of TestMark Laboratories' predecessor, the Evaluation and Support Department (ESD). ESD was established in July, 1979 in Lexington, KY, as an independent testing facility, and began commercial testing in 1983. In 1987, ESD changed its name to TestMark Laboratories to better describe its function.

The applicant states that the GTE TestMark Laboratories consists of 22 professional, technical, and support employees, as follows:

1—Laboratory Director
1—Engineering Director
1—Manager, Listing Services Facility
10—Electrical Engineers
1—Manager, Mechanical Engineering
1—Mechanical Engineer
1—Quality Engineer
1—Physicist
1—Manager, Administrative Services
3—Administrative Clerks
1—Shipping & Receiving Documentation Employee

TML desires recognition for testing and certification of products when tested for compliance with the following test standards, which are appropriate within the meaning of 29 CFR 1910.7(c):

ANSI/UL 310—Electrical Quick-Connect Terminals
ANSI/UL 467—Electrical Grounding and Bonding Equipment
ANSI/UL 719—Nonmetallic Sheathed Cables
ANSI/UL 1012—Power Supplies
UL 1047—Isolated Power Systems Equipment
ANSI/UL 1053—Ground-Fault Sensing and Relaying Equipment
UL 1059—Terminal Blocks
UL 1449—Transient Voltage Surge Suppressors
UL 1459—Telephone Equipment
ANSI/UL 1481—Power Supplies for Fire Protective Signaling Systems

Preliminary Finding

The GTE TestMark Laboratories addressed all of the criteria which must be met for recognition as an NRTL in its initial application and in its further correspondence. For example, the applicant submitted a list of its test equipment and instrumentation; a roster of its personnel including resumes of those in key positions and copies of position descriptions; copies of a typical test report, a factory inspection form and an inspection summary; a summary of its listing, labeling, and follow-up services; a statement of its independence as a testing laboratory; and a copy of its Quality Assurance Manual including a description of its documentation, calibration system, appeals procedure, record keeping and operational procedures.

Nine major areas were examined in depth in carrying out the laboratory survey: Facility; test equipment; calibration program; test and evaluation procedures; test reports; records; quality assurance program; follow-up listing program; and personnel.

The discrepancies noted by the survey team in the on-site evaluation [Ex. 3.A.(1)] were adequately responded to by the applicant prior to the preparation of the survey report (see 3.B.) and have been incorporated into the report.

With the preparation of the final report of the GTE TestMark Laboratories, the survey team was satisfied that the testing facility appeared to meet the necessary criteria required by the standard, and so noted in the On-Site Review Report (Survey). (See Ex. 3.A.).

Following a review of the application file and the on-site survey report of the TML facilities, the NRTL Recognition Program staff concluded that the applicant appeared to have met the requirements for recognition as a Nationally Recognized Testing Laboratory and, therefore, recommended to the Assistant Secretary that the application be preliminarily approved.

Based upon a review of the completed application file and the recommendation of the staff, the Assistant Secretary has made a preliminary finding that the GTE TestMark Laboratories can meet the

requirements for recognition as required by 29 CFR 1910.7.

All interested members of the public are invited to supply detailed reasons and evidence supporting or challenging the sufficiency of the applicant's having met the requirements for a Nationally Recognized Testing Laboratory, as well as appendix A, of 29 CFR 1910.7. Submission of pertinent written documents and exhibits shall be made no later than September 8, 1992, and must be addressed to the NRTL Recognition Program, Office of Variance Determination, room N 3653, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue, NW., Washington, DC 20210. Copies of the TML application, the laboratory survey report, and all submitted comments, as received, (Docket No. NRTL-2-91), are available for inspection and duplication at the Docket Office, room N 2634, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address.

The Assistant Secretary's final decision on whether the applicant satisfies the requirements for recognition as an NRTL will be made on the basis of the entire record including the public submissions and any further proceedings that the Assistant Secretary may consider appropriate in accordance with appendix A of § 1910.7.

Signed at Washington, DC this 1st day of July, 1992.

Dorothy L. Strunk,

Acting Assistant Secretary.

[FR Doc. 92-15914 Filed 7-7-92; 8:45 am]

BILLING CODE 4510-26-M

[Docket No. NRTL-3-90]

Southwest Research Institute

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Notice of application for recognition as a nationally recognized testing laboratory, and preliminary finding.

SUMMARY: This notice announces the application of the Southwest Research Institute for recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7, and presents the Agency's preliminary finding.

DATES: The last date for interested parties to submit comments is September 8, 1992.

ADDRESSES: Send comments to: NRTL Recognition Program, Office of Variance Determination, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue, NW., Room N3653, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: James J. Concannon, Director, Office of Variance Determination, NRTL Recognition Program, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue, NW., Room N3653, Washington, DC 20210.

SUPPLEMENTARY INFORMATION:

Notice of Application

Notice is hereby given that the Southwest Research Institute (SwRI) has made application pursuant to section 6(b) of the Occupational Safety and Health Act of 1970. (84 Stat. 1593, 29 U.S.C. 655), Secretary of Labor's Order No. 1-90 (55 FR 9033), and 29 CFR 1910.7 for recognition as a Nationally Recognized Testing Laboratory.

The address of the laboratory covered by this application is: Southwest Research Institute, 6220 Culebra Road, Post Office Drawer 28510, San Antonio, Texas 78228.

Regarding the merits of the application, the applicant contends that it meets the requirements of 29 CFR 1910.7 for recognition to certify products in the areas of testing which it has specified.

Southwest Research Institute believes that for each item of equipment or material to be certified, it has the capability (including proper testing equipment and facilities, trained staff, written testing procedures, and calibration and quality control programs) to perform testing and examination of equipment and materials for workplace safety purposes to determine conformance with appropriate test standards.

The applicant states that it has pertinent experience through its Certification and Product Services program which provides third-party certification (listing and labeling) for building materials. The services include plant inspections, identification label or mark applied to the product, follow-up inspections, and listing in SwRI's product directory.

According to the applicant, Southwest Research Institute meets all requirements as an independent testing laboratory (see Exhibit 2. A., Section 1.7, pp 3-4, and Appendix A, Affidavit, opp. p 15).

Exhibit 2. A. includes, among other features, written procedures for: Instrument calibration; records preparation and retention, contracts, dispute settlement, and log sheets; establishment of follow-up and listing service; and a certification services sample quality control manual.

The applicant appears to maintain effective procedures for producing creditable findings or reports that are objective and without bias.

The Fire Technology Department has ten buildings on a 5 acre site with a total of 23,200 square feet of floor space of which some 11,000 square feet is devoted to product testing and evaluation. SwRI, itself, occupies some 765 acres with more than 1.5 million square feet of laboratory space.

The Department has identified more than 200 pieces of test equipment it uses to perform the testing required by the standards. Test equipment is available in the laboratory to perform the testing specified in the standard. If equipment is not available, it may be obtained from other departments.

Natural gas, electric and water utilities are available in the buildings used for product testing. Both 208 volts and 440 volts, 3 phase, 60 cycle electric power is available. A 50 psi gas line and 4 inch standard water line plus a 2,000-gallon per minute fire pump and a 25,000-gallon water storage tank are used to support the test work.

Environmental conditions in the laboratory are controlled by a central heating, air conditioning and ventiliation system designed for the type of testing performed in the laboratory. Environmental chambers are used to control and monitor environmental conditions for specific product testing.

The Department has a shipping/receiving department to control and mark incoming products submitted for test. The material is logged in and permanently recorded by date of receipt, client's name, project number, and project engineer to whom product who then receives the material.

Although the laboratory has no security alarm system, the main entrance to the Department is monitored during normal working hours by a receptionist. Visitors are required to identify themselves and to sign in and out in a visitors register log and are issued a visitor's tag. Access and egress to Southwest Research Institute grounds is controlled by security personnel at a main guard building and grounds are patrolled during and after working hours.

The applicant employs some 32 people at the laboratory site, of whom 21 are currently involved in testing and evaluation to the product standards listed. Key personnel include eight technicians, and 10 engineers and supervisors.

The Department maintains a separate calibration laboratory to calibrate and maintain test equipment used for product testing. Outside vendor calibration services or other calibration service within Southwest Research Institute are also used for special equipment. The typical calibration interval for test equipment is six months. The Section Manager and Calibration Supervisor are responsible for the calibration program.

The calibration status of test equipment is apparent to the operator by a label attached to the test equipment. Calibration labels indicate the date of last calibration, calibration due date, ID number, and calibrator's initials.

The Calibration Supervisor maintains records of calibration, repairs and maintenance, for each piece of test equipment. History of repair and calibration includes type, make or model, ID number, calibration interval and manufacturer.

The lab's calibration standards are traceable to the National Institute of Science and Technology (NIST). The calibration laboratory maintains reference standards directly traceable to NIST.

A card file and calibration due notice form are used to indicate when the instruments are due for calibration. In addition, the technician notifies the Calibration Supervisor of the due date on the calibration sticker.

The Project Manager, Department Director and Vice President are responsible for developing, reviewing and approving the standard test procedures. The test procedures are reviewed, as needed, by laboratory management. All product testing is performed in-house.

The Department has various standard operating procedures (SOPs) and a Quality Assurance (QA) Manual in place, which all laboratory personnel are required to follow for evaluating products.

The SOP for a specific test standards is developed and written by the Project Manager, based upon the guidelines for the Q A Manual. Each SOP is, in turn, reviewed by the Safety Officer, Section Manager, Director of the Department of Fire Technology, and the Vice President of the Chemistry and Chemical Engineering Division. An internal audit group is also responsible for the review of SOPs, records, and correspondence.

The Manager of the Fire Testing Services is responsible for assuring that product testing and evaluations are performed according to relevant standards. Test results are reviewed by the Project Manager, Section Manager and, if under the Certification Program, by the Manager of Certification Services.

Submitted products not meeting specified performance standards and requirements are not acceptable for labeling. Disagreements between the applicant or interested third parties and the laboratory are resolved by a committee composed of senior staff of the Department of Fire Technology.

A final test report describing the methods used and results achieved is provided by the Department. This formal report includes: the title and number of the standard used to evaluate the product, the laboratory report number and the manufacturer's name and address; an introduction section that describes the product as it was evaluated; and a section including test procedures and results and observations made both during and after testing.

The Project Manager authors the test report which is reviewed for technical content and accuracy by the appropriate Section Manager and the Director of the Department of Fire Technology. The final report contains, at the very least, the signatures of the Vice President and the Department Director or Project Manager.

Copies of the report, which are given to the client, are also maintained in the Department and Record files, and by the appropriate Project Manager.

Final reports, data, and correspondence are maintained in a working file until the project is closed. Upon completion, all necessary documentation, reports, masters, etc., are filed for reference in a secured area. Within about one year, the file is microfilmed with one copy maintained at the Department of Fire Technology and another at the Institute Library.

The Laboratory has a written Quality Assurance Manual for Fire Resistance Certification and Labeling Services, which covers all the requirements governing and controlling fire qualification listing services such as test control, inspection control, and control of the listing mark.

The Manager of Quality Assurance is responsible for the QA Program and, along with the Director of the Department of Fire Technology, for the approval of the QA Manual.

The Institute Department of Quality Assurance, which is independent, performs annual internal audits of the Fire Technology Department, consisting of a review of project records, test and measuring equipment calibration records, personnel training and qualification records, testing procedures, procurement records, and individual standard operating procedures.

The laboratory requires the client to sign an "Application for Follow-up Services and Listing" Agreement. The client then completes the "Quality Assurance Manual Information Form" which is used during the initial inspection of the manufacturing site. Once the product has passed the appropriate fire tests, the client then must sign a second contract entitled "Follow-Up and Listing Service Agreement". The client is then permitted to use the SWRI Label on their product. The initial plant inspection is conducted to review the manufacturer's quality control program and to determine the manufacturer's ability to conduct the quality control tests required by the standard.

Unannounced follow-up inspections of the manufacturer's facility are conducted quarterly, or as frequently as necessary as determined by the Manager of Certification Services. Qualified inspection personnel conduct and report inspection activities to ensure that products continue to be manufactured according to the drawings and specifications referenced in the final reports.

In the event of a discrepancy affecting the quality of the product, the use of the laboratory's listing mark is suspended until corrective action is taken to resolve the discrepancies.

At the present time, the Department of Fire technology has no listed products subject to field audits. The department reserves the right to make a field audit.

The printing and distribution of the laboratory's listing label is controlled by the Department of Fire Technology. Depending upon the product, labels can be roll printed on the material to be labeled or are serialized and affixed after manufacture. It is the manufacturer's responsibility to maintain sufficient inventory labels to satisfy manufacturing requirements, and the manufacturer must account for all labels.

Background

SWRI is a non-profit organization established in 1947 devoted to industrial research. The Department of Fire Technology in the Chemistry and Chemical Engineering Division, according to the applicant, represents one of the largest and most experienced organizations of its kind in the world, having been engaged in various aspects of fire technology for over 35 years, including the testing and certification of various products that are the subject of this application. The Department lists a large staff of qualified personnel and has facilities which are adequate to

handle and store and easily move equipment to the laboratory areas, which are adjacent the warehouse. Within the 23,200 square feet of floor space of the Department's facilities on the west campus of the Institute, laboratory-scale apparatus designed to meet up to 40 test specifications are housed in 11,100 square feet of laboratory space.

The Department of Fire Technology has, according to SWRI, been recognized by the Council of American Building Officials (CABO) National Evaluation Service as a third-party quality assurance and inspection agency. In addition, the SWRI staff has also participated with numerous organizations and committee addressing a variety of aspects of fire technology.

Southwest Research Institute desires recognition for testing and certification of products when tested for compliance with the following test standards:

ASTM E 152—Standard Methods of Fire Tests of Door Assemblies
ANSI/UL 10A—Tin-Clad Fire Doors
ANSI/UL 10B—Fire Tests of Door Assemblies
ANSI/UL 94—Tests for Flammability of Plastic Materials for Parts in Devices and Appliances
ANSI/UL 155—Tests of Fire Resistance of Vault and File Room Doors
ANSI/UL 555—Fire Damping and Ceiling Dampers
UL 910—Test Method for Fire and Smoke Characteristics of Electrical and Optical-Fiber Cables
UL 1887—Fire Test of Plastic Sprinkler Pipe for Flame and Smoke Characteristics

Preliminary Finding

Southwest Research Institute addressed all of the criteria which must be met for recognition as an NRTL in its initial application and in its further correspondence. For example, the applicant submitted a list of its test equipment and instrumentation; a roster of its personnel including resumes of those in key positions and copies of position descriptions; copies of a typical test report, a factory inspection form and an inspection summary; a summary of its listing, labeling, and follow-up services; a statement of its independence as a testing laboratory; and a copy of its Quality Assurance Manual including a description of its documentation, calibration system, appeals procedure, record keeping and operational procedures.

Nine major areas were examined in depth during the on-site laboratory evaluation: Facility; test equipment; calibration program; test and evaluation procedures; test reports; records; quality assurance program; follow-up listing program; and personnel.

The discrepancies noted during the evaluation [Ex. 3. A.(1)] were adequately responded to prior to the preparation of the survey report and are included as a separate corrective action report section [Ex. 3. A.(2)].

With the preparation of the final report, the survey team was satisfied that the testing facility appeared to meet the necessary criteria required by the standard, and so noted in the On-Site Review Report (Survey). (See Ex. 3.A.).

Following a review of the application file and the on-site survey report of the SwRI facility, the NRTL Recognition Program staff concluded that the applicant appeared to have met the requirements for recognition as a Nationally Recognized Testing Laboratory and, therefore, recommended to the Assistant Secretary that the application be preliminary approved.

Based upon a review of the completed application file and the recommendation of the staff, the Assistant Secretary has made a preliminary finding that the Southwest Research Institute can meet the requirements for recognition as required by 29 CFR 1910.7.

All interested members of the public are invited to supply detailed reasons and evidence supporting or challenging the sufficiency of the applicant's having met the requirements for recognition as a Nationally Recognized Testing Laboratory, as well as Appendix A, of 29 CFR 1910.7. Submission of pertinent written documents and exhibits shall be made no later than September 8, 1992, and must be addressed to the NRTL Recognition Program, Office of Variance Determination, room N 3653, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue, NW., Washington, DC 20210. Copies of the SwRI application, the laboratory survey report, and all submitted comments, as received, (Docket No. NRTL-3-90), are available for inspection and duplication at the Docket Office, Room N 2634, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address.

The Assistant Secretary's final decision on whether the applicant satisfies the requirements for recognition as an NRTL will be made on the basis of the entire record including the public submissions and any further proceedings that the Assistant Secretary may consider appropriate in accordance with Appendix A of Section 1910.7.

Signed at Washington, DC this 1st day of July, 1992.

Dorothy L. Strunk,

Acting Assistant Secretary.

[FR Doc. 92-15915 Filed 7-7-92; 8:45 am]

BILLING CODE 4510-26-M

NATIONAL SCIENCE FOUNDATION

Committee of Visitors of the Advisory Committee for Biological Sciences; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

Date and Time: July 30-31, 1992; 8:30 a.m. to 5 p.m.

Place: Room 543, 1800 G Street, NW., Washington, DC.

Type of Meeting: Closed.

Contact Person: James H. Brown, Division Director, Molecular and Cellular Biosciences (MCB) Division, rm. 325, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357-9400.

Purpose of Meeting: To carry out Committee of Visitors (COV) review, including examination of decisions on proposals, reviewer comments, and other privileged materials.

Agenda: To provide oversight review of the MCB Divisions's Genetics Program.

Reason for Closing: The meeting is closed to the public because the Committee is reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they were disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act would be improperly disclosed.

Dated: July 2, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92-15957 Filed 7-7-92; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Instrumentation and Instrument Development; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

Date and Time: July 30-31, 1992; 8:30 a.m. to 6 p.m.

Place: One Washington Circle Hotel, One Washington Circle, Washington, DC.

Type of Meeting: Closed.

Contact Person: Michael Lamvik, Program Director, Biological Instrumentation and Resources (BIR), National Science Foundation, 1800 G ST. NW., Washington, DC 20550. Telephone (202) 357-7662.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate BIR proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: July 2, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92-15958 Filed 7-7-92; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Mechanical and Structural Systems; Notice Of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

Date and Time: July 10, 1992; 8:30 a.m. to 5 p.m.

Place: Room 543, National Science Foundation, 1800 G Street, NW., Washington, DC.

Type of Meeting: Closed.

Contact Person: Drs. Jerome L. Sackman and Huseyin Sehitoglu, Program Directors, MSS, rm. 1108, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357-9542.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate the Mechanics and Materials Program proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Reason for Late Notice: Preparation of meeting announcement delayed due to personnel changes; was unable to change meeting date because all travel arrangements had been made.

Dated: July 2, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92-15959 Filed 7-7-92; 8:45 am]

BILLING CODE 7555-01-M

Ocean Sciences Review Panel; Notice of Meeting

In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Science Foundation announces the following meeting:

Name: Ocean Sciences Review Panel.

Date and Time: July 27, 28, 29 1992—8:30 a.m. to 5 p.m.

Place: St. James Hotel, 950 24th St. NW., Washington, DC 20037.

Type of Meeting: Closed.

Contact Person: Dr. Michael Reeve, Head, Ocean Sciences Research Section, Division of Ocean Sciences, room 609, National Science Foundation, 1800 G St. NW., Washington, DC, Telephone: 202/357-9639.

Purpose of Committee: To provide advice and recommendations concerning oceanographic research and its support by the NSF Division of Ocean Sciences.

Agenda: (1) To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals.

These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: July 2, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92-15960 Filed 7-7-92; 8:45 am]

BILLING CODE 7555-01-M

Committee of Visitors of the Advisory Committee for Social, Behavioral and Economic Science; Meeting

In accordance with the Federal Advisory Committee (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

Date and Time: July 29-30, 1992; 9 a.m. to 5 p.m.

Place: Room 248 (on July 29) and room 540-B (on July 30), 1800 G Street, NW., Washington, DC.

Type of Meeting: Closed.

Contact Person: Dr. Roberta Balstad Miller, Division Director, Social and Economic Science, rm. 336, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357-7966.

Purpose of Meeting: To carry out Committee of Visitors (COV) review, including examination of decisions on proposals, reviewer comments, and other privileged materials.

Agenda: To provide oversight review of the Economics Program.

Reason for Closing: The meeting is closed to the public because the Committee is reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they were disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act would be improperly disclosed.

Dated: July 2, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92-15961 Filed 7-7-92; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (P.L.) 97-415, the Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. P.L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from June 15, 1992, through June 25, 1992. The last biweekly notice was published on June 24, 1992 (57 FR 28195).

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments 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 basis for this proposed determination for each amendment request is shown below.

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 Rules and Directives Review 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. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By August 7, 1992, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 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 satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request 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 before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

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 20555, 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 N1023 and the following message addressed to (Project Director): 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 the 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 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 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 for the particular facility involved.

Commonwealth Edison Company, Docket Nos. 50-373 and 50-374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of amendment request: April 24, 1992, supplemented June 2, 1992

Description of amendment request: By letter dated April 24, 1992, Commonwealth Edison Company (CECo) proposed two changes to the LaSalle County Station's Technical Specifications. The first was to add to the specifications, allowed outage times (AOT) for the scram discharge volume (SDV) vent and drain valves. The second removed surveillance requirement 4.1.3.1.4.b which covers SDV instrumentation. The staff's proposed no significant hazards consideration determination for the requested changes was published on June 12, 1991 (56 FR 27039).

By letter dated June 2, 1992, CECo supplemented the application by proposing to delete the requirement that surveillance requirement 4.1.3.1.4.a be performed at high reactor pressure and low reactor power. The amendment proposes to have this surveillance performed when the reactor is in the shutdown condition. This reduces the number of unnecessary plant transients and needless challenges to plant safety systems.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Commonwealth Edison has evaluated the proposed Technical Specification Amendment and determined that it does not represent a significant hazards consideration. Based on the criteria for defining a significant hazards consideration established in 10 CFR 50.92, operation of LaSalle County Station Units 1 and 2 in accordance with the proposed amendment will not:

1) Involve a significant increase in the probability or consequences of an accident previously evaluated because:

The deletion of the requirement for control rods to be withdrawn to perform surveillance requirement 4.1.3.1.4.a and the associated Note * does not increase the probability or consequences of a previously evaluated accident. This is justified because the ability of the valves to close in the required time and reopen is still tested, and the difference in initial test conditions has little affect on the results of the test. Therefore, operability of the SDV Vent and Drain valves is verified by performing the surveillance in shutdown conditions.

2) Create the possibility of a new or different kind of accident from any accident previously evaluated because:

The change to the initial conditions for the SDV vent and drain valve timing does not involve any changes to the facility or the operation of the facility as described in the [Updated Final Safety Analysis Report] UFSAR.

3) Involve a significant reduction in the margin of safety because:

There is not an overall significant reduction in the margin of safety. Conducting the test at a reduced pressure may be considered a minor reduction in the margin of safety; however, this is mitigated by the increase in safety as a result of eliminating a required scram from high reactor pressure and low power (5 to 15%), which challenges safety systems on an 18 month frequency. The closing time of the SDV vent and drain valves is minimally effected by the change in initial conditions because the SDV is of sufficient size and is initially vented such that peak pressure prior to the closing of the valves is not substantial. The current Technical Specification requires demonstrating the reopening capability of the SDV vent and drain valves against a high backpressure (normal operating reactor pressure) and with this amendment the backpressure will normally be low during the performance of this surveillance. However, the ability of the valves to open against rated pressure would be demonstrated after a reactor scram during normal operation or, if failure to reopen occurred, then repairs would have to be done prior to startup. Therefore, conducting this surveillance during shutdown is acceptable due to the minimal effect on surveillance results and the increased safety due to less challenges to safety systems.

Guidance has been provided in "Final Procedures and Standards on No Significant Hazards Considerations," Final Rule, 51 FR 7744, for the application of standards to license change requests for determination of the existence of significant hazards considerations. This document provides examples of amendments which are and are not considered likely to involve significant hazards considerations. This proposed amendment most closely fits the example of a change which may result in some increase to the probability or consequences of a previously analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or components specified in the Standard Review Plan. Since these changes are to the surveillance requirements for determining valve operability, these changes are clearly within the acceptance criteria of sections 3.9.4 and 4.6 of the Standard Review Plan. This proposed supplemental amendment does not involve a significant relaxation of the criteria used to establish safety limits, a significant relaxation of the bases for the limiting safety system settings or a significant relaxation of the bases for the limiting conditions for operations. Therefore, based on the guidance provided in the Federal Register and the criteria established in 10 CFR 50.92(c), the proposed changes does not constitute a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690

NRC Project Director: Richard J. Barrett

Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: May 29, 1992

Description of amendment request: The licensee requests an amendment to the Technical Specifications Section 1.0 (Definitions), Table 1-1, to add a definition for "Refueling Interval (R_i)." The surveillance interval for R_i would be at least once every 24 months. The definition of "Refueling (R)" would be changed to "Refueling Interval (R)." This change would accommodate operation on a 24-month fuel cycle and would delineate between those surveillances which have been approved for a 24-month interval and those which have not. Consistent with the proposed change to Section 1.0, all existing references in Section 4.0 (Surveillance Requirements) to "Refueling" would be changed to "Refueling Interval." In addition, for those surveillance intervals proposed to be extended to 24 months, the existing references in Section 4.0 to

"Refueling" or "R" would be changed to "Refueling Interval$_t$" or "R$_t$," as applicable.

The licensee proposed extending the surveillance interval to 24 months for a number of surveillances. The specific surveillances are:

(1) Snubber visual and functional testing,

(2) Reactor manual trip channel test,

(3) Refueling system interlock test,

(4) Station battery load test,

(5) Electrical tunnel, diesel generator building, and containment fan cooler fire protection spray systems tests,

(6) Pressurizer safety valve setpoint test,

(7) Motor driven auxiliary feed pump full flow test,

(8) Residual heat removal (RHR) system leakage test,

(9) Fire protection system for protection of safe shutdown system test,

(10) Containment fan cooler unit (FCU) fire detection instrument test,

(11) Reactor coolant pump fire detection instrument test,

(12) RHR system flow channel calibration,

(13) FCU condensate flow channel calibration,

(14) Steam generator narrow range level channel calibration,

(15) Turbine impulse (first stage) pressure channel calibration,

(16) Overpressure protection system (OPS) channel calibration,

(17) Area radiation monitoring system calibration,

(18) RHR pump flow channel calibration,

(19) Pressurizer level channel calibration,

(20) Containment FCU weir level channel calibration,

(21) Accumulator pressure channel calibration,

(22) Turbine independent electrical overspeed protection system (IEOPS) channel calibration,

(23) Vapor containment sump level channel calibration,

(24) Steam generator examination

(25) Pressurizer pressure channel calibration, and

(26) Reactor coolant system (RCS) flow channel calibration.

The licensee has also proposed setpoint changes for the pressurizer pressure and level channels, the steam generator narrow range level channels, and the RCS flow channels. These instrument channels require setpoint changes to ensure that the trip setpoint remains acceptable after 30 months of instrument drift (24 months and 25% extension). The changes requested by the licensee related to a 24-month fuel cycle are in accordance with Generic Letter 91-04, "Changes in Technical Specification Surveillance Intervals to Accommodate a 24-Month Fuel Cycle" and Generic Letter 90-09, "Alternative Requirements for Snubber Visual Inspection Intervals and Corrective Actions," as applicable.

In addition, the licensee proposed a change to Section 4.13 (Steam Generator Tube Inservice Inspection) which would delete paragraphs 4.13.C.5 and 4.13.C.6. These paragraphs currently require NRC approval for operating for a period longer than eight equivalent months or one calendar year from the date of the steam generator examination.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analyses of the issue of no significant hazards consideration, for each proposed change, which are presented below:

(1) Snubber visual and functional testing:

The proposed change does not involve a significant hazards consideration since:

1. There will be no significant increase in the probability or consequences of an accident previously evaluated. In all four visual inspections reviewed all of the snubbers were found to be operationally specifications [operable]. Leakage projection beyond 18 months is not possible as any degraded snubber was replaced after an 18 month cycle. Comparison of the current inspection program with that proposed in Generic Letter 90-09 indicates that the present program is more restrictive. Generic Letter 90-09 allows two failed snubbers without penalty. Both inspection programs provide the same confidence level.

For snubber functional testing, the Technical Specification currently require a sampling program which provides a 95% confidence level that 90% to 100% of the snubbers operate within acceptance limits. This program will not change and results in the same confidence level and reliability established by the ASME Code.

Based upon historical data it is concluded that extension of the surveillance interval to 24 months (+25%) will involve minimal risk. Snubbers exhibit reliable operation after the first few years of operation. The functional test history supports this observation.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created. The past visual and functional test history with almost no failures provides assurance that an extension in surveillance interval will not result in increased snubber failure. Where the one failure of a snubber to lock up occurred, a subsequent engineering evaluation concluded that the piping system would have remained operable under a seismic event.

Based upon the guidance in Generic Letter 90-09, which addresses an extension of the visual inspection frequency to as much as 48 months, the past inspection history at IP2 justifies an extension of the surveillance interval to 24 months plus 25%.

3. There will be no significant reduction in the margin of safety.

The purpose of functional testing is to provide a confidence level that a minimum of 90% of the snubbers operate within acceptance limits. The performance of visual examinations is a separate process that compliments the functional testing program and provides additional confidence in snubber operability. The review of past inspection and test history indicates that this objective is met at the time of inspection and testing and maintained throughout the current 18 month (plus 25%) interval. There is no reason based upon past history to indicate that this same success rate will not be maintained over a 24 month (plus 25% interval).

Previous history indicates a greater than 90% confidence level in meeting the Generic Letter objective.

(2) Reactor manual trip channel test:

Eight completed tests (8/29/81, 10/13/84, 1/14/86, 10/5/87, 3/18/89, 2/24/90 and 2/1/91) were reviewed to determine whether any failures occurred. No failures were detected.

It is therefore concluded that the proposed change in test surveillance interval does not involve a significant hazards consideration since:

1. A significant increase in the probability or consequences of an accident previously evaluated will not occur. The success rate of the previous eight tests indicates a highly reliable system. Diverse actuation provides added reliability and protection from common mode failure. Actual testing of breakers on a 31 day cycle provides a means of detecting failure of a key component on a frequent basis. All of the above factors tend to mitigate any risk incurred by extending the current test cycle from 18 months plus 25% to 24 months plus 25% to a negligible level.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created. The assurance provided by the diversity in design, successful completion of previous tests and periodic monitoring of the breaker indicates that the channels should continue to be operable for a period of 24 (+25%) months.

3. There is no significant reduction in the margin of safety. The design and past test history provide a basis to conclude that any risk imposed by a longer operating cycle is minimal with regard to the operability of the manual reactor channels.

(3) Refueling system interlock test:

The proposed change do [does] not involve a significant hazards consideration since:

1. There is no increase in the probability or consequences of an accident. The proposed change is one of testing frequency. There is no change in test requirements nor acceptance criteria. Successful performance of the test is a prerequisite to declaring the fuel handling equipment operable for the purpose of handling fuel. Regardless of whether equipment failure is induced by the time period of the previous test, the equipment must be restored to operable status in order to perform the required test in an acceptable manner.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created. Successful test performance is essentially independent of the time period

since the prior test and is a prerequisite to any fuel handling operations.

3. There has been no reduction in the margin of safety. No changes in test requirements or acceptance criteria has occurred. Therefore the equipment is to [be] determined to be operable according to the same standards that existed previously.

(4) Station battery load test:

The proposed changes do not involve a significant hazards consideration since:

1. There will be no significant increase in the probability or consequences of an accident previously evaluated. Review of data for the last three refueling outages indicates no failures in discharge capacity or unacceptable plate condition. In addition, the Technical Specification requires on a monthly basis, measurement of the voltage of each battery. Similarly on a quarterly basis, additional testing on each battery is performed. Data comparisons are made to determine possible degradation.

Successful past data indicates that the batteries have additional life. This factor, together with monthly and quarterly testing which will remain unchanged, provided assurance that any risk incurred by extending the surveillance interval will be minimal.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created. Past successful test data, together with the monthly and quarterly tests which would provide an early indication of deterioration, provide ample assurance that the batteries would continue to perform their safety function over the extended cycle or permit corrective action prior to the point where they no longer could perform their safety functions.

3. There will be no significant reduction in the margin of safety. Extension of the surveillance cycle will have minimal impact upon the margin of safety. Periodic inspections and tests will indicate deficiencies at a state where they are unlikely to influence battery capacity permitting corrective action prior to degradation to an unacceptable state.

(5) Electrical tunnel, diesel generator building, and containment fan cooler fire protection spray systems tests:

Completed tests were reviewed from the last four refueling outages with only one test failure occurring. This failure is attributable to personnel error during maintenance and not as a result of length of service.

It is therefore concluded that the proposed change in test interval does not involve a significant hazards consideration since:

1. A significant increase in the probability or consequences of an accident previously evaluated will not occur. The fire protection system is a static system between surveillances and the valves of concern serve as a pressure boundary. In this capacity the valves are not prone to any failure mechanism as a result of length in service time. The test data supports this conclusion. Given adequate maintenance and an acceptable test prior to return to service, there is reasonable assurance that the valve will perform its intended function with little influence due to the time between surveillances.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created. As evidenced by past test data there is reasonable assurance that the valves of concern will perform their intended safety function over the extended period between surveillances and that no unforeseen accident will be introduced.

3. There is no significant reduction in the margin of safety. The past test history of valves of concern together with the service conclusions encountered during the extended surveillance interval provide an adequate basis upon which to conclude that there is no significant reduction in the margin of safety.

(6) Pressurizer safety valve setpoint test:

The proposed change does not involve a significant hazards consideration since:

1. There is no significant increase in the probability or consequences of an accident resulting from an increased surveillance interval. A statistical analysis of "as found" to "as left" data over three cycles indicates a normal distribution with acceptable scatter; actual valve setpoints did not drift outside setpoint tolerance. There was no indication that setpoints drifted significantly with time and it is reasonable to conclude that: setpoints would remain within tolerance over a 24 month (+25%) cycle as well as an 18 month (+25%) cycle. There are no indication of bias; the drift observed was equally likely to result in a lower or higher setpoint.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created. The setpoint for actuation is not expected to drift out of an acceptance band over the longer cycle. Therefore, the valves will continue to perform their safety function which is to prevent an accident from an over pressure transient of the reactor coolant system. The combined capacity of the safety valves continues to be equal or greater than the maximum surge rate resulting from a complete loss of load without a direct reactor trip or any other control except for safety valves on the secondary side.

3. There has been no significant reduction in the margin of safety. As it can be reasonably assumed that the pressurizer safety valves will continue to actuate over a longer surveillance cycle and their capacity remains unaffected, there should be no change in the margin of safety.

(7) Motor driven auxiliary feed pump full flow test:

The proposed change does not involve a significant hazards consideration since:

1. There will be no significant increase in the probability or consequences of an accident previously evaluated. An evaluation of 4 cycles of test data collected over the past five years indicates satisfactory pump performance in each case. It is considered highly unlikely that pump performance would deteriorate to an unacceptable level if the surveillance interval was extended, in the maximum, for 22.5 months to 30 months. Furthermore, a quarterly ASME Section XI test would detect extreme degradation in the extended 7.5-month period. There is minimal risk involved, in terms of the pumps capability to deliver required flow, by extending the surveillance period.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created. Since it is highly unlikely, for the reasons stated above, that pump performance would deteriorate to unacceptable levels unnoticed during the extended surveillance interval, it is expected that the motor driven pumps will continue to be able to perform their intended safety function. As the previous test data indicates, any deterioration in pump performance is gradual in terms of time and no sharp decrease in pump performance over a relatively short time span is expected. No new failure modes are anticipated due to the extended surveillance interval.

3. There will be no significant reduction in the margin of safety. Past test data provides a basis to conclude that the motor driven pumps performed acceptably over a 22.5 month cycle. There is no known mechanism anticipated which would induce severe degradation

in pump performance if the surveillance interval were extended an additional 7.5 months. Should such a mechanism occur, the ASME Section XI quarterly test provides a means of detection before unacceptable performance develops.

(8) Residual heat removal (RHR) system leakage test:

Four cycles of test data resulting from hydrostatic testing of the RHR system were reviewed. In all instances the measured leakage did not approach the Technical Specification limits.

It is concluded that extending the surveillance interval would not involve a significant hazards consideration since:

1. A significant increase in the probability or consequences of an accident previously evaluated will not occur. Extending the surveillance interval to a maximum of 30 months will, in all likelihood, only extend the period when the RHR system is not in service. Mechanisms which would induce leakage are more likely to develop when the system is in operation rather than during an extended standby period. Since past test data supports the integrity of the system and an extended standby period is not expected to enhance leakage, there is a reasonable expectation that the RHR system will continue to perform its intended safety function without excessive leakage.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created. The integrity and performance of the RHR system is not expected to be influenced by an extended surveillance period for the reason stated above. Therefore it is anticipated that the system will continue to perform its intended safety function and that leakage will not exceed levels previously analyzed for radiological releases.

3. There is no significant reduction in the margin of safety. There is minimal risk involved that an extended surveillance interval will increase system leakage beyond Technical Specification limits or that system performance will be influenced. Past test data indicates that the margin imposed by the Technical Specification is not approached by actual system leakage.

(9) Fire Protection system for protection of safe shutdown system test:

Completed test reports from the last four refuelings were reviewed and all results were satisfactory. No deficiencies.

It is concluded that extending the surveillance interval will not involve a significant hazards consideration since:

1. A significant increase in the probability or consequences of an accident previously evaluated will not occur. Past history indicates that the portion of the fire protection system covered by Technical Specification 4.14.A and 4.14.E is highly reliable and that system integrity is not unduly influenced by the passage of time. This is expected of a static system which is, for all practical purpose, maintained in a standby condition between surveillance tests. Extension of the surveillance interval by several months is not expected to change the results of surveillance testing performed over the current shorter time cycle. There does not appear to be a degradation mechanism which is highly time dependent.

It is concluded that there is minimal risk that the components of concern would not perform their required safety function if called upon within the proposed surveillance interval.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created. Since no degradation mechanism which is strongly time dependent is evident, the components of concern are expected to perform their intended safety function if called upon during the somewhat longer surveillance interval.

3. There is no significant reduction in the margin of safety. Since the system is essentially kept in a standby condition there is minimal risk that performance will degrade from the time of the previous surveillance test. Past test history does not indicate that a degradation mechanism strongly dependent upon time is present.

(10)Containment fan cooler unit (FCU) fire detection instrument test:

1. There will be no significant increase in the probability or consequences of an accident previously evaluated. Review of past inspection data indicates some minor problems but none which would have rendered the spray system inoperable or unable to have performed its protective function. There was no observed problems with the fire detectors. Since the system is static and has proven reliability, increasing the time interval by several months between inspections is expected to have minimal, if any, impact upon operability of the spray system and fire detection system.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created. Test inspection data indicates that the spray system and fire detectors have proven reliability over time. Extending the surveillance interval is not expected to influence the integrity of the system to the point where these systems would be unable to perform their protection function.

3. There will be no significant reduction in the margin of safety. Extending the surveillance interval is not expected to influence the capability of these systems to perform their intended safety function.

(11) Reactor coolant pump fire detection instrument test:

It is concluded that extending the surveillance interval would not involve a significant hazards consideration since:

1. A significant increase in the probability or consequences of an accident previously evaluated will not occur. Extending the surveillance interval may have an impact upon the number of the fire detectors which remain operable. However, the impact upon detection of a fire affecting the Reactor Coolant Pumps will be minimal due to the alternate means of monitoring the Containment air temperature. Failure of the fire detectors is self-monitoring with an alarm in the Control Room advising plant operations of the need for compensatory action.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created. The purpose of the reactor coolant pump detectors is to detect fires in the pumps necessitating plant shutdown. Only one reactor coolant pump is necessary to achieve hot shutdown. In none of the surveillances over a year period did all detectors fail which would have meant removal of the primary means of fire detection. In all instances, Containment air temperature monitoring, the secondary means of detecting a fire in Containment was implemented. Under the worst of circumstances two pumps always had primary fire detection capability. It is considered highly unlikely that a fire within Containment would progress to the point where the last reactor coolant pump would be threatened, or that achievement of hot shutdown (6 hours) would be at risk without adequate prior notice to plant operators.

3. There is no significant reduction in the margin of safety. Although the primary means of fire protection, i.e., the smoke detectors, is less than desired, the backup means of fire detection, i.e., Containment air temperature monitoring has been implemented. This compensatory action is recognized and required by the Technical Specifications and is an acceptable method for indefinite plant operation.

(12) RHR system flow channel calibration:

The proposed change does not involve a significant hazards consideration since:

1. There will be no significant increase in the probability or consequences of an accident previously evaluated. The RHR flow channel calibration procedures from the December 1986 outage to February 1992 were reviewed. It was determined that this channel can support its intended function on a 30 month surveillance cycle.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created. This instrument channel is used to determine the flow from the discharge of the RHR pumps. The projected 30 month drift value does not exceed any assumptions of the safety analysis or affect the channels capability of performing its safety function.

3. There will be not [no] significant reduction in the margin of safety.

The projected 30 month drift values were determined with a 95% probability at a 95% confidence level. This drift value does not exceed any assumptions of the safety analysis or affect this channel's capability of performing its safety function.

(13) FCU condensate flow channel calibration:

The proposed change does not involve a significant hazards consideration since:

1. There will be no significant increase in the probability or consequences of an accident previously evaluated. The FCU Condensate flow channel calibration procedures from the December 1986 outage to February 1992 were reviewed. It was determined that this channel can support its intended function on a 30 month surveillance cycle.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created. This instrument channel is used to determine the condensated [condensate] flow from the fan cooler units. The projected 30 month drift value does not exceed any assumptions of the safety analysis or affect the channels capability of performing its safety function.

3. There will be not [no] significant reduction in the margin of safety. The projected 30 month drift values were determined with a 95% probability at a 95% confidence level. This drift value does not exceed any assumptions of the safety analysis or affect this channel's capability of performing its safety function.

(14) Steam generator narrow range level channel calibration:

The proposed change does not involve a significant hazards consideration since:

1. There will be no significant increase in the probability or consequences of an accident previously evaluated. The setpoint limits for reactor trip and auxiliary feedwater initiation will be made more conservative to accommodate the small increase in uncertainty due to the longer period of instrument drift. Separately, the accident analysis utilizing this parameter as an initial condition was found to already bound the effects of the new calculated uncertainty. Therefore, analyzed accidents will be neither more probable nor have worse consequences.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created. The only effect of a longer period between channel calibrations is a small increase in uncertainty. The small potential decrease in accuracy will be accommodated by a change in applicable setpoints and, if necessary, in values used in the Emergency Operating Procedures. [The] Existing accident analysis was verified to already account for the increased uncertainty in initial condition. Therefore, no new adverse phenomenon will be introduced.

3. There will be no significant reduction in the margin of safety. Changes will be made, as necessary, in the affected setpoints and Emergency Operating Procedure values, so that margin of safety will not be significantly affected.

(15) Turbine impulse (first stage) pressure channel calibration:

The proposed change does not involve a significant hazards consideration since:

1. There will be no significant increase in the probability or consequences of an accident previously evaluated. The Turbine Impulse Pressure calibration procedures from the February 1986 outage to the February

1992 were reviewed. The results of the channel statistical calculations show that the channel uncertainties will meet those which can support the current Technical Specification Setpoint requirement and the current Safety Analysis Limits.

2. The possibility of a new or different kind of accident form [from] any previously analyzed has not been created. Since the channel uncertainties do not exceed those which can support the current Technical Specification Setpoint, no new or different kind of accident can be created by the extension of the surveillance interval.

3. There will be no significant reduction in the margin of safety. The projected 30 month drift values were determined with a 95% probability at a 95% confidence level. Since the channel uncertainties are within the current Technical Specification envelope the extension of the surveillance interval will not significantly reduce the safety margin.

(16) Overpressure protection system (OPS) channel calibration:

The proposed change does not involve a significant hazards consideration since:

1. There will be no significant increase in the probability or consequences of an accident previously evaluated. The only analysis affected is that required by 10 CFR [Part] 50 Appendix G. The limits specified in Appendix G will continue to be satisfied by a change in the Overpressure Protection System (OPS) setting, if necessary, to account for the additional uncertainty due to the longer period of instrument drift.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created. The small potential decrease to channel accuracy will be accommodated by a setting change, if necessary. This will not introduce any new phenomenon.

3. There will be no significant reduction in the margin of safety. The Appendix G limits will continue to be satisfied, so the margin of safety will not be affected.

(17) Area radiation monitoring system channel calibration:

The proposed change does not involve a significant hazards consideration since:

1. There will be no significant increase in the probability or consequences of an accident previously evaluated. These area radiation monitors and associated circuits are generally reliable devices. Based on this reliability, and the daily and monthly surveillance of these channels, extension of the surveillance interval from 18 months to 24 months for this test would have little affect on the reliability of the system. Also, the capability to rotate the check source into place to check the channels provides the necessary confidence that the channel is responding in a manner consistent with proper operation. Therefore, no increase in probability or consequences of previously evaluated accidents are involved.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created. Generic Letter 91-04, "Changes in Technical Specification Surveillance Intervals to

Accommodate a 24-month Fuel Cycle", requires confirmation that historical maintenance and surveillance data do not invalidate this conclusion. Since no deficiencies, as a consequence of equipment failure or malfunction, were found in the Area Radiation Monitoring system during the performance of test procedures in the last four refueling cycles, the historical data supports the conclusion that safety will not be compromised by extending the interval between tests to a maximum of 30 months. Thus no new or different kind of accident will be created.

3. There is no significant reduction in the margin of safety. The purpose of the surveillance requirement for the area radiation monitors is to provide a level of assurance of component function as designed. Extension of the surveillance period to 30 months and the consequential effect on the instrument function, based on the historical data, supports the conclusion that safety margins will not be adversely impacted. In addition, the complimentary daily check and monthly test for the monitors as required by existing Technical Specification will be preserved.

(18) RHR pump flow channel calibration:

The proposed change does not involve a significant hazards consideration since:

1. There will be no significant increase in the probability or consequences of an accident previously evaluated. The accident analyses do not rely on the RHR flow channel to provide a setpoint for automatic actuation of required equipment, or an alarm setpoint for required operator action. This measurement only provides information for monitoring operation of the low head portion of the Safety Injection System. The small change in accuracy due to the longer period of instrument drift will leave the channel still sufficiently accurate for this purpose.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created. The small potential decrease in accuracy of information to the operator does not have the potential for creating any previously unanalyzed phenomenon.

3. There will be no significant reduction in the margin of safety. The small potential decrease in accuracy due to a longer period of drift between calibrations is not significant for the function of providing information to the operator for post accident monitoring of system operation.

(19) Pressurizer level channel calibration:

The proposed change does not involve a significant hazards consideration since:

1. There will be no significant increase in the probability or consequences of an accident previously evaluated. An historical review of "As Left/As Found" data was conducted for all completed test procedures since the February, 1986 outage. This evaluation considered all other conceivable impact[s] relevant to the determination of instrument channel uncertainties. The final statistical determination of instrument channel drift value for the 30 month surveillance of the Pressurizer Level instrument channel resulted in recommended changes to existing Technical Specification and plant procedures which are addressed in this amendment application. These proposed changes together insures that existing accident analyses limits are not exceeded.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created. The evaluation of the impact of the desired change to the pressurizer level instrument channel surveillance interval from 24 to 30 months and the proposed changes to plant procedures preserves the system function within the limits of existing safety analyses, therefore, no new accidents are being created.

3. There are [is] no significant reduction in the margin of safety. The purpose of the surveillance calibration test of the pressurizer level instrument channel is to provide a level of assurance of system function as designed. Extension of the surveillance period to 30 months and consequential effect on instrument drift values with the mentioned changes, was evaluated with acceptable results in regards to system functional capability. The complimentary minimum frequency for visual inspection of the channels on each shift as required by the existing Technical Specification remains unaffected. The margin of safety for the system is being preserved.

(20) Containment FCU weir level channel calibration:

The proposed change does not involve a significant hazards consideration since:

1. There will be no significant increase in the probability or consequences of an accident previously evaluated. The FCU Weir Level is not a parameter used in any accident or transient analysis. This measurement is merely an aid to the operator in identifying leakage into the containment from a source other than the Reactor Coolant System. The small change in accuracy due to the longer period of instrument drift will leave the channel still sufficiently accurate for this purpose.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created. The small potential decrease in accuracy of information to the operator does not havethe potential for creating any previously unanalyzed phenomenon.

3. There will be no significant reduction in the margin of safety. The potential decrease in accuracy due to a longer period of drift between calibrations is not significant. In addition, the measured parameter is itself not significant to any safety limit or any accident or transient analysis.

(21) Accumulator pressure channel calibration:

The proposed change does not involve a significant hazards consideration since:

1. There will be no significant increase in the probability or consequences of an accident previously evaluated. The "As Left/As Found" data from all completed test procedures since the December 1986 outage to the present was evaluated to determine a projected 30 month drift with a 95% probability at a 95% confidence level. This evaluation considered the impact of the M&TE [measuring and test equipment] used to record the data as well as other channel uncertainties including sensor rack and process effect for the operating environmental conditions of the instrument

extensive review of work orders and any modification to the channels were also conducted to determine instrument performance from one cycle to the next. This data was statistically evaluated to determine population normality and outliers. As possible, outliers were eliminated by the use of accepted statistical tests or justifiable mechanistic causes. This effort resulted in drift values for the accumulator pressure channel which can be accommodated within existing safety analyses and Technical Specification Limits, therefore system performance is preserved.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created. The accumulator pressure instrument channel design functional attribute will be retained due to changes in plant alarm setpoints. Thus no new condition outside of existing analyses are being created.

3. There is no significant reduction in the margin of safety. The purpose of the surveillance calibration test of the accumulator pressure instrument channel is to provide a level of assurance of system function as designed. Extension of the surveillance period to 30 months and the consequential effect on instrument drift value was evaluated with acceptable results in regards to system functional capability. The minimum frequency for visual inspection channel checking on each shift is retained. The margin of safety for the system is therefore preserved.

(22) Turbine IEOPS channel calibration:

The proposed change does not involve a significant hazards consideration since:

1. There will be no significant increase in the probability or consequences of an accident previously evaluated. Review of past data for the 18 month (+25%) calibration does not indicate any unacceptable data. It is not expected that extending the surveillance interval to 24 (+25%) months will result in unacceptable data. In addition a monthly test of the trip frequency is conducted which provides additional assurance that an alternate means of monitoring during the extended surveillance interval is available.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created. Past surveillance data indicates that the IEOPS turbine trip channel has performed in an acceptable manner over a 22.5 month interval. The same is expected for the proposed 30 month interval. In addition there is the monthly frequency check. Therefore, it is expected that the Turbine IEOPS channel will continue to perform its intended safety function over the proposed 30 month interval.

3. There has been no significant reduction in the margin of safety. As the Turbine IEOPS channel is expected to perform its safety function over the proposed 30 month interval there is minimal risk that the margin of safety has been reduced.

(23) Vapor containment (VC) sump level channel calibration:

The proposed change does not involve a significant hazards consideration since:

1. There will be no significant increase in the probability or consequences of an accident previously evaluated. The VC sump level calibration procedures from the February 1986 outage to the February 1992 were reviewed. With the change to the Technical Specification setpoint for HI-HI level alarm being implemented ... the channel uncertainties can be accommodated over a 30 month interval.

2. The possibility of a new or different kind of accident form [from] any previously analyzed has not been created. Since the change in the instrumentation setpoint for HI-HI level alarm will restore the channel uncertainties to those which can support the current Technical Specification Setpoint requirement for operator action at the 45 ft. level, no new or different kind of accident can be created by the extension of the surveillance interval.

3. There will be no significant reduction in the margin of safety. The projected 30 month drift values were determined with a 95% probability at a 95% confidence level. With the change to the instrument setpoint ..., the extension of the surveillance interval will not significantly reduce the safety margin.

(24) Steam generator examination:

The proposed changes do not involve a significant hazards consideration since:

1. There will be no significant increase in the probability or consequences of an accident previously evaluated. The Generic Letter [91-04] reflects a surveillance interval of 24 months, without qualification, based upon Regulatory Guide 1.83 which provides the same requirement. The Regulatory Guide establishes a basis acceptable to the NRC for reducing the probability and consequences of steam generator tube failure through periodic inservice inspection for early detection of defects and deterioration. As stated in the basis of this specification, all other aspects of the steam generator inspection program exceed the requirements of Regulatory Guide 1.83 and remains unchanged by this Technical Specification amendment.

2. The possibility of a new or different kind of accident from any previously evaluated has not be created. The proposed Technical Specification establishes a surveillance interval which reflects an acceptable interval to the NRC for the purpose of reducing the probability of steam generator tube failures.

3. There will be no significant reduction in the margin of safety. As noted in the basis of the Technical Specification, the steam generator tube inspection program exceeds the requirements of Regulatory Guide 1.83. This statement remains unaffected by this change.

(25) Pressurizer pressure channel calibration:

The proposed change does not involve a significant hazards consideration since:

1. There will be no significant increase in the probability or consequences of an accident previously evaluated. An historical review of "A Left/As Found" data was conducted for all completed test procedures since the December 1986 outage. This evaluation considered all other conceivable impact[s] relevant to the determination of instrument channel uncertainties. The final statistical determination of instrument channel drift value for the 30 month surveillance interval resulted in recommended changes to existing Technical Specification and plant procedures .... Together, these proposed changes insures that existing accident analyses limits are not exceeded.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created. The evaluation of the impact of the desired change to the pressurizer pressure instrument channel surveillance interval from 24 to 30 months and the proposed changes to plant procedures preserves the system function within the limits of existing safety analyses, therefore, no new accidents are being created.

3. There are [is] no significant reduction in the margin of safety. The purpose of the surveillance calibration test of the pressurizer pressure instrument channel is to provide a level of assurance of system function as designed. Extension of the surveillance period to 30 months and consequential effect on instrument drift values with the mentioned changes, was evaluated with acceptable results in regards to system functional capability. The complimentary minimum frequency for visual inspection of the channels each shift as required by our existing Technical Specification remains unaffected. The margin of safety for the system is therefore preserved.

(26) Reactor coolant system (RCS) flow channel calibration:

The proposed change does not involve a significant hazards consideration since:

1. There will be no significant increase in the probability or consequences of an accident previously evaluated. The RCS Flow calibration procedures from the February 1986 outage to the February 1992 were reviewed. The channel uncertainties projected over the 30 month period can be accommodated within the current Technical Specification setpoint and safety analysis limit.

2. The possibility of a new or different kind of accident form [from] any previously analyzed has not been created. No new or different kind of accident can be created by the extension of the surveillance interval, since there is no change in the Technical Specification setpoint or safety analysis limit.

3. There will be no significant reduction in the margin of safety. The projected 30 month drift values were determined with a 95% probability at a 95% confidence level. The extension of the surveillance interval will not significantly reduce the safety margin.

The NRC staff has reviewed the licensee's analyses and, based on this review, it appears that the three standards of 50.92(c) are satisfied for each proposed change. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

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Attorney for licensee: Brent L. Brandenburg, Esq., 4 Irving Place, New York, New York 10003.

NRC Project Director: Robert A. Capra

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: May 19, 1992, as supplemented on June 15, 1992

Description of amendment request: This proposed amendment to the Technical Specifications (TSs) will allow the use of the B&W sleeving process as described in BAW-2045P, Rev. 1, "Recirculating Steam Generator Kinetic Sleeve Qualification for 3/4 inch OD Tubes." This revision to the topical allows sleeving to be used in the tube support plate region, as well as in the tube sheet region, which is currently allowed per TS 4.4.5.4.a.6.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation of Catawba in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated. Considering the function of the sleeve, the principal accident associated with this amendment is the steam generator tube rupture accident. The steam generator sleeve has been analyzed and tested to the operating and design conditions of the original tube as documented in Topical Report BAW-2045P, Rev. 1. The Topical Report contains the design verification results from the analysis and confirmatory testing performed on the sleeve. The probability or consequences of this previously evaluated accident does not involve a significant increase since the sleeve meets the original tube design conditions and the structural integrity of the tube is maintained by the sleeving process. The sleeve is less susceptible to the identified stress corrosion failure mechanisms of the original tube because of the B&W specified installation process and the use of improved material (Inconel alloy 690); therefore, the potential for primary to secondary leakage is also reduced by the addition of a steam generator tube sleeve. The continued integrity of the sleeve will be verified by TS inspection requirements, and the sleeve will be plugged in accordance with TSs, if necessary.

Operation of Catawba in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated. The purpose of the sleeve is to repair a defective steam generator tube to maintain the function and integrity of the tube as opposed to plugging and removing the tube from service. The sleeve functions in essentially the same manner as the original tube, and has been analyzed and tested for steam generator design conditions. The sleeve is less susceptible to the identified stress corrosion failure mechanisms of the original tube because of the B&W specified installation process and the use of improved material (Alloy Inconel 690); therefore, the potential for primary to secondary leakage is also reduced by the addition of a steam generator tube sleeve. The continued integrity of the sleeve will be verified by TS inspection requirements and the sleeve will be plugged in accordance with TSs, if necessary. Repairing a steam generator tube to a serviceable condition utilizing the proposed sleeve process does not create the possibility of a new or different type of accident since the sleeving is a passive component with postulated failures that are similar to the original tube.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the first two standards of 10 CFR 50.92(c) are satisfied. The NRC staff requested additional information regarding the licensees analysis of whether the proposed amendment would involve a significant reduction in the margin of safety. The licensee has stated in the initial application that the structural integrity of the tube is maintained by the installation of the sleeve and the sleeve/tube weld. In addition, in its supplementary response of June 15, 1992, the licensee has discussed the transient and accident analyses that are sensitive to tube plugging. The licensee states that these analyses have been basedon the assumption of ten percent plugging of the steam generator tubes. The equivalent number of tubes plugged will be determined from the total number of tubes actually plugged and sleeved. This value will be monitored to ensure that it remains below the accident analyses assumption of ten percent. Therefore, on the basis that tube plugging and sleeving will not exceed that equivalent value already accounted for in these analyses and the licensee's statement on the maintenance of structural integrity, the staff concludes that there will be no significant reduction in the margin of safety. On these bases, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

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NRC Project Director: David B. Matthews

Entergy Operations Inc., Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: May 5, 1992

Description of amendment request: The proposed amendment request allows the removal of component list "Secondary Containment Bypass Leakage Paths," "Containment Isolation Valves," "Containment Penetration Conductor Overcurrent Protective Devices," and "Motor-Operated Valves Thermal Overload Protection and/or Bypass Devices" from Technical Specifications (TS). This removal implements the staff's recommendations contained in NRC Generic Letter 91-08.

Basis for proposed no significant hazards consideration determination: In accordance with 10 CFR 50.91(a), the staff has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed amendment does not involve an increase in the probability or consequences of an accident previously evaluated.

The removal of Tables 3.6-1, 3.6-2, 3.8-1 and 3.8-2 and placing them in to Plant procedures and the Final Safety Analysis Report (FSAR) does not change plant operation. In addition, changes to the Limiting Conditions for Operation (LCO) are made to be consistent with the components list removal. Therefore, there will be no increase in the probability or consequences of an accident previously evaluated.

The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Because deletion of Tables 3.6-1, 3.6-2, 3.8-1 and 3.8-2 does not change the way the plant is operated, the potential for an unanalyzed accident is not created.

The proposed amendment does not involve a significant reduction in the margin of safety.

Deletion of Tables 3.6-1, 3.6-2, 3.8-1 and 3.8-2 from the TS and placing them in the FSAR has no affect on plant operation. Therefore, there is no reduction in any margin of safety.

Based on this review, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

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NRC Project Director: John T. Larkins

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of amendment request: November 7, 1991, as supplemented June 17, 1992

Description of amendment request: The proposed amendments would change the Technical Specifications (TS) to allow quarterly leak rate tests of containment purge supply and exhaust isolation valves to be performed by pressurizing the space between the inboard and outboard containment isolation valves (hereafter referred to as "between-valve" tests). The change to between-valve tests would apply only to quarterly tests and not to Type C tests performed at least every 24 months to satisfy 10 CFR 50, Appendix J. The proposed changes would provide clearer distinctions between quarterly and Type C tests, their associated acceptance criteria and required actions. The change would include an additional option (use of a blind flange) for isolating the purge penetrations in the event a Type C test reveals excessive leakage through an isolation valve. Specifically, the following changes are proposed:

1)TS 4.6.1.7.2 presently requires that the containment purge valves with resilient material seals in each sealed closed containment purge supply and exhaust penetration be demonstrated operable at least quarterly by verifying that the measured penetration leakage rate is less than 0.06 L_a "when pressurized to P_a." This would be renumbered TS 4.6.1.7.3 and the quoted portion would be changed to read

by pressurizing between the valves to P_a. If a containment purge penetration exceeds its required action limit, a Type C penetration leakage test shall be performed within 24 hours provided the total combined leakage rate remains less than 0.60 L_a.

A new TS 4.1.6.7.2 would be added to require that

At least once per 24 months each containment purge supply and exhaust penetration shall be Type C tested. Each Type C test shall have a penetration leakage of less than 0.06 L_a.

Existing TS 4.6.1.7.3 would be renumbered TS 4.6.1.7.4.

2) Action statement c of TS 3.6.1.7 requires that

With a containment purge supply and/or exhaust isolation valve(s) having a measured leakage rate in excess of the limits of Specification 4.6.1.7.2, restore the inoperable valve(s) to OPERABLE status within 24 hours; otherwise be in at least HOT STANDBY within the next 6 hours, and in COLD SHUTDOWN within the following 30 hours.

This would be changed to read

With a Type C leakage test on the containment purge supply and/or exhaust penetrations exceeding 0.06 L_a, but with the combined leakage rate for all penetrations and valves subject to Type B and C tests less than 0.60 L_a, reduce the leakage to less than 0.06 L_a, within 24 hours by either restoring the affected valve(s) to OPERABLE status, or isolating each affected penetration by insertion of at least one blind flange outside of containment. Otherwise, be in at least HOT STANDBY within the next 6 hours, and in COLD SHUTDOWN within the following 30 hours.

A new Action statement d would also be added to TS 3.6.1.7 to require that

With a containment purge supply and/or exhaust isolation valve(s) having a measured leakage rate by either the Type C test or the between-valve test such that the combined leakage rate for all penetrations and valves subject to Type B and C tests is greater than or equal to 0.60 L_a, restore CONTAINMENT INTEGRITY within 1 hour or be in at least HOT STANDBY within the next 6 hours and COLD SHUTDOWN within the following 30 hours.

3) TS 4.6.1.2.f requires that purge supply and exhaust isolation valves with resilient material seals be tested and demonstrated operable by the requirements of TS 4.6.1.7.2. This would be supplemented by adding at the end, "and 4.6.1.7.3."

4) TS Bases 3/4.6.1.7 "Containment Ventilation System" would be supplemented to add that "The required action limit for the quarterly surveillance specified in 4.6.1.7.3 is maintained in Section 6.2.6 of the FSAR and controlled by plant procedures."

Basis for proposed no significant hazards consideration determination: The licensee would prefer the between-valve method for quarterly local leak rate tests (LLRTs) because such tests do not require containment entry and, thus, are advantageous in maintaining radiological exposures to plant personnel to levels as low as is reasonably achievable. Quarterly tests are conducted to identify degradation of the resilient seals which could lead to excessive leakage. The method would not apply to Type C tests; Type C tests would continue to be conducted at least once per 24 months, and whenever the quarterly between-valve leak test leakage reaches a certain percentage of the acceptance criteria, by applying pressure "in the same direction as that when the valve would be required to perform its safety function" [Appendix J to 10 CFR part 50]. Because leak characteristics of containment purge valves tend to be direction-dependent and because between-valve testing means that the inboard valve is pressurized in a direction opposite the accident direction, the licensee has proposed several additional requirements, including the following:

The containment purge supply and/or exhaust penetration leakage must be less than 0.06 L_a, and the combined leakage rate for all penetrations and valves subject to Type B and C tests must be less than 0.60 L_a.

Quarterly between-valve test results will be trended. If the current leakage exceeds the previous test leakage by 10 percent of 0.06 L_a, then the between-valve test frequency will be increased to at least once per month.

If the current between-valve test leakage exceeds 35 percent of 0.06 L_a, then a Type C test must be performed within 24 hours. (The value of 35 percent of 0.06 L_a, is the required action limit given in FSAR Section 6.2.6 which is referenced by proposed TS 4.6.1.7.3 and its associated Bases).

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of accidents previously evaluated. The proposed change involves the requirements that ensure that containment integrity and containment leakage limits are maintained. The proposed change does not involve or have any effect on any initiating event for any accident previously evaluated. Operation under the provisions of the proposed amendment will continue to ensure that containment integrity and leakage limits are maintained. The requirements of 10 CFR 50, Appendix J will continue to be met. Therefore, the probability or consequences of any accident previously evaluated will not be affected.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated. The change does not introduce any new equipment into the plant or require any existing equipment to be operated in a manner different than that in which it was designed to be operated. Containment integrity and leakage limits will continue to be maintained under the proposed surveillance requirements. With regard to isolating the affected penetration, the provision for the use of blind flanges is a part of the existing design, and is consistent with existing TS 3.6.3, "Containment Isolation Valves."

3. The proposed change does not involve a significant reduction in a margin of safety. Containment integrity and leakage limits will continue to be maintained in a manner that is consistent with the safety analysis. The acceptance criteria for the quarterly tests will be based on a conservative fraction of the leakage limits. If the acceptance criteria for the quarterly test cannot be met, the test frequency will be increased or a Type C LLRT will be performed in a timely manner, as required. Therefore, containment purge penetration leakage will continue to be monitored in an effective manner while reducing radiation exposure to personnel involved in testing as well as reducing personnel hazards associated with the use of scaffolding, etc. The introduction of an alternate method of isolating the penetration

(i.e., blind flanges) plus the additional action to provide for the event that total combined leakage exceeds 0.60 L_a, is consistent with existing TSs 3.6.3, "Containment Isolation Valves," and 3.6.1.1, "Containment Integrity." Based on the above, there will be no reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia 30830.

Attorney for licensee: Mr. Arthur H. Domby, Troutman, Sanders, Lockerman and Ashmore, Candler Building, Suite 1400, 127 Peachtree Street, NE., Atlanta, Georgia 30303-1810.

NRC Project Director: David B. Matthews

Indiana Michigan Power Company, Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of amendment request: May 1, 1992

Description of amendment request: The proposed amendment would change the number of containment thermistor fire detectors to accurately reflect the as-built conditions in Units 1 and 2.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. The correction of the number of thermistor fire detectors in the Technical Specification (TS) tables will not alter the existing TS requirements or change the components to which they apply. The requirements for fire detection instrumentation will remain the same. No physical changes are being made to the facility as a result of the change. The editorial changes to the TS will not affect the probability or consequences of an accident in any way. Therefore, the proposed amendment does not involve a change in the probability or consequences of an accident previously evaluated.

(2) Create the possibility of a new or different kind of accident from any previously evaluated. The proposed amendment does not create the possibility of a new or different kind of accident from any previously evaluated. The correction of the number of thermistor fire detectors in the TS tables will not alter existing TS requirements. No physical changes are being made to the facility as a result of or in support of this proposed change. Since the requirements for the fire protection instrumentation for containment thermistors will remain the same, this proposed amendment will not affect the outcome of previously evaluated accidents. Therefore, this proposed amendment does not create the possibility of a new or different kind of accident from any previously evaluated.

(3) Involve a significant reduction in a margin of safety. The proposed amendment does not involve a significant reduction in the margin of safety. The correction of the number of containment thermistor fire detectors listed in the TS tables will not alter existing TS requirements or change the components to which they apply. No physical changes are being made to the facility as a result of the proposed change. Since the requirements for the fire protection instrumentation for containment thermistors will remain the same, this proposed amendment will not affect the margin of safety. The editorial changes made to refine the TS will not affect the margin of safety. Consequently, the proposed amendment does not involve a significant reduction in the margin of safety.

Based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW, Washington, DC 20037.

NRC Project Director: L. B. Marsh.

Maine Yankee Atomic Power Company, Docket No. 50-309, Maine YankeeAtomic Power Station, Lincoln County, Maine

Date of amendment request: May 8, 1992

Description of amendment request: The proposed amendment would change Technical Specification 1.4.D by (1) removing reference to the containment air recirculation system providing post-accident containment air mixing, and (2) removing reference to containment air recirculation system requirements that have been satisfied and incorporated into the Final Safety Analysis Report (FSAR). (The tense of TS 1.4.D is changed to reflect construction completion.)

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, the essence of which is presented below:

Significant Hazards Evaluation: The proposed change to remove reference to the containment air recirculation system in Technical Specification 1.4 has been evaluated against the standards of 10 CFR 50.92 and has been determined to not involve a significant hazards consideration. This proposed change does not:

1. Involve a significant increase in the probability or consequence of an accident previously analyzed. The containment air recirculation system is not credited in any of the FSAR Chapter 14 analyses, and evaluations have shown that natural convective circulation mixing and/or containment spray-induced convection are adequate to provide a well mixed containment atmosphere. Therefore, there will be no impact on accidents previously analyzed.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated. Use of the containment air recirculation system and/or the containment spray system as indicated in this submittal does not create the possibility of a new or different kind of accident, because the proposed amendment involves neither a hardware modification nor the creation of a unique operating condition.

3. Involve a significant reduction in a margin of safety. Removing the containment air recirculation system from Technical Specifications does not change the results or conclusions of any of the FSAR Chapter 14 analyses. The containment spray system will provide containment mixing and its operation is already governed by Maine Yankee Technical Specifications.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Wiscasset Public Library, High

Street, P.O. Box 367, Wiscasset, Maine 04578

Attorney for licensee: John A. Ritsher, Esquire, Ropes and Gray, One International Place, Boston, Massachusetts 02110-2624

NRC Project Acting Director: Victor Nerses

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: November 15, 1991

Description of amendment request: The amendment would remove the rod sequence control system (RSCS) from the Technical Specifications and reduce the rod worth minimizer (RWM) low-power set point (LPSP) from its current power level of 20 percent to a power level of 10 percent. These changes will enable the licensee to disable the RSCS for the unit and thereby improve reactor startup and controlled shutdown operations.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The enclosed Technical Specification change is judged to involve no significant hazards based on the following:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

The removal of the RSCS, and the corresponding RWM LPSP reduction from 20% power to 10% power will not involve a significant increase in the probability or consequences of an accident previously evaluated. The RSCS and the RWM were originally designed to mitigate the consequences of a CRDA [control rod drop accident]; these systems were not designed to prevent a CRDA from occurring. The probability of a CRDA occurring is a function of the Control Rod Drive System (CRDS), which effects movement of the control rods. Since no hardware changes are being made to the CRDS, the control rods or the attendant control rod guides, there will be no increase in the probability of a control rod decoupling from its drive or in the probability of a decoupled control rod sticking in the core.

The RSCS was originally designed and installed at earlier vintage Boiling Water Reactors (BWRs). However, it has since been determined that the probability of occurrence of the CRDA is slight, and other, reliable means are employed which effectively minimize the probability of a CRDA occurring in which peak enthalpy values would exceed the staff acceptance criteria of 280 cal/gm. In its Safety Evaluation accepting Amendment 17 to GESTAR II, the NRC referenced a probability study performed by the NRC staff in 1975 to provide a basis for evaluating potential RSCS backfit requirements. This study concluded that for a CRDA to exceed the staff acceptance criteria of 280 cal/gm heat generation in the peak fuel pellet, the following must occur:

(1) A drive-blade disconnect, (2) which is not discovered before rod drop occurs, (3) the blade must stick, (4) and not be discovered, (5) the sticking must occur in upper 1/6 of core, (6) the drive must be lowered at least 2-3 feet, (7) an incorrect rod pattern must have been selected and pulled and, (8) the error not detected, (9) the error must directly involve the dropped rod and, (10) the error must provide an unusually high worth for that rod, (11) the rod blade must unstick and drop, (12) the drop must occur at low power (less than 10%), (13) it must occur when the relevant overall rod pattern is such as to enhance the rod worth (a small fraction of pattern development time).

The study conservatively estimated that the probability of a CRDA occurring which exceeds the 280 cal/gm criterion is approximately 10^{-7} per reactor-year, a significant margin to an acceptance criteria of 10^{-3} per reactor-year. Since issuance of this study in 1975, approximately ten times the number of reactor-years have accumulated without occurrence of a rod drop or even a combination of any two of the necessary initiating events listed above. Based on this data, and the fact the probability of a CRDA occurring is dependent on the CRDS, and not the RSCS or the RWM, the District concludes that the removal of the RSCS and reduction of the RWM LPSP does not result in a significant increase of the probability of an accident previously evaluated.

The RSCS and the RWM were designed to mitigate the consequences of a CRDA. However, other design and administrative controls are employed which further reduce the possibility of experiencing a CRDA which exceeds the 280 cal/gm limit. CNS employs the Banked Position Withdrawal Sequence (BPWS) control rod movement pattern. The BPWS is a method by which control rods are inserted and withdrawn such that incremental control rod worths are maintained at low values, thereby mitigating the consequences of the CRDA in the startup and low power operating ranges. The BPWS is enforced through the RWM which prevents withdrawing an out-of-sequence control rod more than one notch past the pre-programmed limit.

The CNS procedures which govern control rod movement require that while the reactor is operating at or below the RWM LPSP with the RWM inoperable, a second licensed operator or other qualified employee shall independently verify that the proper control rod sequence is being maintained during rod manipulation. Additionally, as required by the NRC in the safety evaluation, with this change the District also proposes an administrative limit to minimize reactor startups with the RWM inoperable. The proposed limit is one startup per calendar year.

Further, improvements in CRDA analysis methods have indicated that the peak fuel enthalpies resulting from a CRDA are significantly lower than previously determined by earlier methods as demonstrated by both General Electric and NRC sponsored studies (BNL-NUREG 28109, "Thermal Hydraulic Effects on Control Drop Accident in a BWR"). These analyses have shown that when above 10% reactor power, a CRDA which exceeds the 280 cal/gm limit cannot occur. Therefore, based on this and the foregoing discussion, the District has determined that removing the RSCS from operation and reducing the RWM LPSP from 20% power to 10% power does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

The RWM and the RSCS were designed only to mitigate the consequences of the CRDA. As discussed above, the District proposes to remove the RSCS and reduce the RWM LPSP. No other hardware changes or new modes of operation are planned. Likewise, the proposed change to the RWM bases section does not involve any hardware changes or new modes of operation. Therefore, the District concludes that this change will not create the possibility for a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change create a significant reduction in the margin of safety?

Removal of the RSCS will not create a significant reduction in the margin of safety. The RWM will continue to provide an effective means of supervising control rod movement to ensure that the operators adhere to the correct rod movement sequences. In addition, CNS procedures ensure that during all control rod movements while operating at or below the RWM LPSP with the RWM inoperable, a second licensed operator or other qualified employee verifies that the correct rod sequences are being followed.

Lowering the RWM LPSP from 20% power to 10% power will not reduce the margin of safety. Calculations performed by General Electric and Battelle Pacific Northwest Laboratories have shown that even with the maximum single control rod position error, and most multiple error patterns, no CRDA can occur which would exceed the acceptance criteria of 280 cal/gm.

The NRC has already reviewed and accepted the technical justification prepared by General Electric for implementing this change. This is documented in the NRC's Safety Evaluation accepting Amendment 17 to GESTAR II. Therefore, the District concludes that removing the RSCS and reducing the RWM LPSP as described above will not create a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305

Attorney for licensee: Mr. G.D. Watson, Nebraska Public Power District, Post Office Box 499, Columbus, Nebraska 68602-0499

NRC Project Director: John T. Larkins

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: May 4, 1992

Description of amendment request: This proposed change would remove component lists from the Technical Specifications (TS) in accordance with guidance provided in NRC Generic Letter 91-08, "Removal of Component Lists from Technical Specifications." The changes proposed and the pages in the TS where they occur are listed below.

1. On page 162, remove from TS 4.7.A.2.f.1 the reference to and description of Tables 3.7.2, 3.7.3, and 3.7.4. In addition, remove the reference to Table 3.7.2 from TS 4.7.A.2.f.2. 2. On page 162a, remove reference to Table 3.7.3 from TS 4.7.A.2.f.4. 3. In TS 3.7.D.2 on page 167, add an asterisk with a footnote stating that isolation valves closed to satisfy this requirement may be opened intermittently under administrative controls. In addition, on page 167, add a new surveillance requirement, TS 4.7.D.1.d. This new specification was a footnote to Table 3.7.4 and discusses the surveillance requirements for devices installed to limit the opening angle of certain containment isolation valves.

4. On page 168, correct the component identification code (CIC) numbers for reactor water sample valves from RRV-740AV/741AV to RR-740AV/741AV. 5. On page 169, correct the CIC numbers for the air containment atmosphere dilution (ACAD) valves to indicate that they are listed as primary containment valves (e.g., change ACAD MV 1301 to PC-1301MV, etc). 6. On pages 171 through 175, remove Tables 3.7.2 through 3.7.4; these pages are no longer used. 7. On page 178, remove reference to Table 3.7.4 from Bases Section 3/4.7.A. 8. On page 183, in Bases Section 3/4.7.D, add a paragraph stating that the updated safety analysis report (USAR) and the plant procedures identify testable penetrations, primary containment testable isolation valves, and the types of leak testing performed on the valves.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The enclosed Technical Specification change is judged to involve no significant hazards based on the following:

1. Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change will not result in any hardware changes to the plant. The testable penetrations, and primary containment testable isolation valves, listed in the affected tables are not assumed to be initiators of analyzed events. Containment isolation valves, listed in the affected tables are assumed in the mitigation of accident and transient events. The removal of tabular components from the Technical Specifications does not impact affected testable penetrations, and primary containment testable isolation valve OPERABILITY requirements. Technical Specifications will continue to require the testable penetrations, and primary containment testable isolation valves to be OPERABLE. Action statements and surveillance requirements for testable penetrations, and primary containment testable isolation valves will remain in the Technical Specifications. The removal of the Tables and replacing them with a reference to the USAR and plant procedures in the Bases section does not reduce the effectiveness of the Technical Specifications. The testable penetrations, and primary containment testable isolation valves are located in the USAR and any changes to them are controlled by the 10CFR50.59 review process. In addition, the testable penetrations, and primary containment testable isolation valves are adequately addressed in existing plant surveillance procedures which are also controlled by 10 CFR 50.59 and are subject to the change control provision specified in the Administrative Controls Section of the Technical Specifications (Section 6.2.1.A.4). In addition, there are no proposed changes to the LCO's and Surveillance requirements other than the addition discussed below; consequently, no changes in operability of the testable penetrations, and primary containment testable isolation valves will occur. Accordingly, there will be no effect on previously analyzed accidents.

The footnote for Table 3.7.4 has been retained, but was moved to the applicable Surveillance section of the Technical Specifications. This footnote discusses the surveillance requirements for those installed devices that limit the maximum opening angle of certain primary containment purge and vent isolation valves. These valves and their requirements remain the same as the current Technical Specifications. Thus, as the location of the requirement within the Technical Specification has changed, the requirement itself has not; therefore, there is no impact on the probability or consequences of an accident previously evaluated.

The administrative changes revise typographical errors listing Component Identification Code (CIC) numbers in Technical Specification Table 3.7.1. The form, fit, function, and operational requirements of the affected valve CIC numbers do not, in any way change the way equipment is operated, tested, or maintained. Since the proposed administrative changes only correct typographical errors in CIC numbers, it does not increase the probability or consequences of any accident previously evaluated.

2. Does the proposed change create the possibility for a new or different kind of accident from any accident previously evaluated?

The proposed change, which involves the deletion of testable penetration, and primary containment testable isolation valve tables from the Technical Specifications does not change the way the plant is operated, tested or maintained. The proposed change does not necessitate a physical alteration of the plant (no new or different type of equipment being installed) or involve any changes in the parameters governing normal plant operation. The proposed change, deletion of the testable penetration, and primary containment testable isolation valve tables, will not impose any different requirements to the plant and, adequate control of information will be maintained (changes to the USAR and plant procedures require 50.59 review). The retention of surveillance requirements over specific valves cannot create a new accident since the requirements are the same. Thus, this proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated for the Cooper Nuclear Station.

The administrative changes revise typographical errors listing Component Identification Code (CIC) numbers in Technical Specification Table 3.7.1. The form, fit, function, and operational requirements of the affected valve CIC numbers do not, in any way, change the way equipment is operated, tested, or maintained. Since the proposed administrative changes only correct typographical errors in CIC numbers, and do not involve a change in system components or system operating characteristics, no new or different kind of accident can be created.

3. Does the proposed change create a significant reduction in the margin of safety?

The proposed changes will not reduce the margin of safety because they have no impact on any safety analysis assumption. The Technical Specifications continue to require the affected testable penetrations, and primary containment testable isolation valves to be OPERABLE by maintaining the surveillance requirements associated with them. The Technical Specifications also maintain the surveillance requirements (new surveillance requirement 4.7.D.1.d) for verifying that the devices that limit the maximum opening angle on certain valves remain functional. In addition, since any further changes to the listing of testable penetrations, and primary containment testable isolation valves in the USAR and plant procedures will be evaluated per the requirements of 10 CFR 50.59, no reduction (significant or insignificant) in a margin of safety will be allowed. Therefore, this change does not involve a significant reduction in the margin of safety.

The administrative changes revise typographical errors listing Component

Identification Code (CIC) numbers in Technical Specification Table 3.7.1. The form, fit, function, and operational requirements of the affected valve CIC numbers do not, in any way change, the way equipment is operated, tested, or maintained. Since the proposed administrative changes only correct typographical errors in CIC numbers, it does not involve a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305

Attorney for licensee: Mr. G.D. Watson, Nebraska Public Power District, Post Office Box 499, Columbus, Nebraska 68602-0499

NRC Project Director: John T. Larkins

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: May 4, 1992

Description of amendment request: The proposed changes in the Cooper Nuclear Station (CNS) Technical Specifications would remove the requirements associated with the main steam line radiation monitor reactor scram and Group 1 containment isolation functions. The Group 1 isolation consists of the main steam line isolation valves and the main steam line drain valves. These changes reflect changes previously considered and approved in the NRC staff safety evaluation of the licensing topical report NEDO-31400.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The enclosed Technical Specifications change is judged to involve no significant hazards based on the following:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed Technical Specification changes associated with removal of Group 1 Containment Isolation and reactor scram functions from the Main Steam Line Radiation Monitor (MSLRM) do not constitute a significant increase in the probability or consequences of an accident previously evaluated. Removal of these functions does not involve any hardware changes which could increase the frequency of occurrence of any accident previously evaluated, as no new failure modes will be introduced. For all previously analyzed accidents except the Control Rod Drop Accident (CRDA), reactor scram and Main Steam Line Isolation are expected to occur through other single failure proof means prior to actuation of the MSLRMs. Therefore, no credit is taken in any accident analysis for these functions occurring as the result of the actuation of the MSLRMs, with the exception of the CRDA, which is discussed in more detail below. Therefore, the proposed changes to the CNS Technical Specifications, and the associated plant hardware changes do not constitute a significant increase in the probability or consequences of an accident previously evaluated.

Although a Control Rod Drop Accident assumes that Main Steam Line Isolation Valve (MSIV) isolation would occur as the result of increased coolant activity due to a failure of fuel rods, the CRDA analysis conservatively assumes that all activity calculated to be available for transport to the condenser is transported to the condenser prior to closing of the MSIVs. Further, in accordance with the analysis provided in NEDO-31400 which the District has determined conservatively bounds the CRDA analysis for CNS, maintaining the MSIVs in the open position following a CRDA does not involve a significant increase in the consequences of the CRDA. In fact, it has been determined as documented in NEDO-31400 that processing a portion of the activity resulting from a CRDA through the CNS Augmented Offgas System (AOG) would reduce the potential offsite exposures resulting from the accident by reducing the amount of activity available for leakage from the condenser directly to the environment. In addition, maintaining the MSIVs open would also retain availability of the condenser for decay heat removal following such an event.

Additionally, while the analysis conducted for the BWROG [Boiling Water Reactor Owners Group] as described in NEDO-31400 indicates an insignificant increase in reactivity control failure (1.4 X 10-9 events/year) as a result of removing the MSLRM scram function, this is offset by a reduction in transient initiating events caused by spurious reactor scrams from the MSLRMs which results in an approximate 0.3% reduction in core damage frequency. This represents an overall net improvement in safety. Therefore, based on this and the above discussion, the District concludes that this proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility for a new or different kind of accident from any accident previously evaluated?

This proposed change does not involve any plant hardware changes which could introduce any new equipment failure modes or effects, nor does it institute any new mode of operation other than that discussed above and in NEDO-31400, which has been accepted by the NRC Staff. The new mode of operation discussed above constitutes improved processing of potential activity following the unlikely event of a CRDA, and does not impart the potential for any new accident modes. Therefore, this proposed change does not create the possibility for a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change create a significant reduction in the margin of safety?

As discussed above, the reduction in reactivity control reliability resulting from elimination of the MSLRM scram function has been shown to be negligible (1.4×10^{-9} events/year). This is offset by a reduction in the frequency of transient initiating events caused by spurious scrams associated with the MSLRM, with a calculated decrease in core damage frequency of 0.3%. This represents an overall net increase in safety; therefore, this proposed change does not create a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305

Attorney for licensee: Mr. G.D. Watson, Nebraska Public Power District, Post Office Box 499, Columbus, Nebraska 68602-0499

NRC Project Director: John T. Larkins

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: April 28, 1992

Description of amendment request: The licensee proposed to delete two license conditions from the Millstone 3 operating license which have been satisfied and are no longer necessary. The conditions to be deleted are: (1) 2.C(5) Inservice Inspection Program, and (2) 2.C(10) Initial Test Program.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed amendment does not involve a significant hazards consideration because it would not:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed.

Individual license conditions discussed above were one-time commitments that have been met. Their existence is no longer warranted; therefore, removal of license conditions is appropriate and safe. As a result of the proposed amendment, there are no physical changes to the facility and all operating procedures, limiting conditions for operation (LCO), limiting safety system

settings, and safety limits specified in the Technical Specifications will remain unchanged.

2. Create the possibility of a new or different kind of accident from any previously evaluated.

Since there are no changes in the way the plant is operated, the potential for an unanalyzed accident is not created. No new failure modes are introduced.

3. Involve a significant reduction in a margin of safety.

Plant safety margins are established through LCOs limiting safety system settings, and safety limits specified in the Technical Specifications. As a result of the proposed amendment, there will be no changes to either the physical design of the plant or to any of these settings and limits; therefore, there will be no changes to any of the margins of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: May 20, 1992

Description of amendment request: The licensee has proposed the following changes to the Technical Specifications:•

Figure 3.1-5: Required Shutdown Margin for Mode 5 with RCS Loops Not Filled. This proposed change revises the title of the figure to be consistent with the wording of Technical Specification Sections 3.1.1.1.2, 3.1.1.2, and 3.4.1.4.2.

Δ *Section 3.4.1.3: Reactor Coolant System--Hot Shutdown.* The requirement to have two reactor coolant pumps (RCPs) operating in Mode 4 is being changed to require three RCPs operating with the reactor trip breakers closed.

Δ *Section 4.4.1.3.3: Reactor Coolant System--Hot Shutdown Surveillance Requirements.* The proposed change will revise the wording of the surveillance requirement to ensure that the required number of reactor coolant loops are verified in operation consistent with the requirements of the Technical Specification 3.4.1.3.

Δ *Section 3/4.4.1.4.2: Reactor Coolant System--Cold Shutdown--Loops Not Filled.* This change will make the requirements of Technical Specification Section 3/4.4.1.4.2 consistent with those requirements of Section 3.1.1.2, and, therefore, preclude any confusion.

Δ *Section 3/4.9.1.1: Refueling Operations--Boron Concentration.* The proposed change will require that valve 3CHS*V305 be closed in addition to those valves specified in Technical Specification Section 4.4.1.4.2.3 which is more restrictive.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed changes do not involve a significant hazards consideration because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed.

The proposed changes either provide clarification and ensure consistency with our Technical Specifications or are more restrictive requirements that provide greater assurance that systems will be able to perform their function. There are no hardware changes associated with these proposed changes. There is no increase in the probability or consequences of any previously analyzed accident.

2. Create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes clarify the requirements of the Technical Specifications and do not change conditions sufficiently to create an accident of a different type than previously evaluated.

3. Involve a significant reduction in the margin of safety.

Since the changes do not affect the consequences of any accident previously analyzed, there is no reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Northern States Power Company, Docket Nos. 50-282 and 50-306, Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2, Goodhue County, Minnesota

Date of amendment request: June 15, 1992

Description of amendment request: The license amendment request proposes changes to the facility Technical Specifications in response to Generic Letter 87-09 "Sections 3.0 and 4.0 of the Standard Technical Specifications (STS) on the Applicability of Limiting Conditions for Operation and Surveillance Requirements," which provided guidance to licensees on improvements to Technical Specifications to clarify when a missed surveillance constitutes a violation of the operability requirements of a Limiting Condition for Operation and to clarify the applicability of the action requirements and the time during which the limits apply.

The proposed changes to the Prairie Island Technical Specifications are described below.

(1) In the Table of Contents, the page number for "4.0 SURVEILLANCE REQUIREMENTS" would be changed from "4.1-1" to "4.0-1" to reflect the new Section 4.0 described below.

(2) Section 4.0 would be relocated and reformatted to be consistent with Section 3.0, which was incorporated into the Prairie Island Technical Specifications by License Amendment Nos. 91 and 84. The requirements of the current Section 4.0 would be relocated to Specification 4.0.A and expanded to include a statement similar to Standard Technical Specification 4.0.2 which states that surveillance requirements shall be performed within the specified time intervals. The current Section 4.0 requirements would be incorporated, with only editorial changes, into the new Specification 4.0.A as exceptions to the requirement that surveillances shall be performed within the specified time interval. The proposed Specification 4.0.A more clearly states requirements for completion of surveillance requirements and the allowed exceptions to those requirements.

(3) A new Specification 4.0.B would be incorporated into Section 4.0 to add Standard Technical Specification Section 4.0.3, as modified by Generic Letter 87-09. The incorporation of the proposed Specification 4.0.B will clarify when a missed surveillance constitutes a violation of the operability requirements of a limiting condition for operation and will clarify the

applicability of action requirements and the time during which the limits apply.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to the current contents of Specification 4.0 are administrative in nature and therefore have no affect on accidents previously evaluated. The proposed Specification 4.0.B conforms with the guidance provided in Generic Letter 87-09. It proposes a delay of up to 24 hours in the application of action requirements to permit the completion of a missed surveillance. The 24 hour time limit in the application of the action statements, following the identification of a missed surveillance, balances the risks associated with an allowance for completing the surveillance within this period against the risks associated with the potential for a plant upset and challenge to safety systems when the alternative is a shutdown to comply with action requirements before the surveillance can be completed. Therefore, the proposed Specification 4.0.B will not significantly affect the probability or consequences of an accident previously evaluated.

2. The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.

The proposed changes to the current contents of Specification 4.0 are administrative in nature and therefore will not create the possibility of a new or different kind of accident from any previously evaluated. The proposed Specification 4.0.B only affects the performance of surveillance requirements. While it may result in the delay of operability verification following discovery of a missed surveillance, it does not involve any modification in operational limits. There are no new failure modes or mechanisms associated with the proposed Specification 4.0.B because the proposed changes will not affect what plant equipment is required to be operable or how that equipment is operated. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated, and the accident analyses presented in the Updated Safety Analysis Report will remain bounding.

3. The proposed amendment will not involve a significant reduction in the margin of safety.

The proposed changes to the current contents of Specification 4.0 are administrative in nature and therefore will have no affect on the plant's margin of safety. The 24 hour delay for completion of a missed surveillance test included in the proposed Specification 4.0.B conforms with the NRC Staff guidance provided by Generic Letter 87-09. The NRC Staff concluded in Generic Letter 87-09, after taking several factors into account, that 24 hours would be an acceptable time limit for completing a missed surveillance when the allowed out of service times of the action requirements are less than this time limit or when shutdown action requirements apply. The NRC Staff concluded that the 24 hour time limit would balance the risks associated with an allowance for completing the surveillance within this period against the risks associated with the potential for a plant upset and challenge to safety systems when the alternative is a shutdown to comply with action requirements before the surveillance can be completed. Therefore, the proposed Specification 4.0.B will not result in any reduction in the plant's margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW, Washington, DC 20037

NRC Project Director: L. B. Marsh

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: June 1, 1992

Description of amendment request: The proposed amendment to the Technical Specifications (TS) would change the pressure-temperature limits in TS 2.1.2 and would make the limits valid for 20 effective full-power years (EFPY) of operation. The proposed amendment also modifies TS 2.1.1 to change the minimum requirements for starting a non-operating reactor coolant pump (RCP) and modifies TS 2.3(3) to change the requirements for disabling high-pressure safety injection (HPSI) pumps during scheduled heatup and cooldown operations. Lastly, the proposed amendment would modify TS 2.1.6 to change the power-operated relief valve (PORV) limiting conditions of operation (LCO) and surveillance requirements. These changes are being made to implement Generic Letter 90-06.

Basis for proposed no significant hazards consideration determination: The first part of the proposed amendment to the TS deals with pressure-temperature limits. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

This proposed amendment does not involve a significant hazards consideration because the operation of Fort Calhoun Station in accordance with this amendment would not:

1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change would not increase the probability or consequence of any accident since the curves are being updated for operation to higher reactor vessel neutron fluences.

2) Create the possibility of a new or different kind of accident from any accident previously evaluated.

It has been determined that a new or different type of accident is not created because no new or different modes of operation are proposed for the plant. The continued use of the same Technical Specification administrative controls prevents the possibility of a new or different kind of accident.

3) Involve a significant reduction in a margin of safety.

The proposed curves do not constitute a significant reduction in the margin of safety since the uncertainties that are not accounted for in the P-T limits are accounted for in the LTOP [low-temperature overpressure protection] PORV setpoints. This ensures that the actual reactor vessel pressure-temperature limits would not be exceeded during any postulated low temperature overpressure transient.

The second part of the proposed amendment to the Technical Specifications deals with the minimum requirements for starting a non-operating RCP. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

This proposed amendment does not involve a significant hazards consideration because the operation of Fort Calhoun Station in accordance with this amendment would not:

1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

Limiting the secondary-to-primary temperature differential to less that 30 F decreases the consequences of a RCP start transient, and is therefore conservative, since less energy would be added to the primary during such a transient. The consequences of a reactor coolant pump start would not be increased by changing the pressurizer steam volume requirement since the analysis has shown that the LTOP system would protect the vessel pressure-temperature limits.

2) Create the possibility of a new or different kind of accident from any accident previously evaluated.

It has been determined that a new or different type of accident is not created because no new or different modes of operation are proposed for the plant. The continued use of the same Technical Specification administrative controls prevents the possibility of a new or different kind of accident.

3) Involve a significant reduction in a margin of safety.

These changes will not reduce the margin of safety since the LTOP system is designed such that the reactor vessel pressure-temperature limits will not be exceeded during a RCP startup associated pressure transient at low temperature.

The third part of the proposed amendment to the TS deals with the requirements for disabling HPSI pumps during scheduled heatup and cooldown operations. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

This proposed amendment does not involve a significant hazards consideration because the operation of Fort Calhoun Station in accordance with this amendment would not:

1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes would not change the probability or consequences of a HPSI pump start transient since the proposed disable temperatures were chosen such that an inadvertent start of the available pumps would not cause the RCS pressure to exceed the vessel pressure-temperature limits.

2) Create the possibility of a new or different kind of accident from any accident previously evaluated.

It has been determined that a new or different type of accident is not created because no new or different modes of operation are proposed for the plant. The continued use of the same Technical Specification administrative controls prevents the possibility of a new or different kind of accident.

3) Involve a significant reduction in a margin of safety.

The margin of safety will not be reduced since an analysis has shown that the proposed changes will ensure the reactor vessel P-T limits would not be exceeded during an inadvertent start of enabled HPSI pumps.

The fourth part of the proposed amendment to the TS deals with the PORV LCO and surveillance requirement. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

This proposed amendment does not involve a significant hazards consideration because operation of Fort Calhoun Station in accordance with this amendment would not:

1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

Credit is not taken for the PORVs in transient overpressure analyses in the USAR. The changes described earlier will reduce the probability of a RCS Depressurization Event by clarifying position and electrical power requirements for the block valves. Therefore, this change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2) Create the possibility of a new or different kind of accident from any accident previously evaluated.

The potential failure modes have been previously evaluated in the USAR. A failure of a PORV with the block valve open will result in a RCS Depressurization Event. Failure of a PORV with the block valve closed will not have any adverse consequences since the RCS pressure boundary is maintained. No credit is taken for the operation of the PORV(s) in any safety analysis. Therefore, it has been determined that a new or differnent kind of accident from any accident previously evaluated in the USAR will not be created.

3) Involve a significant reduction in a margin of safety.

None of the changes will require a reduction in any margin of safety, since the analyses previously contained in the USAR remain valid for the changes described above. Therefore, no significant reduction in the margin of safety is required.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102

Attorney for licensee: LeBoeuf, Lamb, Leiby, and MacRae, 1875 Connecticut Avenue, N.W., Washington, D.C. 20009-5728

NRC Project Director: John T. Larkins

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: June 22, 1992

Description of amendment request: This proposed amendment to the James A. FitzPatrick technical specifications adds response time testing requirements for the reactor protection system and main steam isolation valve actuation instrumentation including the analog transmitter trip system (ATTS). These testing requirements are applied to instrument channels for which response time is a significant input to the Final Safety Analysis Report (FSAR) transient and accident analysis.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation at the FitzPatrick plant in accordance with the proposed amendment will not involve a significant hazards consideration as defined in 10 CFR 50.92 because it will not:

1. involve a significant increase in the probability or consequences of an accident previously evaluated:

The probability and consequences of previously evaluated accidents were based upon the RPS [Reactor Protection System] instrument channel and MSIV [Main Steam Isolation Valve] isolation actuation instrumentation meeting specified reliability and response time standards. The inclusion of the complete channel in the measurement of response time increases assurance that instrument response time will be maintained within the limits assumed in the transient and accident analyses and will not increase the probability of occurrence of previously evaluated accidents.

2. create the possibility of a new or different kind of accident from any accident previously evaluated.

During the performance of both sensor calibration and RTT [Response Time Testing], the process instrument lines are isolated from the actual system. Because the actual process system is isolated from the test signals, and because the isolation method is unchanged from existing procedures, the new test method will not create the possibility of a new or different kind of accident.

3. or involve a significant reduction in a margin of safety.

Testing of instrumentation which was not previously subject to response time testing will not decrease the margin of safety. The response time limits for trip functions were increased to allow for inclusion of all components in the instrumentation channel, including the ATTS components. However, the response time limits remains less than those assumed in the transient and accident analyses described in the FSAR.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mr. Charles M. Pratt, 1633 Broadway, New York, New York 10019.

NRC Project Director: Robert A. Capra

Public Service Company of New Hampshire, Docket No. 50-443, Seabrook Station, Rockingham County, New Hampshire

Date of amendment request: March 20, 1992, as supplemented June 19, 1992

Description of amendment request: New Hampshire Yankee (NHY), the licensee for Seabrook Station, submitted

the original RTD Bypass System Elimination License Amendment Request (LAR) 92-01 on March 20, 1992. In response to the NRC staff's request for additional information, the licensee submitted Supplement 1 to the amendment request on June 19, 1992. This notice on LAR 92-01 supersedes and replaces the original notice published on May 13, 1992 (57 FR 20516). The amendment request proposes revising the Technical Specifications (TS) to permit a plant design change that will eliminate the Resistance Temperature Detector (RTD) Bypass System which is currently used for the measurement of narrow range Reactor Coolant System hot leg and cold leg temperatures. The RTD Bypass System will be replaced by narrow range thermowell-mounted fast-response RTDs. The proposed TS changes also modify the requirements for the performance of a precision heat balance to determine Reactor Coolant System (RCS) flow rate by increasing the thermal power level at which the heat balance is required. NHY has also proposed a change to the RCS flow rate requirement and the measurement uncertainty value, instead of specifying the thermal design flow analysis value as proposed in LAR 92-01. NHY is also withdrawing the proposed changes to Technical Specification BASES page B 2-5, which were submitted with LAR 92-01, to ensure conformance with Standard Technical Specifications.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

New Hampshire Yankee has determined that License Amendment Request 92-01 and Supplement 1 thereto do not involve a significant hazard consideration pursuant to the standards of 10CFR50.92 based on the following evaluation.

1. The proposed changes do not involve a significant increase in the probability or consequences of a[n] accident previously evaluated.

Westinghouse has prepared WCAP-13181 "RTD Bypass Elimination Licensing Report for Seabrook Nuclear Station" (Proprietary) in support of the four loop operation of Seabrook Station utilizing new thermowell mounted RTD's. For the Westinghouse scope, WCAP-13181 contains a safety evaluation for this modified hot leg and cold leg temperature measurement system. This significant hazards evaluation addresses both the mechanical modifications to the reactor coolant system pressure boundary and the instrumentation uncertainty changes associated with the modified system.

The installation of thermowells and fast response RTDs will not increase the probability of an accident previously analyzed. The modifications to the Reactor Coolant System pressure boundary will be performed utilizing the same ASME Section III installation requirements as were used for the original installation. The installation requirements are specified in the ASME section III 1977 Edition thru Winter 1977 Addenda.

The removal of the bypass piping and valves associated with this piping will enhance the integrity of the Reactor Coolant System. By removing significant lengths of piping, numerous valves and instrument penetrations the probability of a small break LOCA will be reduced.

The new thermowell mounted RTDs have a total response time equivalent to the existing system as discussed in WCAP-13181. The increased instrumentation uncertainty associated with the new thermowell mounted RTDs necessitated an increase in the Overpower [delta -]T K4 term safety analysis limit and conservative changes to the K6 term to assure protection for all power ranges. The Overpower [delta -]T and Overtemperature [delta -]T functions thus continue to provide an equivalent degree of reactor protection. RTD signal processing and the added circuitry to the reactor protection system racks will be accomplished using the same type of Westinghouse 7300 series reactor protection system technology as has been previously qualified and used in the reactor protection system of Seabrook Station. There is no change in the use of the temperature signals by any reactor protection or reactor control system.

The compliance of Seabrook Station to IEEE 279-1971, (>IEEE Standard: Criteria for Protection Systems for Nuclear Power Generating Stations"), applicable NRC General Design Criteria and regulatory guides has not changed.

This modification does not increase the radiological consequences of any accident previously evaluated. Although the pressure boundary will be modified, proper welding techniques, penetrant testing, radiographs, and system hydrostatic tests will insure the integrity of the pressure boundary and thus not contribute to any radiological consequences.

The proposed revisions to Technical Specification 3/4.2.5 (DNB Parameters) for RCS flow from a value that includes 2.1% measurement uncertainty to a value that includes 2.4% measurement uncertainty has no effect on the accident analyses since the analysis limit which is based on the thermal design flow will not be changed. The effect of undetected venturi fouling, has been included in the RCS flow requirement of Technical Specification 3/4.2.5.

Surveillance Requirement 4.2.5.3 for the precision heat balance determination of RCS flow is changed from being required prior to operation above 75% Rated Thermal Power (RTP) to being required prior to exceeding 95% RTP. Performance of the precision heat balance above 90% RTP was recommended by Westinghouse in association with the RTD bypass elimination to minimize flow rate measurement uncertainties that are exacerbated at lower power levels. The precision heat balance is performed each cycle to detect changes in the RCS flow element (elbow taps) characteristics that would affect the accuracy of the RCS flow indication. Significant changes in the characteristics of all of the elbow taps over a single operational cycle is not credible. Performing the flow rate measurement prior to exceeding 95% RTP provides adequate margin to DNB in the highly improbable event that there is a degradation in RCS flow rate that is masked by a simultaneous non-conservative change in all elbow taps.

The effect of the increased instrument uncertainty on updated Final Safety Analysis Report (UFSAR) Chapter 6 and 15 LOCA and non-LOCA accident analyses within the Westinghouse scope has been evaluated as discussed in WCAP-13181. Relative to both the LOCA and non-LOCA safety analyses, Westinghouse has concluded in WCAP-13181 that the modification does not affect the conclusions of the UFSAR safety analyses.

Additionally, Yankee Atomic Electric Company (YAEC) has evaluated the affect of the modified system for hot leg and cold leg temperature measurement on (1) containment response, (2) Boron Dilution events and (3) Steam Generator Tube Rupture design basis events.

Relative to containment response YAEC concluded that during the limiting event (large break LOCA), the early containment pressure response during the blowdown phase may increase slightly due to the increased uncertainties associated with the modification. However, the long term and peak containment pressures are still valid and the effects of the modification on the containment response is bounded by the current analysis. The YAEC evaluation of the affect of the modification on containment response is enclosed in Section VIII.

Yankee Atomic Electric Company has concluded that the increased uncertainties associated with the modification will have a negligible effect on the Steam Generator Tube Rupture analysis which was performed by them and submitted to the NRC on April 16, 1991 in NHY letter NYN-91061. Yankee Atomic Electric Company also concluded that the modification will have negligible effect on the Boron Dilution analysis to be performed by them for Cycle 3. The YAEC evaluation of the affect of the modification on the Steam Generator Tube Rupture analysis and on the Boron Dilution analysis which is to be performed for Cycle 3 is enclosed in Section VIII.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The removal of the RTD Bypass System will not create the possibility of a new or different kind of accident from any accident previously evaluated. The reactor coolant pressure boundary modifications design and installation will be equivalent to the original RCS design and installation. Reactor coolant loop temperature inputs for reactor control and reactor protection functions will continue to be supplied. Other equipment important to safety will be unaffected and will continue to function as designed.

The removal of the Resistance Temperature Detector (RTD) bypass piping and the installation of a modified temperature measurement system does not affect the integrity of the reactor coolant system pressure boundary. This is due to the reactor coolant piping (pressure boundary component) modifications adhering to the ASME Code (Sections III, Class 1 and Section XI) and to the NRC General Design Criteria. Installation requirements will be equivalent to the original RCS installation pursuant to ASME Section III, 1977 Edition thru Winter 1977 Addenda.

The removal of the RTD Bypass System eliminates components that have been a major cause of plant outages in the industry as well as a major contributor to occupational radiation exposure. Additionally, with these components removed, the probability of a malfunction from them is eliminated. The installation of fast response thermowell mounted RTDs on the reactor coolant loop piping and additional processing electronics will continue to provide the individual loop temperature signals for input to the reactor control and reactor protection systems using components that are environmentally and seismically qualified.

The RTD Bypass System flow alarm is no longer required to warn of flow reduction that could affect instrument system response. Flow through the scoop tubes with thermowells is not monitored because blockage of the flow path is not credible. Blockage is not credible because of the multiple scoop tube holes, the size of the holes, and administrative and chemistry controls that prevent the introduction of objects that could block the flow path.

The modification does not affect the ability of the protection system to mitigate the radiological consequences of any accident. The new RTD signals are processed to provide equivalent signals to those provided by the original direct immersion RTDs. Since three RTDs will be used to provide an average hot leg temperature as opposed to the original use of one RTD, the consequences from a failed RTD are unchanged. Manual actions to bypass a failed RTD channel remain the same.

3. The proposed changes do not result in a significant reduction in the margin of safety.

The instrumentation uncertainty analysis associated with this modification has resulted in proposed Technical Specification changes to the uncertainty terms associated with Overpower [delta -]T and Overtemperature [delta -]T and low Reactor Coolant System (RCS) Flow reactor trip functions. Additionally RCS average temperature measurements used for control board indication and input to the rod control system, and the value of the RCS flow measurement uncertainty are also affected by the modification. The safety evaluations of this modification which have been performed by Westinghouse and YAEC referenced above conclude that sufficient margin exists such that margins to safety are not affected.

The proposed Technical Specification changes also include the elimination of the bypass piping loop low flow alarms and the revision to the Technical Specification requirement for RCS flow.

The proposed increase in the RCS flow requirement reflects the RCS flow measurement uncertainty increase associated with the new RCS temperature measurement system. The proposed RCS flow limit will ensure that RCS flow is greater than or equal to the thermal design flow analysis value.

The RTD Bypass System flow alarm is no longer required to warn of flow reduction that would affect instrument system response. Flow through the scoop tubes with thermowells is not monitored because blockage of the flow path is not credible. Blockage is not credible because of the multiple scoop tube holes, the size of the holes, and administrative and chemistry controls that prevent the introduction of objects that could block the flow path. The removal of this alarm does not result in a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Exeter Public Library, 47 Front Street, Exeter, New Hampshire, 03833.

Attorney for licensee: Thomas Dignan, Esquire, Ropes & Gray, One International Place, Boston, Massachusetts 02110-2624

NRC Acting Project Director: Victor Nerses

Public Service Company of New Hampshire, Docket No. 50-443, Seabrook Station, Rockingham County, New Hampshire

Date of amendment request: March 20, 1992 as supplemented June 19, 1992.

Description of amendment request: The proposed amendment would make changes to Seabrook Station Technical Specifications (TS) to modify surveillance testing of emergency diesel generators (EDGs). The changes are described below. The safety injection with loss of offsite power test, which will continue to be performed with the EDGs at standby conditions, will no longer be required to be performed a second time immediately after the 24 hour EDG endurance run. Also, the TS will continue to require a demonstration of hot restart of the EDGs, but will allow a two hour warmup (or until operating temperature stabilizes) instead of a 24-hour warmup prior to the test. Another proposed change is that those tests that require EDG loading will specify a loading range to avoid repeated overloading during testing. In addition, the term "ambient condition" will be changed to "standby conditions" to reflect cooling water and lube oil warming systems which continuously operate. Finally, several footnotes to the TS would be modified to provide clarifying information. The testing changes proposed have been developed to meet the intent of NRC's Regulatory Guide 1.108.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

[1.] The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed revisions to the diesel generator Surveillance Requirements do not change the function or operation of any plant equipment or affect the response of that equipment if it is called upon to operate. The diesel generators will be tested with a LOP/SI start from standby conditions and be rapidly loaded by the emergency power sequencer. Diesel Generator hot restart capability will continue to be verified as will be the ability of the diesel generators to carry load. The tests being performed are not new or unique and the hot restart test is similar to the monthly surveillances. The response of the diesel generators and the electrical system as described in UFSAR Section 15.2.6, Loss of Nonemergency AC Power to The Plant Auxiliaries (Loss of Offsite Power) will remain unchanged. Therefore, since the emergency diesel generators are designed to respond to the loss of voltage on the emergency buses they will function as designed with no adverse affect from the changes and there will be no increase in the probability of an accident previously evaluated in the UFSAR.

The proposed revision of the diesel generator Surveillance Requirements will not increase the probability of an accident and it will not change the response of the diesel generators to a loss of power on the emergency busses. The revision of the diesel generator Surveillance Requirements does not alter the operation of the diesel generators or the associated response circuitry, but it does verify that the diesel generator will respond to a loss of power and will supply the emergency busses. Therefore, the accident analysis of Chapter 15 is unchanged and in particular the statement in the UFSAR Section 15.2.6.1.d remains true and in an accident scenario "[t]he emergency diesel generators, started on loss of voltage on the plant emergency busses, begin to supply plant vital loads". Since the plant response to an accident will not change there is no change in the potential for an increase in the release of radiation to the public from the revision of the diesel generator Surveillance Requirements. Therefore, it follows that the consequences of an accident, as measured in terms of dose, will not increase due to the revision of the diesel generator Surveillance Requirements.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed revision of the diesel generator Surveillance Requirements does not affect the operation or response of any plant equipment or introduce any new failure mechanisms. The revisions do not affect the test results and the diesel generators will still be verified to be OPERABLE and their response to a LOP will be unchanged. The plant equipment will respond per the design and analyses and there will not be a malfunction of a new or any type introduced by the revision to the diesel generator Surveillance Requirements. Therefore, the previous accident analyses are unchanged and bound all expected plant transients and there are no new o[r] different accident scenarios introduced.

3. The proposed changes do not result in a significant reduction in the margin of safety.

The bases of the Technical Specifications 3/4.8, Electrical Power Systems, state that the operability of the AC and DC power systems and associated distribution systems ensure that sufficient power will be available to supply the safety-related equipment required for safe shut down and mitigation and control of accident conditions. The bases also state that the surveillance requirements for determining the OPERABILITY of the diesel generators are in accordance with the recommendations of Regulatory Guide 1.108, Revision 1. The revision of Surveillance Requirements establishes tests that will continue to verify that the diesel generators are OPERABLE and the testing will still meet the intent of Regulatory Guide 1.108, Revision 1. OPERABLE diesel generators ensure that the assumptions in the bases of the Technical Specifications are not affected and ensure that the margin of safety is not reduced. Therefore, the assumptions in the Bases of Technical Specifications are not affected and this change does not result in a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Exeter Public Library, 47 Front Street, Exeter, New Hampshire, 03833.

Attorney for licensee: Thomas Dignan, Esquire, Ropes & Gray, One International Place, Boston, Massachusetts 02110-2624

NRC Acting Project Director: Victor Nerses

Public Service Company of New Hampshire, Docket No. 50-443, Seabrook Station, Rockingham County, New Hampshire

Date of amendment request: June 11, 1992

Description of amendment request: The proposed amendment would change Seabrook Station Technical Specifications to implement the guidance of NRC Generic Letter (GL) 91-08, "Removal of Component Lists from Technical Specifications." The Technical Specification changes proposed by New Hampshire Yankee (NHY) would implement the guidance of GL 91-08 by removing the listing of Secondary Containment Bypass Leakage Paths (Technical Specification Table 3.6-1) and by revising Technical Specification 3.6.3 (Containment Isolation Valves) to specify that locked or sealed closed containment isolation valves may be opened on an intermittent basis under administrative control. The Bases of Technical Specification 3.6.3 has also been revised to define the administrative controls which are required for opening a locked or sealed closed containment isolation valve. A reference to "isolation times" is deleted in Technical Specification 3.6.3. Also, the isolation valves in 4.6.3.1, 4.6.3.2, and 4.6.3.3 are clarified to be containment isolation valves. The list of Secondary Containment Bypass Leakage Paths which NHY proposes to remove from Technical Specifications will be added to the licensee's Technical Requirements Manual and the Updated Final Safety Analysis Report.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed Technical Specification changes included in License Amendment Request 91-06 are administrative in nature and do not involve the elimination or reduction of any current requirements. The changes merely serve to improve Technical Specifications by relocating unnecessary plant-specific detail to another NHY document which is subject to the change control provisions of the Administrative Controls (Section 6) of the Seabrook Station Technical Specifications. The proposed removal of Technical Specification Table 3.6-1, Secondary Containment Bypass Leakage Paths, and the proposed revisions to Technical Specification 3.6.3, Containment Isolation Valves, and Surveillance Requirement 4.6.1.1 implement the guidance of NRC Generic Letter 91-08. The proposed changes have no relationship to the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed Technical Specification changes included in License Amendment Request 91-06 implement the guidance of NRC Generic Letter 91-08 by removing the listing of Secondary Containment Bypass Leakage Paths (Technical Specification Table 3.6-1) and by revising Technical Specification 3.6.3, Containment Isolation Valves and Surveillance Requirement 4.6.1.1. The proposed changes are administrative in nature and do not involve the elimination or reduction of any current requirements. The general requirements associated with these Technical Specifications are unaffected by the proposed changes. For example, the removal of the list of Secondary Containment Bypass Leakage Paths does not affect the requirement that the leakage from these containment penetrations be less than or equal to 0.6 La when pressurized to Pa (49.6 psig) as provided in Technical Specification 3.6.1.2. Although the list of Secondary Containment Bypass Leakage Paths will no longer be located in Technical Specifications, it will be located in a NHY document which is subject to the change control provisions of the Administrative Controls (Section 6) of the Seabrook Station Technical Specifications. Changes to this document require the performance of an evaluation pursuant to 10CFR50.59 to ensure that the proposed change does not introduce an unreviewed safety question and review and approval by the Station Operation Review Committee, the Nuclear Safety Audit Review Committee and the Executive Director-Nuclear Production. The Technical Specification changes proposed in License Amendment Request 91-06 have no relationship to plant accidents and therefore have no potential to create a new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not result in a significant reduction in the margin of safety.

The proposed Technical Specification changes included in License Amendment Request 91-06 do not reduce or eliminate any current requirements. The proposed changes merely eliminate unnecessary plant-specific detail in the interest of improving the Seabrook Station Technical Specifications. The margin of safety associated with the affected Technical Specifications is not reduced in any way because the general requirements of the affected Technical Specifications remain intact.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Exeter Public Library, 47 Front Street, Exeter, New Hampshire, 03833.

Attorney for licensee: Thomas Dignan, Esquire, Ropes & Gray, One International Place, Boston, Massachusetts 02110-2624

NRC Acting Project Director: Victor Nerses

The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of amendment request: March 19, 1992

Description of amendment request: The amendment would make several technical and administrative changes to the Perry Nuclear Power Plant (PNPP) Unit 1, Technical Specifications. These changes would clarify confusing language, correct errors or omissions from previous amendments, reflect a revised setpoint for verifying adequate vacuum in the secondary containment, and revise the requirements for submittal of written reports to the NRC to conform with 10 CFR Part 50.4.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

(1) The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated because the proposed changes constitute either (1) purely administrative changes designed to achieve consistency throughout PNPP Unit 1 Technical Specifications, provide clarification, correct existing errors, or delete material no longer applicable to PNPP Unit 1 Technical Specifications, (2) an additional limitation, restriction or control not presently included in the PNPP Unit 1 Technical Specifications, or (3) changes to conform PNPP Unit 1 Technical Specifications to changes in NRC regulations, where the license changes result in very minor changes to facility operations clearly in keeping with the regulations. Each of the proposed changes have been reviewed and determined to result in no significant changes to plant systems. The proposed changes have no significant effect on accident conditions or assumptions. The proposed changes do not significantly affect possible initiating events for accidents previously evaluated, or any system functional requirements.

The proposed changes to Specification 3.3.1, Reactor Protection System Instrumentation, ACTION a, Specification 3.3.2, Isolation Actuation Instrumentation, ACTION b, and Specification 3.3.3, Emergency Core Cooling System Actuation Instrumentation, Table 3.3.3-1 ACTION 38, are administrative in nature and are being made to correct the Specifications to be consistent with the guidance in Generic Letter 87-09 as it related to section 3.0.4 of the Technical Specifications, which was modified by Amendment 30 to PNPP's Unit 1 Facility Operating License. As such, the proposed changes do not affect any accident previously evaluated.

The proposed changes to Specification 3.3.1, Reactor Protection System Instrumentation, Table 3.3.1-1, ACTION 3 and ACTION 9, to remove the note which excepts the replacement of local power range monitor (LPRM) strings, are purely administrative changes designed to achieve consistency between the PNPP Technical Specification definition of CORE ALTERATION and Specification 3.3.1. Based upon the current definition of CORE ALTERATION, which exempts the replacement of LPRM's, the subject footnote is no longer applicable and its removal will provide clarification and thereby eliminate unnecessary confusion. Consequently, the proposed changes to Specification 3.3.1 ACTION 3 and ACTION 9 do not result in an increase in the probability or consequences of any accident previously evaluated.

The proposed changes to Specifications 3.3.7.5, Accident Monitoring Instrumentation, Table 3.3.7.5-1, Item 2, Reactor Vessel Water Level, and associated Surveillance Requirement 4.3.7.5-1, Table 4.3.7.5-1, Item 2, Reactor Vessel Water Level, are intended for clarification only. Subdividing the Reactor Vessel Water Level instrumentation into "Fuel Zone" and "Wide Range" will provide clarification as to the number of channels required, the minimum number of channels required to be operable and applicable instrument surveillance requirements. The clarification is requested due to PNPP's method of satisfying commitments to Regulatory Guide 1.97, Revision 2, which requires BWR Accident Monitoring reactor coolant level instrumentation to have a range from the bottom of the core support plate to the centerline of the main steam line. PNPP employs a design with Fuel Zone instruments covering the range from -150" [150" below top of active fuel (TAF)] to 50" above TAF, and Wide Range instruments covering the range from 5" to 230" above TAF (reference PNPP USAR Table 7.1-4 and SER, Supplement 6, Section 7.5.2.2). To meet the above monitoring requirement, and to satisfy the intent of Specification 3.3.7.5, both wide range and fuel zone instrumentation should be OPERABLE. However, in its current format, Specification 3.3.7.5 does not make the operability requirements for the individual Wide Range and Fuel Zone instrumentation clear. The proposed changes to Tables 3.3.7.5-1 and 4.3.7.5-1 will provide the necessary clarification. Since the proposed changes are provided for clarification only and do not change current Technical Specification Limiting Conditions for Operation or Surveillance Requirements, the changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to Specification 3.4.4 to add "OPERATIONAL CONDITION 2" to the last sentence of ACTION c is also for clarification purposes. ACTION c provides the required Action to be taken with reactor coolant system conductivity, pH and Chloride concentration out-of-limit while in OPERATIONAL CONDITIONS 4 or 5. ACTION c requires either (1) that the out-of-limit condition be restored to within acceptable limits, or (2) an engineering evaluation be performed to determine the effects of the out-of-the limit condition on the structural integrity of the reactor coolant system. In addition, ACTION c, as currently worded, explicitly prohibits a mode change into OPERATIONAL CONDITION 3 until it is first determined that the structural integrity of the reactor coolant system remains acceptable for continued operation. The intent of this restriction is to ensure that the structural integrity of the reactor coolant system remains acceptable for continued operation prior to any plant startup from OPERATIONAL CONDITIONS 4 or 5. However, ACTION c does not explicitly require the "determination of acceptability" prior to a mode change into OPERATIONAL CONDITION 2 from OPERATIONAL CONDITIONS 4 or 5. Since it is typical for a BWR during the performance of a plant startup to move from OPERATIONAL CONDITION 4 directly into OPERATIONAL CONDITION 2, without entering OPERATIONAL CONDITION 3 at any time, the proposed change will make it clear that such a change is prohibited until after the required acceptability determination is completed. Since the proposed change to Specification 3.4.1, ACTION c, is for clarification only, and does not otherwise change the Specification 3.4.4 Action requirements, the change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

The proposed change to the wording of the ACTION statement for Technical Specification 3.6.1.9, Feedwater Leakage Control System, is a purely administrative change designed to correct an existing typographical error and in turn provide clarification of the appropriate action to be taken under the subject Specification's Limiting Condition For Operation. The proposed change will make the ACTION statement consistent with its original intent and with that of other standard Technical Specification ACTION statements.

The purpose of the proposed change to Figure 3.6.5.2-1, Containment Average Temperature vs. Relative Humidity, which provides an extension to the dividing line between regions of acceptable versus unacceptable operation, is to provide clarification on what humidity levels are acceptable for containment average air temperature below 72F. The current Figure fails to provide meaningful operational limits below 72F and 8% relative humidity, the point at which the dividing line terminates. The intent of Specification 3.6.5.2 is to restrict operation to within specified temperature versus relative humidity limits to prevent excessive vacuum from being created inside containment following an inadvertent initiation of the containment spray system. By maintaining containment average temperatures and relative humidities within the acceptable operational limits specified in Figure 3.6.5.2-1, peak vacuum inside containment will be maintained [less than or equal to] 0.72 psi (design is [less than or equal to] 0.80 psi) following initiation of both containment spray loops. Based on the results

of an Engineering review of applicable calculations, it is conservative to assume that the boundary between acceptable operation is a straight line extending to temperatures below that shown on the subject figure. Therefore, extending the line which divides the regions of acceptable versus unacceptable operation down in a linear manner such that it intersects the 0% relative humidity line at approximately 62F will provide clarification on acceptable versus unacceptable operational limits below 72F. Maintaining temperature and relative humidity within the clarified limits for acceptable operation below 72F will continue to ensure peak vacuum inside containment will be maintained [less than or equal to] 0.72 psi following initiation of both containment spray loops. The design methodology used to provide the clarification to Figure 3.6.5.2-1 remains consistent with the original design bases and safety analysis. Therefore, the proposed change to Figure 3.6.5.2-1 will not involve a significant increase in the probability or consequences of any accident previously evaluated.

The change to the limit for secondary containment (annulus) minimum negative pressure contained in Technical Specification Surveillance Requirement 4.6.6.1.a is proposed in response to NRC Information Notice (IN) 88-76, "Recent Discovery Of A Phenomenon Not Previously Considered In The Design Of Secondary Containment Pressure Control," dated September 19, 1988. The change replaces existing secondary containment minimum negative pressure verification requirement of 0.40 inches of vacuum water gauge with 0.66 inches of vacuum water gauge. As such the change constitutes a more stringent surveillance requirement than that previously required. The change is intended to ensure that the secondary containment minimum negative pressure of 0.25 inches water gauge required by PNPP's original design bases and safety analysis is maintained at all times. The design methodology used to recalculate the setpoint for the differential pressure (delta-P) instrumentation remains consistent with the original design bases and safety analysis and accounts for the phenomenon described in NRC Information Notice 88-76 with adjustments for specific conditions at the Perry Plant. The revised delta-P and airflow values will permit the M15 system to operate and maintain secondary containment integrity as described in PNPP's USAR. Based on the fact that overall system function has not changed, the parameters upon which the PNPP USAR safety analysis (USAR Chapter 15.6.5.5.1.2.a) was based having [sic] not been affected. Consequently, the proposed change to Surveillance Requirement 4.6.6.1.a does not involve a significant increase in the possibility or consequences of an accident previously evaluated.

The proposed change to Specification 3.8.1.1, A.C. Sources-Operating, ACTION e, is a purely administrative change designed to provide clarification as to the appropriate actions to be taken in the event both the Division 1 and Division 2 diesel generators are declared inoperable, requiring entry into ACTION g, followed by one of the inoperable diesel generators being restored to OPERABLE status, while the other remains inoperable. Consequently, the proposed change to Specification 3.8.1.1, ACTION e, does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Likewise, the proposed changes to Specification 3.9.12.d, Inclined Fuel Transfer System and associated Surveillance Requirement 4.9.12.2.a are purely administrative changes designed to provide clarification of the Limiting Conditions For Operation and the Surveillance Requirements associated with the Inclined Fuel Transfer System proximity and liquid (water) level sensors. As such, the proposed changes to Specification 3.9.12.d and Surveillance Requirement 4.9.12.2.a do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Finally, the proposed changes to Specifications 4.7.4.e, Snubbers, 6.7.1.c, Safety Limit Violations, 6.9.1, Routine Reports, 6.9.1.8, Monthly Operating Reports, 6.9.1.9, Core Operating Limits Report, 6.9.2, Special Reports, 6.9.3, Special Reports and 6.9.4, Special Reports, are changes designed to conform the reporting requirements of the subject Specifications to changes in NRC regulation 10 CFR 50.4, Written Communications (reference 51 FR 27817, August 4, 1986). The proposed changes are purely administrative in that they are designed to remove administrative inconsistencies between PNPP Unit 1 Technical Specifications and 10 CFR 50.4 where the Commission has clearly stated that Section 50.4 takes precedent over existing Technical Specifications. The proposed changes have no impact on plant equipment or methods of PNPP facility operations and are clearly in keeping with amended rule 10 CFR 50.4. Therefore, the proposed changes to the reporting requirements of the subject Specifications cannot increase the probability or consequences of an accident previously evaluated.

Based upon the above, the subject technical and administrative changes proposed herein do not increase the probability or consequences of any accident previously evaluated.

(2) The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

As stated above, the proposed changes are either administrative in nature which do not increase the possibility of any new or different kind of accident, or constitute more conservative limitations, restrictions or controls than that presently included in PNPP Technical Specifications. The proposed changes do not create the possibility of a new or different kind of accident since they do not affect the reactor coolant pressure boundary or other plant systems or structures in such a manner that could initiate any new or different kind of accident. In addition, the proposed changes do not adversely affect any system functional requirements nor plant maintenance or operability requirements in such a manner that could initiate any new or different kind of accident. Consequently, no new failure modes are introduced as a result of the proposed changes.

(3) The proposed changes do not result in a significant reduction in the margin of safety.

The changes do not involve a significant reduction in the margin of safety because they are administrative in nature, and do not affect any USAR design bases or accident assumptions, or they constitute more conservative limitations, restrictions or controls than that presently included in PNPP Technical Specifications. Therefore, the proposed changes do not reduce the margin of safety as defined in the basis for any Technical Specification.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John N. Hannon.

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment request: May 26, 1992 (TS 92-03)

Description of amendment request: The proposed amendment would revise Surveillance Requirement 4.0.2 and the associated Bases to delete the 3.25 limit for the allowable extension of three consecutive surveillance intervals, in accordance with the guidance provided in Generic Letter 89-14.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issues of no significant hazards consideration, which is presented below:

TVA has evaluated the proposed technical specification change and has determined that it does not represent a significant hazards consideration based on criteria established in 10 CFR 50.92(c). Operation of Sequoyah Nuclear Plant (SQN) in accordance with the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The deletion of the 3.25 limit on extending surveillance intervals will not alter the effectiveness of surveillances that ensure the operability of equipment based on the 1.25 limit that remains in effect. Since operability will be maintained and the 3.25 limit deletion only removes a provision to prevent routine use of the 1.25 limit, the consequences of an accident is not increased. This deletion of the

3.25 limit for extending surveillances is administrative only and does not have the potential for affecting an accident or increasing the probability of an accident. However, this deletion may eliminate unnecessary challenges to safety functions created by surveillance performances during undesired plant conditions or because of required unit shutdown.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

As discussed above, this is an administrative change to surveillance interval extensions only and does not have the potential for creating a new or different kind of accident. The surveillances remain the same and only the extension restrictions have been reduced but not eliminated.

3. Involve a significant reduction in a margin of safety.

The surveillances will remain unchanged to verify adequate margins of safety and only the allowable extensions for surveillance performance have been revised. Therefore, no reduction in a margin of safety is involved with the deletion of the 3.25 limit on extending surveillance intervals.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A, Knoxville, Tennessee 37902

NRC Project Director: Frederick J. Hebdon

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment request: May 26, 1992 (TS 92-04)

Description of amendment request: The proposed amendment would revise Technical Specification (TS) Limiting Condition for Operation (LCO) 3.6.5.3, "Ice Condenser Doors," by adding a new requirement to specify that if one or more of the ice condenser inlet doors is inoperable due to being physically restrained from opening, all inlet doors must be restored to the operable condition within one hour or the plant be in at least the hot standby condition within the next 6 hours and in cold shutdown within the following 30 hours. To accomodate this change, the present LCO 3.6.5.3.a would be relabeled 3.6.5.3.b, the new LCO would become LCO 3.6.5.3.a, and a reference to LCO 3.6.5.3.a would be added to LCO 3.6.5.3.b to indicate that both LCOs would not be applied at the same time. A change to Bases 3/4.6.5.3 would include a description of the new requirements. In addition, Surveillance Requirement 4.6.5.3.1.b.2 would be revised to require that each inlet door be checked to ensure that its opening is not impaired by "obstructions," in addition to the present checks for ice, frost or debris impairments.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issues of no significant hazards consideration, which is presented below:

TVA has evaluated the proposed technical specification (TS) change and has determined that it does not represent a significant hazards consideration based on criteria established in 10 CFR 50.92(c). Operation of Sequoyah Nuclear Plant (SQN) in accordance with the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to the existing TS 3.6.5.3 provide requirements that impose more restrictive action to be taken in the event ice condenser inlet doors are physically restrained from opening. The proposed change does not involve or result in any alteration of plant configuration, equipment, or action that would affect accident mitigation. The ice condenser and the associated doors are utilized for accident mitigation and are not considered to be the source for any accident. While the actions to be taken for inoperable inlet doors have been changed, the functions of the ice condenser and the doors remain the same. Therefore, the probability or consequences of an accident previously evaluated has not been increased.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

The ice condenser and the associated doors are utilized for accident mitigation and are not considered to be the source for any accident. While the actions to be taken for inoperable inlet doors have been changed, the functions of the ice condenser and the doors remain the same. Therefore, no equipment postulated to create an accident is impacted, and the possibility of a new or different kind of accident is not increased.

3. Involve a significant reduction in a margin of safety.

The proposed changes do not alter the functions of any safety-related equipment. All accident mitigation functions of the ice condenser will remain the same and the proposed change will ensure appropriate action is taken in the event an ice condenser inlet door is physically restrained from opening. Therefore, a reduction in a margin of safety is not involved as a result of the proposed change.

The NRC staff has reviewed the licensee's analysis and, based on thisreview, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11H, Knoxville, Tennessee 37902

NRC Project Director: Frederick J. Hebdon

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment request: May 28, 1992 (TS 92-06)

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 6.2.3.4 to reflect a restructuring of the Nuclear Power organization by changing the title of the manager to whom the Independent Safety Engineering personnel reports from the Manager of Nuclear Managers Review Group to Manager, Nuclear Reviews. A proposed change to TS 6.3 would replace the references to the fact that the facility staff qualifications are specified in ANSI N18.1-1971, the March 28, 1980 NRC letter, and Regulatory Guide 1.8, with reference to TVA's Nuclear Qualification Assurance Plan. A similar change is proposed to TS 6.4 that would replace the retraining and replacement training program references to ANSI N18.1-1971, Appendix A of 10 CFR Part 55, and the March 28, 1980 NRC letter, with reference to TVA's Nuclear Quality Assurance Plan. Another proposed change would replace the title of the Quality Engineering and Monitoring Supervisor PORC member to Quality Audit and Monitoring Manager in TS 6.5.1.2. In addition, TS 6.10.2.i would change the title of the Nuclear Quality Assurance Manual to Nuclear Quality Assurance Plan.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issues of no significant hazards consideration, which is presented below:

TVA has evaluated the proposed technical specification change and has determined that it does not represent a significant hazards consideration based on criteria established in 10 CFR 50.92(c). Operation of Sequoyah Nuclear Plant (SQN) in accordance with the proposed amendment will not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed title change of the corporate official to whom Independent Safety Engineering (ISE) makes recommendations has no effect on the safe operation of SQN. This change is administrative in nature and serves to reflect recent organizational changes within TVA's Nuclear Power program. The proposed change to Specifications 6.3.1 and 6.4.1 reflects consistency with the Nuclear Quality Assurance Plan and current regulatory guidance. The proposed changes to Specifications 6.5.1.2 and 6.10.2i are nomenclature and title changes only. Since the proposed amendment will not result in any changes to hardware, operating procedures, or accident analyses, the probability or consequences of an accident previously evaluated have not been increased.

(2) Create the possibility of a new or different kind of accident from any previously analyzed. The proposed change to Specification 6.2.3.4 provides a change in the title of the corporate official to whom ISE makes recommendations. This change is an administrative change that reflects realignment of the management structure within TVA's Nuclear Power organization. The proposed change to Specifications 6.3.1 and 6.4.1 reflects consistency with the Nuclear Quality Assurance Plan and current regulatory guidance. The proposed changes to Specifications 6.5.1.2 and 6.10.2i are nomenclature and title changes only. The proposed amendment does not involve a physical change to the facility; therefore, no new or different kind of accident is created.

(3) Involve a significant reduction in a margin of safety. The proposed revision to administrative Specification 6.2.3.4 reflects recent restructuring within TVA's Nuclear Power organization. This change in no way affects the physical facility design or safe operation of SQN. The function of ISE continues to conform with NUREG-0737 guidance for performing independent review of plant activities. The proposed change to Specifications 6.3.1 and 6.4.1 reflects consistency with the Nuclear Quality Assurance Plan and current regulatory guidance. The proposed changes to Specifications 6.5.1.2 and 6.10.2i are nomenclature and title changes only. Because compliance with the regulatory requirements has not been compromised and because these changes did not alter the facility or its design, there is no reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11H, Knoxville, Tennessee 37902

NRC Project Director: Frederick J. Hebdon

Virginia Electric and Power Company, Docket Nos. 50-336 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of amendment request: June 8, 1992

Description of amendment request: The proposed change would revise the completion times in NA-1&2 Technical Specification (TS) 3.0.5 to permit a shutdown to proceed in a controlled and orderly manner that is within the maximum cooldown rate and within the cooldown capabilities of the unit, assuming only the required equipment is operable.

TS 3.0.5 delineates additional conditions that must be satisfied to permit operation to continue when a normal or emergency power source is not operable. It specifically prohibits operation when one division is inoperable because its normal or emergency power source is inoperable, and a system, subsystem, train, component, or device in another division are inoperable for another reason.

An NRC letter to All Power Reactor Licensees, dated April 10, 1980, requested licensees to submit proposed TS 3.0.3 and 3.0.5. The NRC letter contained model TS. Both model TS 3.0.3 and 3.0.5 were formulated to ensure that no set of equipment outages would be allowed to persist that would result in the facility being in an unprotected condition. The model TS 3.0.3 and 3.0.5 contained the same time frames to reach hot standby, hot shutdown, and cold shutdown.

Amendment No. 19 for NA-1 and the original operating license for NA-2 issued TS 3.0.3 and 3.0.5 consistent with the April 10, 1980 NRC letter. However, TS 3.0.3 was later revised in Amendment Nos. 62 and 46 for NA-1&2, respectively. Amendment Nos. 62 and 46 allowed 1 hour to initiate actions and changed the time frames to reach hot standby, hot shutdown, and cold shutdown for TS 3.0.3. These amendments were consistent with NUREG-0452, Revision 4, "Standard Technical Specifications for Westinghouse Pressurized Water Reactors." However, NUREG-0452 does not include TS 3.0.5. As a result, the licensee did not evaluate or request a change to TS 3.0.5 at that time.

As a result of issuance of Amendment Nos. 62 and 46, the time frames for TS 3.0.3 and 3.0.5 became inconsistent. The proposed change would correct this inconsistency and meet the intent of the April 10, 1980 NRC letter and still maintain consistency with NUREG-0452.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change revises [TS] 3.0.5 completion times to permit a shutdown to proceed in a controlled and orderly manner that is within the maximum cooldown rate and within the cooldown capabilities of the unit, assuming only the minimum required equipment is operable. The proposed change has no significant impact on the probability of an accident due to the fact that the total time to reach cold shutdown remains the same.

Likewise, the consequences of any accident previously evaluated will not increase as a result of the proposed change. Previous evaluations have been based on the total time to reach cold shutdown, which remains the same. Finally, the proposed change will correct the inconsistency associated with completion times for [TS] 3.0.3 and 3.0.5 and meet the intent of the April 10, 1980 NRC letter, while still maintaining consistency with NUREG-0452.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed change does not involve any change to plant design or methods of operation. The proposed change does not involve operation of any plant equipment in a manner different from which it was designed to operate. Since a new or different kind of failure is not created, the possibility of a new or different type of accident does not exist.

3. The proposed change does not involve a significant reduction in a margin of safety. The proposed change does not involve a change to safety limits or limiting safety system settings. Setpoints and operating parameters are not affected. Therefore, the margin of safety is not significantly reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903-2498.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, P.O. Box 1535, Richmond, Virginia 23212.

NRC Project Director: Herbert N. Berkow

Virginia Electric and Power Company, Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of amendment request: June 8, 1992

Description of amendment request: The proposed changes would revise the current NA-1&2 Technical Specifications (TS) to permit staggered testing of the reactor trip system (RTS) instrumentation and permit up to 2 hours to test certain emergency safeguards feature actuation system (ESFAS) instrumentation. Also, some minor administrative changes are included.

The NA-1&2 TS 3.3.1.1 requires that the RTS instrumentation channels and interlocks of Table 3.3-1 shall be operable with response times as shown in Table 3.3-2. The NA-1&2 TS 3.3.2.1 requires that the ESFAS instrumentation channels shown in Table 3.3-3 shall be operable with their trip setpoints set consistent with the values shown in the trip setpoint column of Table 3.3-4 and with response times as shown in Table 3.3-5.

The proposed changes revise the TS 4.3.1.1.1, RTS Instrumentation, Table 4.3-1, Item 19, safety injection input from ESF, to increase the surveillance interval from every month to every 62 days on a staggered test basis and TS 3.3.2.1, Table 3.3-3, Action 20, to allow a channel to be bypassed for up to 2 hours for testing purposes. The proposed amendments would also make administrative changes that do not affect the technical content of the TS.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed changes revise [TS] 4.3.1.1.1 such that the amount of time each train of [RTS] instrumentation is inoperable for testing is decreased and [TS] 3.3.2.1 such that sufficient time is allowed for testing the ESFAS logic without having to enter a shutdown action statement. These changes to [RTS] and ESFAS instrumentation testing have no significant effect on the probability of an accident because the time spent testing is not significantly increased and because it only affects one train at a time.

Likewise, the consequences of the accidents previously evaluated will not increase as a result of the proposed [TS] changes. Testing the Safety Injection input from ESF function on a staggered test basis increases the operability time for the two trains of [RTS] instrumentation. The consequences of allowing up to an additional hour to test each train of ESFAS logic are not significantly increased because the time spent testing is not significantly increased and the opposite train is still available to perform its design function. The proposed changes are consistent with other testing requirements and are . . . as stringent as the requirements of NUREG 0452, Standard Technical Specifications for Westinghouse Pressurized Water Reactors, Revision 4.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated. The changes proposed herein do not involve any changes to plant design nor methods of operation. The proposed changes do not involve operation of any plant equipment in a different manner from which it was designed to operate. Since a new failure mode is not created, a new or different type of accident is not made possible.

3. The proposed changes do not involve a significant reduction in a margin of safety. The proposed operational configuration does not involve changes to safety limits or limiting safety system settings. Setpoints and operating parameters are not affected. Safety margins are, therefore, not reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903-2498.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, P.O. Box 1535, Richmond, Virginia 23212.

NRC Project Director: Herbert N. Berkow

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendments request: March 1, 1991 and December 6, 1991Description of amendments request: These amendments would revise TS 15.4.8, Auxiliary Feedwater System, by changing sections 15.4.8.1.a and 15.4.8.1.b to require each auxiliary feedwater (AFW) pump to be started quarterly, and would provide the basis for TS 15.4.8 for this change. In addition, TS 15.3.4, Steam and Power Conversion System section 15.3.4.c.2, would be changed to clarify the AFW PUMP out-of-service limitations.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below with regard to the changes in sections 15.4.8.1.a and 15.4.8.1.b:

... we have evaluated these changes ... and have determined that operation of the Point Beach Nuclear Plant units in accordance with the proposed amendments does not present a significant hazards consideration. Previously analyzed accidents considered in our assessment include Steam Generator Tube Rupture, Loss of External Electrical Load, Loss of Power to the Station Auxiliaries, and Loss of Normal Feedwater.

Criterion 1

Operation of a facility will not result in a significant hazards consideration if it would not involve a significant increase in the probability or consequences of an accident previously evaluated. This change modifies the frequency of required starting of the auxiliary feedwater pumps and, in the case of the steam turbine-driven pump, requires this start at conditions more representative of those expected during an actual demand to start. Since only the testing frequency and conditions will be changed, there will be no physical change to the facility, its systems, or its operating procedures. Based on pump testing history, decreasing the pump test frequency from monthly to quarterly will have no effect on accident probabilities using accepted Probabilistic Risk Assessment criteria. The previously analyzed accidents are, therefore, not affected. An increased probability or consequences of an accident previously evaluated cannot result.

Criterion 2

Operation of a facility in accordance with a proposed amendment does not result in a significant hazards consideration if it cannot create the possibility of a new or different kind of accident from any previously evaluated. The proposed change modifies the frequency of a pump test and, in the case of the turbine-driven auxiliary feedwater pumps, requires this test to be at conditions more indicative of those expected during an actual demand start. No physical change to the facility or its operation results. We have been performing AFW pump testing since we began operation. Potential accidents that may be associated with this testing were previously considered. Therefore, a new or different kind of accident from any previously evaluated cannot result.

Criterion 3

Operation of a facility in accordance with a proposed amendment will not result in a significant hazards consideration if it does not involve a significant reduction in a margin of safety. Testing at quarterly intervals could result in a pump being non-operational for a longer period of time prior to detection than the presently prescribed monthly start, thus resulting in a possible reduction in a margin of safety. However, the present monthly testing has never indicated a

pump failure, and the pumps have never failed to start in response to an actual demand, indicating a high degree of reliability. Based on this testing history, decreasing the test frequency from monthly to quarterly has no effect on accident probabilities using accepted probabilistic risk assessment criteria. Fast start testing without prior warm-up of the turbine-driven auxiliary feedwater pumps is more rigorous than the present slow, warm-up test, providing added assurance that the steam turbine-driven pumps will start on demand. In addition, the quarterly interval is based on ASME Section XI requirements which proved adequate assurance of pump operability. Therefore, a margin of safety is, at most, only minimally reduced from present levels.

With regard to the changes to section 15.3.4.C.2:

Criterion 1

Operation of a facility in accordance with a proposed amendment does not present a significant hazard if it does not result in an increase in the probability or consequences of an accident previously analyzed.

The intent of Specification 15.3.4.C.2 is to permit, as discussed in 15.3.0, "General Considerations," a temporary relaxation of the single failure criteria, consistent with overall reliability considerations, to allow limited time periods during which corrective actions may be taken to restore the AFW pumps to full operability. The proposed amendment to 15.3.4.C.2 serves to clarify that only one of the three operable AFW pumps associated with a single unit may be taken out of service at one time. This is consistent with the bases and with Specification 15.3.4.C.1 for two-unit operation. The proposed change requires no hardware or procedural change and can be characterized as administrative in nature. Accordingly, this change has no impact on the probability or consequences of previously evaluated accidents since the assumptions for the accidents are not altered and the LCO operability requirements provide the necessary assurance that the mitigative measures will be available.

Criterion 2

Operation of a facility in accordance with a proposed amendment does not present a significant hazard if it cannot create the possibility of an accident different from any previously evaluated.

This change does not result from any physical change or modification to the facility or its operation. The operability of equipment necessary for accident mitigation, such as the AFW pumps, is assured by periodic surveillance and testing. The continued availability of that equipment during plant operations is controlled by the limiting conditions for operation. Once operability is established through the successful completion of periodic testing and surveillance, the presumption is that the system will function as designed in the accident analyses.

Since there has been no change to the function, design or operation of the AFW system, one may conclude that a new or different kind of accident will not result from proposed changes.

Criterion 3

Operation of the facility in accordance with a proposed amendment will not present a significant hazard if it does not result in a significant reduction in a margin of safety.

Under the existing Specification 15.3.4.C.2 one may argue that the specification would permit two AFW pumps to be out of service during single unit operation for a restricted period of time. Such a condition would not satisfy the intent of the specification which is to provide for redundant sources of auxiliary feedwater to an operating unit at all times. The availability of a single AFW pump for single unit operations would result in a reduction in the margin of safety. In that the proposed change will provide further assurance that during power operations no more than one AFW pump may be out of service at any one time, the change may actually be considered to assure the previously assumed margin of safety is available. Thus the previously accepted margins to safety are not reduced by these changes and it may be concluded that the proposed change does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John N. Hannon.

Yankee Atomic Electric Company, Docket No. 50-029, Yankee Nuclear Power Station (YNPS), Franklin County, Massachusetts

Date of amendment request: June 5, 1992

Description of amendment request: The proposed amendment would revise the Fire Protection Program Technical Specifications following the guidance of the NRC Generic Letters 86-10 and 88-12.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.92(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change has been evaluated and determined to involve no significant hazards consideration. The proposed amendment does not:

1. Involve a significant increase in the probability or consequence of an accident previously evaluated. The Fire Protection systems and equipment are not being changed. The proposed changes involve only the way changes to the Fire Protection Systems will be controlled.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated. No changes are being made to any equipment or systems needed to mitigate the affects of a fire. The proposed changes only involve the way changes to these systems and equipment are controlled.

3. Involve a significant reduction in the margin of safety. There are no changes being made to systems or equipment. What is being changed is the way changes are to be controlled. As described above, the administrative controls, the reviews, and the audits being required of the Fire Protection Program will ensure that the margin of safety provided for fires will be maintained.

Based on the considerations contained herein, there is reasonable assurance that operation of the Yankee plant consistent with the proposed Technical Specifications will not endanger the health and safety of the public. This proposed change has been reviewed by the PORC and Nuclear Safety Audit and Review Committee.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301

Attorney for licensee: Thomas Dignan, Esquire, Ropes and Gray, One International Place, Boston, Massachusetts 02110-2624

NRC Project Director: Seymour H. Weiss

Notice of Issuance of Amendment to Facility Operating License

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application 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.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or

petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, D.C., and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

Arizona Public Service Company, et al., Docket Nos. STN 50-528, STN 50-529, and STN 50-530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Maricopa County, Arizona

Date of application for amendments: February 14, 1992

Brief description of amendments: The amendments allow the implementation of the guidance provided in NRC Generic Letter 89-01 wherein programmatic controls for radiological effluent are contained in the technical specifications but the details are relocated to either the Offsite Dose Calculation Manual or to the Process Control Program.

Date of issuance: June 18, 1992

Effective date: June 18, 1992

Amendment Nos.: 62, 48, and 34

Facility Operating License Nos. NPF-41, NPF-51, and NPF-74: The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: April 1, 1992 (57 FR 11102) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 18, 1992. No significant hazards consideration comments received: No.

Local Public Document Room location: Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004

Baltimore Gas and Electric Company, Docket No. 50-317, Calvert Cliffs Nuclear Power Plant, Unit No. 1, Calvert County, Maryland

Date of application for amendment: February 6, 1992

Brief description of amendment: The amendment modifies the existing 0-12 effective full power years (EFPY) heatup and cooldown curves and rates to approximately 22 EFPY based on the guidance provided in Regulatory Cuide 1.99, Revision 2. In addition, adjustments were made to the low temperature overpressure protection (LTOP) mitigating system. The LTOP changes include changes to the controls for the high pressure safety injection pumps and the reactor coolant pumps. In addition, the minimum pressure and temperature (MPT) enable temperature is increased and the adjusted reference temperature (ART) in the TS Bases is changed. The TS Bases are also modified to reflect the above changes.

Date of issuance: June 16, 192

Effective date: June 16, 1992

Amendment No.: 171

Facility Operating License No. DPR-53: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: March 18, 1992. (57 GT 9437) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 16, 1992. No significant hazards consideration comments received: No

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678.

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of application for amendment: April 1, 1992

Brief description of amendment: The amendment changes Technical Specification (TS) Section 6.9.1.9 to add the list of the sections of the Haddam Neck TS that reference the Technical Report Supporting Cycle Operation (TRSCO), reformat TS Section 6.9.1.9 and delete the words "... at the locations listed in..." and replaces them with the word "per" in ACTION statements 3.3.3.6.a. and 3.3.3.6.b. In addition, in TS Sections 3.3.3.6.a and 3.3.3.6.b, the reference to TS Section 4.6.1.6 has been corrected to 4.6.1.5.

Date of issuance: June 17, 1992

Effective date: June 17, 1992

Amendment No.: 153

Facility Operating License No. DPR-61. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: April 29, 1992 (57 FR 18172) The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated June 17, 1992. No significant hazards consideration comments received: No.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of application for amendment: April 2, 1990 and July 15, 1991; as amended September 27, 1990, and December 20, 1991, respectively.

Brief description of amendment: This amendment revises the Palisades Technical Specifications to: (1) transfer responsibility for the industry operating experience review program from the plant safety and licensing group to the plant review committee, (2) make various editorial corrections, and (3) incorporate changes from the most recent Palisades Plant reorganization.

Date of issuance: June 9, 1992

Effective date: June 9, 1992

Amendment No.: 146

Facility Operating License No. DPR-20. The amendment revises the Technical Specifications.

Date of initial notice in Federal Register: June 12, 1991 (56 FR 27041) and August 21, 1991 (56 FR 41578). By letters dated September 27, 1990, and December 20, 1991, the licensee submitted additional information and clarifications that did not change the initial proposed no significant hazard consideration determinations. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 9, 1992. No significant hazards consideration comments received: No.

Local Public Document Room location: Van Zoeren Library, Hope College, Holland, Michigan 49423.

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of application for amendment: September 2, 1988

Brief description of amendment: This amendment revises the Technical Specifications (TS) to incorporate operability and surveillance requirements for core exit thermocouples (CETs). Generic Letter 83-37, "NUREG-0737 Technical Specification," provided sample TS and requested you to submit a license amendment consistent with the NRC staff guidance. This amendment resolves

CET operability requirements for the Palisade Plant.

Date of issuance: June 22, 1992

Effective date: June 22, 1992

Amendment No.: 147

Facility Operating License No. DPR-20. The amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** November 29, 1989 (54 FR 49128) and May 13, 1992 (57 FR 20509). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 22, 1992. No significant hazards consideration comments received: No.

Local Public Document Room location: Van Zoeren Library, Hope College, Holland, Michigan 49423.

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of application for amendment: June 13, 1991

Brief description of amendment: This amendment modifies the Palisades Plant Technical Specifications, Section 4.16.1, in response to NRC Generic Letter 90-09, "Alternate Requirements For Snubber Visual Inspection Intervals and Corrective Actions," which provides an alternate schedule for visual inspection of snubbers.

Date of issuance: June 12, 1992

Effective date: June 12, 1992

Amendment No.: 148

Facility Operating License No. DPR-20. The amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** August 21, 1991 (56 FR 41578) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 12, 1992. No significant hazards consideration comments received: No.

Local Public Document Room location: Van Wylen Library, Hope College, Holland, Michigan 49423.

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of application for amendment: July 11, 1990

Brief description of amendment: This amendment would modify the Palisades Plant Technical Specification (TS) Section 4.1.1.a.4 to change the testing requirements of the Pressurizer Power Operated Relief Valves (PORV) from ASME Code, Section XI, Category C to Category B.

Currently the Palisades PORV's are identified in the TS as ASME Code, Section XI, subsection IWV, Category C valves. Based on a recent engineering evaluation, Consumers Power Company has determined that this designation is technically incorrect in that this ASME category designation applies to self actuating valves, such as relief or check valves, whereas the PORV's are actuated via an external signal. The correct designation for the PORV's is ASME Code, Category B as defined in ASME Code, Section XI, subsection IWV, paragraph IWV-3413. The testing requirements for Category B valves are defined in Table IWV-3700-1, "Inservice Testing Requirements".

Date of issuance: June 19, 1992

Effective date: June 19, 1992

Amendment No.: 149

Facility Operating License No. DPR-20. The amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** November 28, 1990 (55 FR 49447). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 19, 1992. No significant hazards consideration comments received: No.

Local Public Document Room location: Van Wylen Library, Hope College, Holland, Michigan 49423.

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: March 11, 1992

Brief description of amendments: The amendments revise the 24-volt Standby Shutdown Facility (SSF) battery surveillance requirements for battery electrolyte level, voltage and specific gravity to be in agreement with the recommendations in ANSI/IEEE Standard 1106-1987 (IEEE Recommended Practice for Maintenance, Testing and Replacement of Nickle-Cadmium Storage Batteries for Generating Stations and Substations).

Date of issuance: June 18, 1992

Effective date: June 18, 1992

Amendment Nos.: 97 and 91

Facility Operating License Nos. NPF-35 and NPF-52: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 29, 1992 (57 FR 18173) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 18, 1992. No significant hazards consideration comments received: No.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Duquesne Light Company, Docket Nos. 50-334 and 50-412, Beaver Valley Power Station Unit No. 1 and Unit No. 2, Shippingport, Pennsylvania

Date of amendment request: October 1, 1990.

Description of amendment request: The amendments modify Technical Specification 4.6.1.6.1 relating to containment structural integrity. Specifically, the amendments modify Surveillance Requirement 4.6.1.6.1 which prescribes how containment integrity shall be determined with a non-prescriptive requirement for the determination of structural integrity.

Date of issuance: June 23, 1992

Effective date: June 23, 1992

Amendment Nos.: 165 for Unit 1 - 47 for Unit 2

Facility Operating License Nos. DPR-66 and NPF-73. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 20, 1991 (56 FR 6872) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 23, 1992. No significant hazards consideration comments received: No.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Florida Power and Light Company, Docket No. 50-335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida

Date of application for amendment: March 13, 1992

Brief description of amendment: This amendment revises Technical Specifications Design Features Section 5.3.1, Fuel Assemblies, to delete the maximum weight of uranium in a fuel rod and provide alternative requirements for fuel assemblies in the design features section.

Date of issuance: June 9, 1992

Effective date: June 9, 1992

Amendment No.: 114

Facility Operating License No. DPR-67: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 1, 1992 (57 FR 11109) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 9, 1992. No significant hazards consideration comments received: No.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954-9003

Florida Power and Light Company, et al., Docket Nos. 50-335 and 50-389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of application for amendments: October 17, 1991

Brief description of amendments: These amendments update the Unit 1 operating license and add to the Unit 2 operating license the standard license condition as stated in Generic Letter 86-10, Section F; revise the Unit 1 and Unit 2 Technical Specifications to delete Sections 3/4.3.3.7, 3/4.7.11, 3/4.7.12, and 6.2.2.e; and add Section 6.5.1.6.n. These amendments are in accordance with the guidelines stated in Generic Letter 88-12.

Date of issuance: June 11, 1992

Effective date: June 11, 1992

Amendment Nos.: 115 and 55

Facility Operating License Nos. DPR-67 and NPF-16: Amendments revised the Technical Specifications and the licenses.

Date of initial notice in **Federal Register:** November 13, 1991 (56 FR 57696) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 11, 1992. No significant hazards consideration comments received: No.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954-9003

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-321 and 50-366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of application for amendments: July 11, 1991, as supplemented February 20, 1992.

Brief description of amendments: The amendments revise Hatch Unit 1 Technical Specifications 4.6.L and Hatch Unit 2 TS 4.7.4 concerning snubber surveillance to reflect the present guidance proposed in Enclosure B of NRC Generic Letter 90-09, "Alternate Requirements for Snubber Visual Inspection Intervals and Corrective Actions," issued December 11, 1990.

Date of issuance: June 19, 1992

Effective date: Within 60 days from the date of issuance

Amendment Nos.: 181 and 122

Facility Operating License Nos. DPR-57 and NPF-5. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 13, 1992 (57 FR 20512) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 19, 1992. No significant hazards consideration comments received: No.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy, Center, Linn County, Iowa

Date of application for amendment: December 30, 1991

Brief description of amendment: The amendment revised the Technical Specifications by combining the Recirculation Pump Limiting Condition for Operation (LCO) and Surveillance Requirements into one section, consolidating Single Loop Operation (SLO) requirements, and making minor editorial changes and corrections.

Date of issuance: June 24, 1992

Effective date: June 24, 1992

Amendment No.: 183

Facility Operating License No. DPR-49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 5, 1992 (57 FR 4489) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 24, 1992. No significant hazards consideration comments received: No.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S. E., Cedar Rapids, Iowa 52401.

Northeast Nuclear Energy Company, Docket No. 50-245, Millstone NuclearPower Station, Unit 1, New London County, Connecticut

Date of application for amendment: August 1, 1989, superseded April 13, 1992

Brief description of amendment: The amendment changes the Technical Specifications (TS) as recommended in NUREG-0737 and as detailed in Generic Letter (GL) 83-36. These changes pertain to containment high-range radiation monitors, containment pressure monitors, and containment water level monitors. In addition, the amendment changes each subsection of the Containment Systems section, TS 3.7.A, to include its own specific action statement, instead of having an overall requirement at the end of Section 3.7.A.

Date of issuance: June 15, 1992

Effective date: June 15, 1992

Amendment No.: 57

Facility Operating License No. DPR-21. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 13, 1992 (57 FR 20513) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 15, 1992. No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of application for amendment: August 6, 1991

Brief description of amendment: The amendment changes the surveillance requirement acceptance criteria for the High Pressure Safety Injection Pumps and the Low Pressure Safety Injection Pumps (Technical Specifications 4.5.2.a.1.b, 4.5.2.a.2.b and 4.5.3.f.2) to satisfy the modified accident analysis.

Date of issuance: June 16, 1992

Effective date: June 16, 1992

Amendment No.: 159

Facility Operating License No. DPR-65. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 4, 1991 (56 FR 43811) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 16, 1992. No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of application for amendment: February 23, 1992, as supplemented April 1, 1992.

Brief description of amendment: The amendment changes the action statement and the visual inspection surveillance requirements (Technical Specifications 3.7.8 and 4.7.8) associated with the snubbers. The changes provide an alternate method for determining the next interval for the visual inspection of snubbers.

Date of issuance: June 16, 1992

Effective date: June 16, 1992

Amendment No.: 160

Facility Operating License No. DPR-65. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 29, 1992 (57 FR 18176) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 16, 1992. No

significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Northeast Nuclear Energy Company, et al., Docket No. 50-423, MillstoneNuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: December 11, 1991

Brief description of amendment: The amendment revises (1) Technical Specification Figure 3.1-2 to correct a drafting inaccuracy, and make the curve consistent with the data points, (2) Technical Specification 3.3-4 so that it is consistent with previously approved changes, and (3) Technical Specification Section 3/4.6.3 to delete an obsolete reference to Table 3.6.2.

Date of issuance: June 23, 1992

Effective date: June 23, 1992

Amendment No.: 67

Facility Operating License No. NPF-49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 8, 1992 (57 FR 712) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 23, 1992. No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station,Unit No. 1, Washington County, Nebraska

Date of amendment request: June 28, 1991, as supplemented November 27, 1991, and April 23, 1992.

Brief description of amendment: The amendment revised the Technical Specifications to increase the maximum allowable setpoint drift for the main steam safety valve (MSSV) setpoints from 1% to +3%/-2% and to specify the lift settings for all MSSVs and for the two pressurizer safety valves (PSVs).

Date of issuance: June 16, 1992

Effective date: June 16, 1992

Amendment No.: 146

Facility Operating License No. DPR-40. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 13, 1991 The additional information contained in the supplemental letters dated November 27, 1991, and April 23, 1992, was clarifying in nature and, thus, within the scope of the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 16, 1992.No significant hazards consideration comments received: No.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102

Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendments: August 16, 1991 and supplemented by letter dated May 29, 1992

Brief description of amendments: These amendments revise the Technical Specification 4.6.1.2a and the associated bases to incorporate an exemption from Appendix J of 10 CFR Part 50 that removes the requirement that the third Type "A" Overall Integrated Containment Leakage Rate test required in each 10-year service period is to be conducted at the 10-year inservice inspection interval.

Date of issuance: June 24, 1992

Effective date: As of the date of issuance, to be implemented within 30 days.

Amendment Nos.: 121 and 89

Facility Operating License Nos. NPF-14 and NPF-22. These amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 4, 1991 (56 FR 43812) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 24, 1992. No significant hazards consideration comments received: No

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Power Authority of The State of New York, Docket No. 50-286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of application for amendment: April 8, 1992

Brief description of amendment: Technical Specifications Section 6.4 (Training), as related to licensed operator requalification, was revised to reflect the change in the Code of Federal Regulations (CFR) which redesignated Appendix A to 10 CFR Part 55 as 10 CFR 55.59.

Date of issuance: June 16, 1992

Effective date: June 16, 1992

Amendment No.: 120

Facility Operating License No. DPR-64: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 13, 1992 (57 FR 20516) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 16, 1992. No significant hazards consideration comments received: No

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Power Authority of The State of New York, Docket No. 50-286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of application for amendment: October 28, 1991

Brief description of amendment: The amendment revises Technical Specifications Section 3.1.A (Operational Components), Section 3.1.B (Heatup and Cooldown), Section 3.3 (Engineered Safety Features), and Section 4.3 (Reactor Coolant System Integrity Testing). These sections have been revised to extend the reactor coolant system Pressure-Temperature (PT) limits to 11.0 effective full power years (EFPY) of operation and to provide for the corresponding Overpressure Protection System (OPS) limits. In addition, Section 3.1 has been retyped in its entirety for format consistency and to correct typographical errors.

Date of issuance: June 18, 1992

Effective date: June 18, 1992

Amendment No.: 121

Facility Operating License No. DPR-64: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 11, 1991 (56 FR 64661) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 18, 1992. No significant hazards consideration comments received: No

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Southern California Edison Company, et al., Docket No. 50-206, San Onofre Nuclear Generating Station, Unit No. 1, San Diego County, California

Date of application for amendment: August 31, 1990, supplemented November 1, 1990, September 9, 1991, and June 5, 1992.

Brief description of amendment: The amendment revises the Technical

Specification 3.3.1, "Safety Injection and Containment Spray Systems, operating status, to:

• Expand and clarify the Westinghouse Standard Technical Specification (STS) 72-hour Action Statement time limit for the Emergency Core Cooling Systems (ECCS)

• Remove Specification 3.3.1.C, addition of extended mode requirements for ECCS and for operation of the Recirculation System

• Clarify Containment Spray System requirements

• Remove the action statement requirement for non-safety related back-p saltwater cooling capacity

• Make existing specification consistent with the proposed requirements with editorial changes

Date of issuance: June 24, 1992.

Effective date: June 24, 1992.

Amendment No.: 146

Facility Operating License No. DPR-13: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 3, 1990 (55 FR 40476) The supplemental information contained in letters dated November 1, 1990, and September 9, 1991, were clarifying in nature. A reduction in scope was requested in letter dated June 5, 1992. All supplemental documents were within the scope of the initial notice and did not affect the Commission's proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 24, 1992. No significant hazards consideration comments received: No.

Local Public Document Room location: Main Library, University of California, P. O. Box 19557, Irvine, California 92713

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: December 6, 1991, as supplemented June 16, 1992.

Brief description of amendment: The amendment revised Technical Specification 3/4.7.12, Table 3.7-4, and associated Bases to increase the maximum room temperature for the Electrical Penetration Rooms from 101°F to 106°F.

Date of issuance: June 18, 1992

Effective date: June 18, 1992

Amendment No.: 70

Facility Operating License No. NPF-30. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 4, 1992 (57 FR 7817) The June 16, 1992, submittal provided additional clarifying information that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 18, 1992. No significant hazards consideration comments received: No.

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251.

Washington Public Power Supply System, Docket No. 50-397, Nuclear Project No. 2, Benton County, Washington

Date of application for amendment: December 31, 1990, as supplemented May 20, 1992.

Brief description of amendment: The amendment revises Technical Specification (TS) 2.2.1, "Reactor Protection System Instrumentation Setpoints," and its bases, as well as TS 3.3.6, "Control Rod Block Instrumentation," to reflect minor adjustments to protection system instrumentation setpoints associated with the SDV.

Date of issuance: June 15, 1992

Effective date: June 15, 1992

Amendment No.: 106

Facility Operating License No. NPF-21: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 7, 1991 (56 FR 37591) The additional information contained in the supplemental letter dated May 20, 1992, served to clarify the amendment, was within the scope of the initial notice, and did not affect the Commission's proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 15, 1992. No significant hazards consideration comments requested: No.

Local Public Document Room location: Richland Public Library, 955 Northgate Street, Richland, Washington 99352.

Washington Public Power Supply System, Docket No. 50-397, Nuclear Project No. 2, Benton County, Washington

Date of application for amendment: April 10, 1992

Brief description of amendment: The proposed amendment removes the schedule for withdrawal of reactor vessel material specimens (TS Table 4.4.6.1.3-1, "Reactor Vessel Material Surveillance Program Withdrawal Schedule") and modifies TS Surveillance Requirement 4.4.6.1.3 to reflect removal of this schedule. This change is in response to guidance provided by the staff in Generic Letter 91-01, "Removal of the Schedule for the Withdrawal of Reactor Vessel Material Specimens from the Technical Specifications."

Date of issuance: June 15, 1992

Effective date: June 15, 1992

Amendment No.: 107

Facility Operating License No. NPF-21: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 13, 1992 (57 FR 20520) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 15, 1992. No significant hazards consideration comments received: No.

Local Public Document Room location: Richland Public Library, 955 Northgate Street, Richland, Washington 99352

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of application for amendments: August 9, 1991

Brief description of amendments: The amendments revised Technical Specification 15.4.6, "Emergency Power System Periodic Tests," by requiring that the acceptance of test results for the diesel generators be based on their assuming required loads in accordance with the timing sequence listed in Section 8.2 of the Final Safety Analysis Report.

Date of issuance: June 10, 1992

Effective date: June 10, 1992

Amendment Nos.: 132 and 136

Facility Operating License Nos. DPR-24 and DPR-27.

Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 2, 1992 (57 FR 4496) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 10, 1992. No significant hazards consideration comments received: No.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

Dated at Rockville, Maryland, this 29th day of June 1992.

For the Nuclear Regulatory Commission

Steven A. Varga,

Director, Division of Reactor Projects - I/II, Office of Nuclear Reactor Regulation

[Doc. 92-15842 Filed 7-7-92; 8:45 am]

BILLING CODE 7590-01-F

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of OMB review of information collection.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

1. Type of submission, new, revision or extension: New.

2. The tile of the information collection: Final Policy Statement—Integrated Schedules.

3. The form number if applicable: Not applicable.

4. How often the collection is required: For those licensees who volunteer to participate, a one-time submittal of the integrated schedule program and the integrated schedule, and periodic updates of the integrated schedule.

5. Who will be required or asked to report: Nuclear Power Reactor Licensees.

6. An estimate of the number of responses: Ten.

7. An estimate of the total number of hours required annually to complete the requirement or request: Total burden: 3,000 hours (300 hours per licensee). In addition, there is a one-time burden of 3,000 hours (300 hours per licensee) for submittal of the initial integrated schedule program.

8. An indication of whether section 3504(h), Public Law 96–511 applies: Not applicable.

9. Abstract: The final policy statement regarding the development of integrated schedules encourages, but does not require licensees to develop integrated schedules. Those licensees who volunteer will develop and submit an integrated schedule program, including prioritization methodology, an integrated schedule, and periodic schedule updates.

Copies if the submittals may be inspected or obtained for a fee from the NRC Public Document Room 2120 L Street NW. (Lower Level), Washington, DC 20555.

Comments and questions should be directed to the OMB reviewer: Ronald Minsk, Office of Information and Regulatory Affairs, (3150–), NEOB–3019, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3084. The NRC Clearance Officer is Brenda Jo. Shelton (301) 492–8132. Dated at Bethesda, Maryland, this 29th day of June 1992.

For the Nuclear Power Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 92–15942 Filed 7–7–92; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on the Medical Uses of Isotopes: Meeting Notice

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The Advisory Committee on the Medical Uses of Isotopes (ACMUI) will hold an open meeting on July 30, 1992, to provide the members of the Committee an opportunity to prepare for a meeting with the Chairman and the Commissioners of the Nuclear Regulatory Commission. The ACMUI meeting with the Commission is scheduled for July 31, 1992, at 10 a.m., in the Commissioners' Conference Room in NRC's One White Flint Building. This meeting will be Noticed separately.

The Committee has no advanced agenda for this meeting; the members will address topics of mutual interest for discussion at the meeting with the Commission. NRC staff will provide supplemental information and other support at the Committee's request.

DATES: The meeting will be held at 12:30 p.m., on July 30, 1992.

LOCATION: Nuclear Regulatory Commission, One White Flint North, Room 1F21, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Larry W. Camper, Office of Nuclear Material Safety and Safeguards, MS 6–H–3, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone 301–504–4317.

Conduct of the Meeting

Barry Siegel, M.D. will chair the meeting. Dr. Siegel will conduct the meeting in a manner that will facilitate the orderly conduct of business. The following procedures apply to public participation in the meeting.

1. Persons may submit written comments by sending a reproducible copy to the Secretary of the Commission, ATTN: Advisory Committee Management Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Comments must be received by July 17, 1992, to ensure consideration at the meeting. The transcript of the meeting will be kept open until August 21, 1992, for inclusion of written comments.

2. Persons who wish to make oral statements should inform Mr. Camper, in writing, by July 17, 1992. The Chairman will rule on requests to make oral statements. Given the nature and duration of this meeting, the Chairman may determine that oral statements will not be permitted. Opportunity for members of the public to make oral statements will be based on the order in which requests are received. In general, oral statements should be limited to approximately 5 minutes. Oral statements must be supplemented by detailed written statements, for the record. Rulings on who may speak, the order of presentation, and time allotments may be obtained by calling Mr. Camper, 301–504–3417, between 9 a.m. and 5 p.m. EST, on July 23, 1992.

3. At the meeting, questions from attendees other than committee members, NRC consultants, and NRC staff will be permitted at the discretion of the Chairman.

4. The transcript, minutes of the meeting, and written comments will be available for inspection, and copying for a fee, at the NRC Public Document Room, 2120 L Street, NW, Lower Level, Washington, DC 20555, on or about August 21, 1992.

5. Seating for the public will be on a first-come, first-served basis.

This meeting will be held in accordance with the Atomic Energy Act of 1954, as amended (primarily Section 161a) the Federal Advisory Act (5 U.S.C. App) and the Commission's regulations in title 10, Code of Federal Regulations, part 7.

Dated: July 1, 1992

John C. Hoyle,

Advisory Committee Management Officer

[FR Doc. 92–15943 Filed 7–7–92; 8:45 am]

BILLING CODE 7590–01–M

Proposed Generic Communication NRC Generic Letter 89–10, Supplement 5: Inaccuracy of Motor-Operated Valve Diagnostic Equipment Resulting From Valve Stem Directional Effects

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of opportunity for public comment.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to issue a Supplement to Generic Letter (GL) 89–10 on Inaccuracy of Motor-Operated Valve (MOV) Diagnostic Equipment Resulting from Valve Stem Directional Effects. In the supplement to GL 89–10,

the NRC staff would request nuclear power plant licensees to assess the capability of their safety-related MOVs as currently sized and set in light of new information on the inaccuracy of MOV diagnostic equipment resulting from calibrating the equipment in one direction and relying on the equipment to predict thrust in the other direction. Each licensee would be requested to review the information applicable to any equipment used at its facility to establish current torque switch settings for its safety-related MOVs. In particular, licensees would be requested to notify the NRC staff within 30 days of the MOV diagnostic equipment used, the actions taken to address valve stem directional effects on diagnostic equipment accuracy, any MOVs not sized and set adequately in light of increased inaccuracy, and actions taken or planned to meet the regulations. The NRC staff considers the backfit of these requested actions to be justified. With respect to the thrust measuring device (TMD) manufactured by ITI-MOVATS, the Nuclear Management and Resources Council (NUMARC) and ITI-MOVATS have provided guidance for licensees on addressing the effects of the increased uncertainty of that particular diagnostic equipment. Subject to the comments in the enclosure to this generic letter supplement, the NRC staff finds that the NUMARC guidelines contain an acceptable approach for addressing the uncertainty resulting from the use of the ITI-MOVATS TMD.

DATES: Comment period expires August 7, 1992. Comments submitted after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except for comments received on or before this date.

ADDRESSES: Submit written comments to Chief, Rules and Directives Review Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Written comments may also be delivered to room P-223, Phillips Building, 7920 Nortfolk Avenue, Bethesda, Maryland, from 7:30 am to 4:15 pm on Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: C.E. Carpenter, Jr. (301) 504-1387.

SUPPLEMENTARY INFORMATION: In Generic Letter 89-10 (June 28, 1989), "Safety-Related Motor-Operated Valve Testing and Surveillance," the NRC staff requested holders of operating licenses and construction permits for nuclear power plants to provide additional assurance of the capability of safety-related MOVs and certain other MOVs in safety-related systems to perform their intended functions by reviewing MOV design bases, verifying MOV switch settings initially and periodically, testing MOVs under design-basis conditions where practicable, improving evaluations of MOV failures and necessary corrective action, and trending MOV problems. The NRC staff has issued several supplements to clarify or modify the recommendations of Generic Letter 89-10.

A generic letter is an NRC document that addresses programmatic recommendations and transmits, to more than one licensee, safety-significant information and usually requires a written response from licensees or permit holders or both regarding matters of safety, safeguards, or environmental significance. The addresses may be asked to take actions over a specified period and report implementation of such actions by letter.

The NRC will consider comments received from interested parties in the final evaluation of the proposed generic letter supplement. The NRC's final evaluation will include a review of the technical position and analysis of the value of implementation of the recommended actions and impact on licensees. The proposed generic letter, in its entirety, including the supplements and references, is also available for public inspection in the Public Document Room. The text of the proposed generic letter supplement and its enclosure (NRC Staff Comments on the NUMARC Guidelines Concerning the ITI-MOVATS Thrust Measuring Device) is reproduced following this notice.

To: All Licensees of Operating Nuclear Power Plants and Holders of Construction Permits for Nuclear Power Plants

Subject; Generic Letter 89-10, Supplement 5, "Inaccuracy of Motor-Operated Valve Diagnostic Equipment Resulting From Valve Stem Directional Effects"

Background

In Generic Letter (GL) 89-10 (June 28, 1989), "Safety-Related Motor-Operated Valve Testing and Surveillance," the NRC staff requested holders of operating licenses and construction permits for nuclear power plants to provide additional assurance of the capability of safety-related motor-operated valves (MOVs) and certain other MOVs in safety-related systems to perform their intended functions by reviewing MOV design bases, verifying MOV switch settings initially and periodically, testing MOVs under design-basis conditions where practicable, improving evaluations of MOV failures and necessary corrective action, and trending MOV problems. Supplement 1 to GL 89-10 (June 13, 1990) provided the results of public workshops held to discuss the generic letter. In Supplement 2 to GL 89-10 (August 3, 1990), the NRC staff stated that inspections of program descriptions would not commence until January 1, 1991; thus, the program descriptions need not have been available on site until that date. On the basis of the results of NRC-sponsored MOV tests, Supplement 3 to GL 89-10 (October 25, 1990) requested licensees of boiling water reactor (BWR) nuclear plants to take action in advance of the GL 89-10 schedule to resolve concerns about the capability of MOVs used for containment isolation in the steam supply line of the high pressure coolant injection and reactor core isolation cooling systems and in the supply line of the reactor water cleanup system as well as other systems directly connected to the reactor vessel. Supplement 4 to GL 89-10 (February 12, 1992) modified the generic letter so that BWR licensees did not have to address inadvertent MOV operation as part of their GL 89-10 programs on the basis of a staff study of core melt probability resulting from inadvertent MOV operation.

As an integral part of their GL 89-10 programs, most licensees are relying on MOV diagnostic equipment to provide information on the thrust required to open or close the valve as well as the thrust delivered by the motor actuator. The various types of MOV diagnostic equipment estimate stem thrust using different parameters, such as spring pack displacement or strain in the stem, mounting bolts, or yoke. Because some licensees make decisions regarding the operability of safety-related MOVs based on diagnostic equipment thrust readings, the use of MOV diagnostic equipment can have a significant effect on the safe operation of a nuclear power plant.

In 1990, the MOV Users Group (MUG) of nuclear power plant licensees initiated a program to conduct tests of MOV diagnostic equipment to validate the accuracy asserted by the equipment vendors. The Idaho National Engineering Laboratory provided a test stand for the program. The MOV diagnostic equipment vendors participating in the MUG test program were ASEA-Brown Boveri, Impell, ITI-MOVATS, Liberty Technologies, Siemens/KWU, Teledyne, and Wyle Laboratories.

Discussion

On February 3, 1992, the MUG released "Final Report—MUG Validation Testing as Performed at Idaho National Engineering Laboratories" (Volume 1). The MUG final report indicates that the MOV diagnostic equipment that relied on spring pack displacement to estimate stem thrust did not meet the accuracy claims of its vendors. MOV diagnostic equipment that relied on other parameters such as stem or yoke was shown, in general, to meet applicable accuracy claims, although the equipment might not have met the accuracy claims in certain individual tests.

The two MOV diagnostic equipment vendors that have commercially available equipment that relies on spring pack displacement to estimate stem thrust are Impel and ITI-MOVATS. Impell representatives have stated that they would be working with their two licensee customers to develop new accuracy values.

On March 2, 1992, the NRC staff held a public meeting with representatives of ITI-MOVATS to discuss the accuracy of the Thrust Measuring Device (TMD) used by ITI-MOVATS to estimate stem thrust on the basis of spring pack displacement. At this meeting, the representatives of ITI-MOVATS described the results of their field validation program that had been initiated to address the concerns raised by the MUG program. The results of the ITI-MOVATS field validation program showed that the inaccuracy of the TMD may be larger than that assumed in some instances by licensees. In addition to the field validation program, the ITI-MOVATS representatives discussed the results of their activities to resolve concerns regarding the fact that the TMD is calibrated in the valve opening direction, but is also used to predict the thrust delivered by the actuator in the valve closing direction. This study of valve stem directional effect by ITI-MOVATS indicated that the increase in uncertainty of the TMD as a result of this effect can be significant. ITI-MOVATS prepared Engineering Report 5.2 (March 13, 1992) to provide guidance to its licensee customers for evaluating the capability of an MOV to perform its safety function under design-basis conditions in light of the increased inaccuracy of the TMD.

The NRC issued Information Notices 91-61 (September 30, 1991), "Preliminary Results of Validation Testing of Motor-Operated Valve Diagnostic Equipment," and 92-23 (March 27, 1992), "Results of Validation Testing of Motor-Operated Valve Diagnostic Equipment," to alert licensees to the issues raised by the MUG testing program and the ITI-MOVATS studies.

On March 11 and April 21, 1992, the NRC staff held public meetings with representatives of the Nuclear Management and Resources Council (NUMARC) to discuss this issue. NUMARC has developed guidelines for use by licensees in evaluating individual MOVs that had been sized and set using MOV diagnostic equipment that relies on spring pack displacement to estimate stem thrust. The NUMARC guidelines reference ITI-MOVATS Engineering Report 5.2 for detailed implementation by licensees and permit holders. The NRC staff provided its comments on the guidelines to NUMARC, and those comments are contained in an enclosure to this GL 89-10 supplement.

This generic letter supplement addresses the response of licensee and permit holders to the new information on the inaccuracy of MOV diagnostic equipment resulting from calibrating the equipment in one direction and relying on thrust estimates provided for the other direction. The additional issues raised by the MUG report and discussed in Information Notice 92-23, primarily load-sensitive behavior (i.e., rate of loading effects), will be addressed as part of the GL 89-10 inspections.

Requested Actions

Licensees are requested to assess the capability of their safety-related MOVs as currently sized and set to perform their intended functions in light of the new information regarding the inaccuracy of MOV diagnostic equipment resulting from calibrating the equipment in one direction and relying on the equipment to predict thrust in the other direction. Each licensee should review the information applicable to any equipment use at its facility to establish current torque switch settings for its safety-related MOVs. With respect to the TMD, IRI-MOVATS and NUMARC have provided guidance for licensees on addressing the effects of the increased uncertainty of that particular diagnostic equipment. Subject to the comments in the enclosure to this generic letter supplement, the NRC staff finds that the NUMARC guidelines contain an acceptable approach for addressing the uncertainty resulting from the use of the ITI-MOVATS TMD.

Licensees that use other types of MOV diagnostic equipment should contact their respective vendors to determine whether a similar concern exists for that equipment. On the basis of the new information on valve stem directional effects, licensees should confirm that their safety-related MOVs are set to provide sufficient margin to account for that increased uncertainty. If a licensee finds that an MOV does not have adequate margin, the licensee will be expected to satisfy the requirements of the NRC regulations and plant technical specifications.

Reporting Requirements

Pursuant to section 182a of the Atomic Energy Act of 1954, as amended, and 10 CFR 50.54(f), each addressee shall submit a letter providing the information described below. The letter shall be addressed to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555, under oath or affirmation. A copy shall also be submitted to the appropriate Regional Administrator. This generic letter supplement requests information that will enable the NRC to verify that the licensee (1) is evaluating information that the inaccuracy of MOV diagnostic equipment may be greater than assumed by the licensee, and (2) is determining any adverse effects on the operability of safety-related MOVs and the safe operation of the nuclear power plant as a result of any increased inaccuracy of MOV diagnostic equipment.

(1) Within 30 days of receipt of this letter, the licensee shall notify the NRC staff of the following:

(a) The diagnostic equipment used to establish the current size and settings of its safety-related MOVs;

(b) The action take to address any valve stem directional effects for the type of diagnostic equipment used by the licensee;

(c) Any MOVs that are not sized and set to provide sufficient margin to account for an increased uncertainty in the diagnostic equipment resulting from valve stem directional effects;

(d) Actions (such as torque switch setting adjustments, spring pack replacement, or motor/actuator replacement) taken or planned (including the schedule for such actions) to meet the NRC regulations and plant technical specifications for MOVs found not to have sufficient margin to account for uncertainty of diagnostic equipment.

(2) After the necessary actions are determined and the schedule for completion of those actions is established, licensees shall inform the NRC staff of any changes to the planned actions or schedule.

Safety assessment

Some licensees have initiated their programs in response to GL 89-10 and have conducted a significant amount of testing of MOVs under design-basis

differential pressure and flow testing. At the public meeting on March 4, 1992, several such licensees indicated that their MOVs had operated properly under the design-basis differential pressure and flow conditions. The staff agrees with those licensees that such testing provides confidence in their methodology to size and set their MOVs. Those licensees should also verify if their methodology accounts for reduced actuator capability under degraded voltage conditions.

The NRC staff has found from its inspections of GL 89-10 programs that the amount of margin used by different licensees in their methods for sizing and setting MOVs varies significantly. Therefore, the fact that one licensee's methodology for using MOV diagnostic equipment was sufficient to ensure that MOVs operated properly under design-basis differential pressure and flow conditions does not mean that another licensee's methodology would also be adequate. Each licensee will need to evaluate the safety significance of any increase in the uncertainty of its MOV diagnostic equipment.

As a result of operating experience and research information, many licensees have increased torque settings and modified actuators to provide additional thrust capability for their safety-related MOVs. Licensees could consider such actions as part of their evaluation of the safety significance of any increased uncertainty in their MOV diagnostic equipment. However, some licensees have lowered torque switch settings on the basis of data obtained from MOV diagnostic equipment during static tests, or diffential pressure and flow tests at less than design-basis conditions. As a result, the torque switch settings for some MOVs are below the actuator manufacturer's original recommendations. The staff considers the confidence that these MOVs will perform their safety functions to have decreased from the level of confidence before commencement of the GL 89-10 program. Therefore, licensees should take prompt action to identify those MOVs and confirm their design-basis operability.

Regulatory Bases

Most licensees use diagnostic equipment in tests to estimate the thrust delivered by the motor operator at specific torque switch settings in safety-related MOVs in opening or closing the valve. Criterion XI, "Test Control," of 10 CFR part 50, appendix B, requires that procedures for testing components include provisions for ensuring that adequate test instrumentation is available. Some licensees rely on diagnostic equipment, known as a TMD, manufactured by ITI-MOVATS to set the torque switch in MOVs at a level that is sufficient to allow the performance of their safety functions under design-basis conditions. Criterion XII, "Control of Measuring and Test Equipment," of Appendix B requires that measures be established to ensure that measuring and test devices used in activities affecting quality are properly calibrated.

On March 2, 1992, ITI-MOVATS notified the NRC staff at a public meeting that it had identified an error in the published accuracy of its TMD resulting from its method of calibrating the TMD in the valve opening direction while using the TMD to estimate stem thrust in the closing direction. ITI-MOVATS notified its licensee customers of the error and the need to evaluate the capability of MOVs in light of the increased uncertainty of the TMD. ITI-MOVATS provided guidance to the licensees for performing this evaluation in its Engineering Report 5.2. Criterion V, "Instructions, Procedures, and Drawings," of Appendix B requires licensees to have procedures for the conduct of activities that involve the capability of safety-related equipment to perform its safety function. Criterion XVI, "Corrective Action," of Appendix B requires licensees to establish measures to ensure that conditions adverse to quality such as deficiencies and defective equipment, are promptly identified and corrected.

The NRC staff is responsible for evaluating the response of licensees to the error in the published accuracy of MOV diagnostic equipment resulting from valve stem directional effects identified by ITI-MOVATS. At the meeting on March 2, 1992, the representatives of ITI-MOVATS stated that the error in its published uncertainty of the TMD had been evaluated for reportability under 10 CFR part 21. The ITI-MOVATS representatives determined that the increased uncertainty of the TMD was not reportable under part 21 by them because they did not know the safety significance of its use at individual nuclear power plants. The NRC staff does not consider it necessary for individual licensees to report the increased uncertainty of the TMD under part 21 because the staff is aware of the issue. However, the NRC regulations in 10 CFR part 21 and part 50, appendix B, require licensees to resolve the issue in a timely manner.

Backfit Discussion

On the basis of operating experience and research results, the NRC staff determined several years ago the MOV tests beyond those previously found acceptable are necessary to satisfy the NRC regulations. As that determination constituted a backfit, the staff prepared GL 89-10 in accordance with NRC procedures for the issuance of staff guidance containing backfit provisions. This supplement to the generic letter is being treated as a further backfit in that the staff is requesting licensees to address new information on the uncertainty of MOV diagnostic equipment. The NRC staff has determined that the actions requested in this generic letter supplement are necessary to provide confidence that nuclear power facilities are in compliance with their safety analyses and Criterion XI, "Test Control," of appendix B to 10 CFR part 50, which requires that test procedures include provisions for ensuring that adequate test instrumentation is available. Therefore, the NRC staff has determined that the backfit provisions of this generic letter supplement are justified under 10 CFR 50.109(a)(4)(i).

This request is covered by Office of Management and Budget Clearance Number 3150-0011 which expires May 31, 1994. The estimated average number of burden hours is 150 person hours per licensee response, including those needed to assess the new recommendations, search data sources, gather and analyze the data, and prepare the required letters. This estimate of the average number of burden hours pertains only to the identified response-related matters and does not include the time needed to implemented the requested action. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Information and Records Management Branch, Division of Information Support Services, Office of Information Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the Paperwork Reduction Project (3150-0011), Office of Information and Regulatory Affairs, NEOB-3019, Office of Management and Budget, Washington, DC 20503.

Although no specific request or requirement is intended, the following information would be helpful to the NRC in evaluating the cost of complying with this generic letter supplement:

(1) The licensee staff's time and costs to perform requested inspections, corrective actions, and associated testing

(2) The licensee staff's time and costs to prepare the requested reports and documentation

(3) The additional short-term costs incurred as a result of the inspection findings such as the costs of the corrective actions or the costs of down time, and

(4) An estimate of the additional long-term costs which will be incurred in the future as a result of implementing commitments such as the estimated costs of conducting future inspections or increased maintenance.

Enclosure

NRC Staff Comments on the NUMARC Guidelines Concerning the ITI-MOVATS Thrust Measuring Device

(1) NUMARC has not ensured that all licensees will implement its guidance in a timely manner.

(2) In addition to other high-priority MOVs, licensees should address MOVs known to have marginal capability on a priority basis.

(3) The NUMARC and ITI-MOVATS guidance focuses on the close torque switch setting. Licensees will need to address the valve stem directional effect for the open torque switch setting if the switch is not bypassed and is set on the basis of the close torque switch setting rather than the calibration data in the open direction.

(4) Licensees should ensure that all MOV diagnostic equipment vendors have addressed the resulting uncertainty if their diagnostic equipment is calibrated in the opposite direction of its use. Also, the uncertainty may be applicable to MOV diagnostic equipment used on various actuator and valve types.

(5) Although the staff is not aware of any cases, the industry should ensure that the ITI-MOVATS TMD has not been used in generic MOV studies that might overestimate actuator capacity or capability.

(6) Licensees should be aware that the screening criteria in ITI-MOVATS Engineering Report 5.2 focus primarily on the consideration of minimum required thrust, but licensees also need to address the consideration of maximum allowable thrust limits.

(7) Although the NUMARC and ITI-MOVATS guidance discusses the evaluation of thrust margin, licensees will need to develop justification for an adequate amount of margin to account for the uncertainties in their thrust calculations. Margin should be adequate to account for areas such as variation in assumed parameters in the thrust calculations and degradation between refurbishment.

(8) ITI-MOVATS used parameters in its calibration study that may not be appropriate for general licensee use. For example, ITI-MOVATS assumed a stem friction coefficient of 0.15 that may not be appropriate for some MOVs and relied on the Limitorque spring pack calibration charts, which licensees have found are inaccurate in some cases.

(9) Licensees should ensure that the scope of MOVs evaluated for the increased uncertainty of the diagnostic equipment is consistent with their commitments to Generic Letter 89-10, such as, where applicable, MOVs capable of being mispositioned.

(10) Licensees should address the additional issues raised by the MUG report and discussed in Information Notice 92-23, principally load-sensitive behavior (i.e., rate of loading effects), as part of their program in response to GL 89-10.

Dated at Rockville, Maryland, this 30th day of June, 1992.

For the Nuclear Regulatory Commission.

John N. Hannon,

Director, Project Directorate III-3, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 92-15944 Filed 7-7-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-440]

The Cleveland Electric Illuminating Company, et al., Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-58, issued to the Cleveland Electric Illuminating Company, Centerior Service Company, the Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company and the Toledo Edison Company, (the licensees), for operation of the Perry Nuclear Power Plant, Unit No. 1, located in Lake County, Ohio.

The amendment would revise the Technical Specifications to establish appropriate setpoints and limits governing plant operation with a single recirculation loop in service, in accordance with the licensees' application for amendment dated June 28, 1991.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By August 7, 1992, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests 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 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 the Perry Public Library, 3753 Main Street, Perry, Ohio 44081. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request an/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition requesting leave of the Board up to fifteen (15) days prior to the first pre-hearing conference scheduled in the proceeding, but such an amended petition 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 that 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 providing the contention at the hearing.

The petitioner must also provide reference to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2020 L Street, NW., Washington, DC, 20555 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 N1023 and the following message addressed to John N. Hannon: 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 Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.741(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comments of its intent to make a no significant hazards consideration finding in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated June 28, 1991, 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, the Perry Public Library, 3753 Main Street, Perry, Ohio, 44081.

Dated at Rockville, Maryland, this 30th day of June 1992.

For the Nuclear Regulatory Commission.

James R. Hall, Sr.,

Project Manager, Project Directorate III-3, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 92-15945 Filed 7-7-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 030-01326, License No. 08-04289-06, EA 92-027]

DC General Hospital, Washington, DC 20003; Order Imposing Civil Monetary Penalty

I

District of Columbia General Hospital (Licensee) is the holder of Byproduct Material License No. 08-04289-06 last renewed by the Nuclear Regulatory Commission (NRC or Commission) on December 10, 1991. The license authorizes the Licensee to use byproduct materials for diagnostic and therapeutic procedures involving radiopharmaceuticals and brachytherapy devices in accordance with the conditions specified therein.

II

An inspection of the Licensee's activities was conducted during January 21-22, 1992. The results of the inspection indicated that the licensee had not conducted its activities in full compliance with NRC requirements. A Written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated March 4, 1992. The Notice states the nature of the violations, the provision of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violations. The Licensee responded to the Notice in three letters, dated March 30, 1992. In its response, the Licensee denied one of the eight violations (Violation E). In addition, the Licensee requested mitigation of the civil penalty.

III

After consideration of the Licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined, as set forth in the Appendix to this Order, that Violation E should be withdrawn, and that the proposed penalty should be reduced by $950 based on the withdrawal of Violation E, and therefore a civil penalty of $6,550 should be imposed. The NRC staff has also determined that an adequate basis was not provided for any further reduction in the civil penalty amount.

IV

In view of the foregoing, and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, it is hereby ordered that:

The Licensee pay a civil penalty in the amount of $6,550 within 30 days of the date of this Order, by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

V

The Licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region

I, 475 Allendale Road, King of Prussia, Pennsylvania 19406.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issue to be considered at such hearing shall be whether, on the basis of the violations set forth in the Notice (with the exception of Violation E), this Order should be sustained.

Dated at Rockville, Maryland this 30th day of June 1992.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support.

Appendix—Evaluations and Conclusion

On March 4, 1992, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for eight violations identified during an NRC inspection on January 21–22, 1992 at the District of Columbia General Hospital (licensee). The licensee responded to the Notice on March 30, 1992. The licensee denied one of the violations (Violation E). The licensee also requested mitigation of the civil penalty. The NRC's evaluations and conclusions regarding the licensee's requests are as follows:

1. Restatement of Violation E

10 CFR 35.50(b)(3) requires, in part, that a licensee test each dose calibrator for linearity over the range of its use between the highest dosage that will be administered to a patient and 10 microcuries.

Contrary to the above, the licensee's dose calibrator linearity test performed quarterly covered only the range between 100 millicuries and 10 microcuries (and the highest dosage that the licensee administered to a patient was greater than a 100 millicuries). Specifically, the licensee administered:

158.1 millicuries of iodine-131 to a patient on November 27, 1989; 159.4 milicuries of iodine-131 to a patient on March 5, 1990; 110.9 millicuries of iodine-131 to a patient on July 23, 1990; and 153.3 millicuries of iodine-131 to a patient on December 3, 1991.

2. Summary of Licensee Response

In its responses, the licensee admits all of the violations, with the exception of Violation E, which involved the dose calibrator linearity test not covering the range of use. The licensee also requests mitigation of the penalty. In support of its request for mitigation, the licensee states that (1) the NRC should reconsider the 100% escalation of the penalty based on the Licensee's past performance, stating that the overall performance of the program since 1989 has improved; and (2) the NRC should reconsider the 50% escalation of the penalty based on the corrective actions not being prompt and comprehensive.

With respect to its denial of Violation E, the licensee contends that although doses exceeding 100 millicuries of iodine-131 are occasionally administered, in all cases the dosages are constituted from the addition of individual vials containing capsules of the isotope, and each vial is assayed separately. The licensee stated that the results of its assays never exceeded 100 millicuries.

With respect to the NRC escalation of the civil penalty by 100% based on the licensee's past performance, the licensee requests that this escalation be reconsidered. The licensee contends that its overall performance with regard to the radiation safety program, and the involvement of management in the program, did not remain stagnant since the NRC inspection in 1988, but in fact has improved. In support of that contention, the licensee notes that it instituted a number of changes since that time to reflect its commitment to improvement of the radiation safety program. These changes included creation of a full-time health physicist position in July 1990; retention of an outside physics consulting group in October 1998 to provide monthly monitoring of the program; replacement of the consulting group in November 1991 with a different physics contractor, due to unsatisfactory performance as identified by management; and increased attention to the monitoring of personnel radiation exposure.

With respect to the NRC escalation of the civil penalty on the basis that the corrective actions were not prompt and comprehensive, the licensee states that they received the NRC inspection report late on February 14, 1992, and had only 3 working days to prepare a comprehensive program of corrective actions for submittal at the enforcement conference on February 20, 1992. The licensee also indicated that it is looking at options to replace the current Radiation Safety Officer with someone who has both the time and expertise to give the program the support which it requires, but the options were not clear to the licensee at the time of the enforcement conference. Therefore, the licensee contends that escalation of the civil penalty on this factor was unreasonable.

3. NRC Evaluation of Licensee Response

With respect to the licensee's denial of Violation E, the NRC agrees that the violation should be retracted since the licensee indicated that the dose calibrator was never used to assay dosages greater than 100 millicuries.

With respect to the escalation of the civil penalty based on the licensee's past performance, the NRC acknowledges that some actions were taken by the licensee in response to the prior NRC findings, which included a prior Severity Level III problem. However, those actions were not effective in precluding the violations identified during the NRC inspection in January 1992. In view of the past problems at the facility, the NRC maintains that escalation of the civil penalty based on this factor was appropriate.

With respect to the escalation of the civil penalty based on the Licensee's corrective actions not being prompt and comprehensive, the NRC notes that the licensee was informed of the inspection findings at an exit interview on January 22, 1992. The exit interview was attended by the Executive Director, Medical Director, Radiation Safety Officer, Chief of Nuclear Medicine, and Chairman of the Radiation Safety Committee. While the written report may not have been received by the licensee until February 14, 1992, it simply reiterated the findings presented at the exit interview; and the licensee had ample time and opportunity to develop corrective actions for the individual violations, as well as the underlying deficiencies that contributed to them. Further, the licensee had previously received a Notice of Violation for a Severity Level III problem involving lack of management control (EA 89–147, February 1, 1990). That action followed an enforcement conference held December 6, 1989. Thus, the licensee was aware of NRC's expectations regarding corrective action. NRC expects that licensees, when informed of violations or regulatory problems, will take prompt action to correct them. While it may not be possible to fully implement long term corrective action prior to the enforcement conference, the plan for such action and the implementation schedule should be formulated by that time. Accordingly, the NRC maintains that escalation of the civil penalty based on this factor was appropriate.

4. NRC Conclusion

Based on its evaluation of the Licensee's response, the NRC staff concludes that Violation E should be withdrawn. Reducing the proposed civil penalty by ⅓ due to the withdrawal of one violation results in an adjusted civil penalty of $6,550. The Licensee has provided no basis for further mitigation of the civil penalty. Accordingly, a civil penalty in the amount of $6,500 should be imposed by order.

[FR Doc. 92–15946 Filed 7–7–92; 8:45 am]

BILLING CODE 7590–01M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–30880; File No. SR–CSE–92–02]

Self-Regulatory Organizations; Cincinnati Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Unlisted Trading Privileges

July 1, 1992.

I. Introduction

On February 19, 1992, the Cincinnati Stock Exchange, Inc. ("CSE" 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

[1] 15 U.S.C. 78s(b)(1) (1988).

19b–4 thereunder,[2] a proposed rule change relating to the Exchange's ability to trade securities pursuant to unlisted trading privileges ("UTP").

The proposed rule change was noticed in Securities Exchange Act Release No. 30454 (March 9, 1992), 57 FR 9297 (March 17, 1992). No comments were received on the proposal.[3]

II. Description of the Proposal

According to the Exchange, the proposed rule change is designed to facilitate the CSE's full participation in the National Market System by assuring that the CSE is eligible to trade, pursuant to UTP, securities primarily traded on the New York Stock Exchange, Inc. ("NYSE") and the American Stock Exchange, Inc. ("Amex").[4] Because the CSE's present listing standards make no distinction between initial listing requirements and maintenance standards, and its UTP standards merely cross-reference its listing standards, the CSE can obtain and continue UTP only in the securities of companies which would be eligible for primary listing on the CSE. Accordingly, the CSE currently is prohibited from obtaining or continuing UTP in securities which are in fact listed on another exchange but which do not meet the listing standards of the CSE.

This restriction has resulted in the Exchange's inability to trade, pursuant to UTP, the securities of an issuer that experiences financial difficulties while listed on the NYSE or the Amex, even though the issuer remains listed and registered on the primary market. Because of such situations, the CSE seeks to amend its rules in order to enable the Exchange to trade an issuer's securities pursuant to UTP, even though such issuer would not be eligible for listing on the CSE, provided such issuer maintains its listing on either the NYSE or Amex.[5] Essentially, the Exchange does not wish to adopt stricter listing and/or maintenance requirements than the requirements applied by the primary markets. For stocks not traded on the NYSE or Amex, however, the CSE contemplates no change in its present standards.

III. Discussion

After careful consideration, the Commission finds that the CSE's proposed rule change to amend its rule governing UTP is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, specifically, sections 6(b) and 11A of the Act.[6] The Commission believes that the proposal is consistent with the section 6(b)(5)[7] requirement that the rules of the Exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. Additionally, the Commission believes that the proposal is consistent with Section 11A which requires the Commission to facilitate the establishment of a national market system by, among other things, facilitating fair competition between exchanges.

The Commission believes that it is appropriate to allow the CSE to amend its rules in order to enable the Exchange to trade, pursuant to UTP, the securities of a company unable to meet the current listing criteria of the CSE, provided such securities are primarily listed on the NYSE or the Amex and remain so listed. I approving this filing, the Commission has considered the original listing and maintenance standards in place at the NYSE and the Amex and believes that they are adequately designed so as to attract bona fide companies to list and trade their securities in these respective markets.[8] Such listing standards were submitted to the Commission, and upon the Commission's determination that such standards were consistent with the Act, were approved.

Companies listed on the NYSE or the Amex pursuant to these listing standards may experience financial difficulties, yet continue to be listed and traded on the primary exchanges while the exchange determines whether to delist the company's securities. While experiencing these problems, a company may fall below the CSE's listing/maintenance criteria.[9] Under the CSE's current rules, UTP trading of the securities of such a company would not be allowed.

The Commission believes it is consistent with just and equitable principles of trade and with the protection of investors and the public interest to allow the CSE to obtain or continue UTP in a security traded on the NYSE or the Amex, even when such a security falls below CSE's listing standards. As described above, the listing standards of the NYSE and the Amex should ensure that only bona fide companies list on those exchanges. In addition, NYSE and Amex rules require those exchanges to consider delisting a company whose deteriorating financial condition has led it to fall below the exchanges' maintenance criteria. Therefore, so long as such a security remains listed on the NYSE or the Amex, the Commission believes it is reasonable to allow the CSE to trade it pursuant to UTP.

Moreover, pursuant to Section 11A of the Act, Congress has directed the Commission to facilitate a national market system. The Commission's granting of UPT to the regional stock exchanges is instrumental to that directive. UTP enables the regional stock exchanges to provide a competitive marketplace for the trading of eligible securities. Because the other regional stock exchanges do not have in place similar restrictions on their ability to obtain UPT in securities listed primarily on the NYSE or the Amex,[10] the Commission believes that it is appropriate to approve the CSE's proposal. The Commission finds that it would be inconsistent with the Act, especially Section 11A, to require the CSE to maintain its restriction on obtaining UTP in securities listed on the NYSE or the Amex, while allowing other regional exchanges to apply for and obtain UTP in the same securities. Essentially, the Commission believes that effective competition between the

[2] 17 CFR 240.19b–4 (1991).

[3] Subsequent to this release, the CSE amended its proposed rule change by deleting "provided the security is otherwise deemed suited for trading" from the language originally proposed by the Exchange. In its letter amending the proposal, the CSE also indicated that this proposed rule change is not intended to accommodate the trading of securities that raise new regulatory issues, and, therefore, would require a separate filing with the Commission pursuant to Rule 19b–4 under the Act, such as index or currency warrants, or other novel securities products. See letter from Kevin S. Fogarty, General Counsel, CSE, to Laurie Petrell, Division of Market Regulation, SEC, dated May 18, 1992.

[4] Section 12(f) under the Act sets forth the Commission's authority to extend UTP to a security upon request by a national securities exchange. 15 U.S.C. 78l(f) (1988).

[5] The Commission notes that it will not process an exchange's UTP application for a type of security for which the requesting exchange does not have the authority to list and trade. The CSE, therefore, must have in place listing standards for the specific type of security to be traded pursuant to UTP, even though such security is listed and trading on either the NYSE or the Amex. See also note 3, *supra*.

[6] 15 U.S.C. 78f and 78k–1 (1988).

[7] 15 U.S.C. 78f(b)(5) (1988).

[8] For example, the NYSE requires net tangible assets of $18 million and a minimum of $2.5 million pre-tax earnings in the previous year, and $2 million pre-tax earnings for the preceding two years, while the Amex requires at least $4 million in shareholders' equity and a minimum of $750,000 pre-tax income in the last fiscal year or in two of the three last fiscal years. The Amex also has listing criteria for its Emerging Company Marketplace.

[9] The CSE requires net tangible assets of at least $2 million, and earnings equal to at least $200,000 pre-tax annual income for two prior years.

[10] See generally the rules of the Pacific Stock Exchange, Inc. (Rule 3), and the Boston Stock Exchange, Inc. (Chapter XXVII).

exchanges would be diminished if the proposed rule change was not approved.

IV. Conclusion

For the reasons set forth above, the Commission finds that the CSE's proposed rule change is consistent with Sections 6 and 11A of the Act.

It is therefore ordered, Pursuant to section 19(b)(2) [11] of the Act, that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-15939 Filed 7-7-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-30879; File Nos. SR-NSCC-92-04, SR-MCC-92-07, and SR-SCCP-92-02]

Self-Regulatory Organizations; National Securities Clearing Corporation; Midwest Clearing Corporation; Stock Clearing Corporation of Philadelphia; Filing and Order Granting Temporary Approval on an Accelerated Basis of Proposed Rule Changes Relating to the Guarantee of Trades in Continuous Net Settlement Systems

July 1, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that National Securities Clearing Corporation ("NSCC"), Midwest Clearing Corporation ("MCC"), and Stock Clearing Corporation of Philadelphia ("SCCP") (collectively referred to as "clearing corporations") filed with the Securities and Exchange Commission ("Commission") proposed rule changes as described in Items I, II, and III below.[2] The Commission is publishing this notice to solicit comment from interested persons and to grant temporary approval of the proposed rule changes on an accelerated basis through June 30, 1993.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Changes

The proposals seek an extension of NSCC's, MCC's and SCCP's authority to (1) guarantee at an earlier time settlement of member trades in their respective Continuous Net Settlement ("CNS") systems and (2) revise the CNS portion of their respective clearing fund formulas to protect against increased risk posed by such earlier guarantees. The Commission has approved these proposals on a temporary basis through June 30, 1992.[3] These proposed rule changes would extend the Commission's approval of the CNS trade guarantee policies.

II. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In their filings with the Commission, the clearing corporations included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments they received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. The clearing corporations have prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

The purpose of the proposed rule changes is to extend the Commission's approval of NSCC's, MCC's, and SCCP's policies to guarantee the settlement of all pending CNS trades as of midnight on the day after the trade date ("T+1") for locked-in or automatically compared trades and as of midnight on the day trades are reported to members as compared for all other trades. The proposed rule changes also would extend the Commission's approval of the clearing corporations' revisions to the CNS portions of their clearing fund formulas. These revisions are designed to protect against increased CNS system risk associated with earlier guarantees.[4]

NSCC's revised clearing fund formula requires each member to contribute as the CNS portion of its clearing fund requirement an amount approximately equal to: (1) Two percent of the members' projected total long CNS positions; plus (2) the net of each day's difference between the contract price of pending, compared CNS trades and the current market price for all guaranteed pending CNS trades that have not yet reached settlement; plus (3) one-fourth of one percent of the net of all guaranteed, pending CNS trades and open CNS positions.

Under MCC's proposal,[5] CNS assessments for the clearing fund will be based on the following formula: (1) all presettlement long and short settling CNS trades will be summarized daily for the previous twenty day period; (2) for each day that a member has a net debit exposure, based on mark-to-market, such member will be assessed at a rate of 102% of the net debit exposure; and (3) the average twenty day net debit exposure figure will serve as the additional clearing fund contribution Members whose average net debit exposure for the twenty day period is below the minimum $5,000 clearing fund deposit will not be required to provide additional funds.

SCCP's new clearing fund formula enables SCCP to collect the current mark-to-market value of the securities still pending settlement. CNS contributions to the clearing fund are assessed based upon the larger of (1) $1,000 for every twenty five trading units of one hundred shares, with a $5,000 minimum and $50,000 maximum contribution (the first $25,000 must be in cash and the remainder may be in high grade bonds), calculated using a member's monthly average of trading activity calculated from the preceding quarter or (2) a member's aggregate dollar amount of the execution price of all long trades for each quarter divided by the number of days in the quarter times two percent, with a maximum $100,000 contribution. In addition to the above adjustments and as a further

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[11] 15 U.S.C. 78s(b)(2) (1988).

[12] 17 CFR 200.30-3(a)(12) (1991).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] NSCC's proposed rule change (File No. SR-NSCC-92-04) was filed on April 29, 1992; MCC's proposed rule change (File No. SR-MCC-92-07) was filed on June 1, 1992; and SCCP's proposed rule change (File No. SR-SCCP-92-02) was filed on June 18, 1992.

[3] Securities Exchange Act Release Nos. 29388 (June 28, 1992), 56 FR 30951 (approving File Nos. SR-NSCC-01-06, SR-MCC-91-03, and SR-SCCP-91-03 through June 30, 1992); 28728 (December 31, 1990), 56 FR 717 (approving File Nos. SR-NSCC-90-25, SR-MCC-90-08, and SR-SCCP-90-03 until June 30, 1991); and 27192 (August 29, 1989), 54 FR 37010 (approving File Nos. SR-NSCC-87-04, SR-MCC-87-03, and SR-SCCP-87-03 until December 31, 1990).

[4] For a more detailed discussion of the proposals, refer to Securities Exchange Release Nos. 29388, 28728, and the 27192 accompanying rule filings, *supra* note 3.

[5] MCC's proposed rule change makes one clarifying modification to MCC's previous filing (File No. SR-MCC-91-08). MCC will guarantee Regional Interface Organization ("RIO") CNS trades only to the extent that the interfacing clearing corporation provides a comparable guarantee to MCC. The clarification is to cover the situation where a security is CNS eligible at MCC but is not CNS eligible at an interfacing clearing corporation. In such a situation, MCC cannot apply its guarantee to the MCC participant because the interfacing clearing corporation is not providing a comparable guarantee to MCC.

means of reducing risks generated by earlier guarantees, all clearing fund contributions will be adjusted daily with respect to any mark-to-market exposure. Adjustments of less than $10,000 may be waived by SCCP.

B. Self-Regulatory Organizations' Statement on Burden on Competition

The clearing corporations do not believe that their proposed rule changes impose any burden on competition.

C. Self-Regulatory Organizations' Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The clearing corporations have not solicited, and do not intend to solicit, comments on the proposed rule changes. The clearing corporations have not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

The Commission believes the clearing corporations' proposals to continue providing earlier guarantees for CNS trades along with revised formulas for calculating clearing fund contributions is consistent with the Act and particularly with section 17A of the Act.[6] Section 17A(b)(3)(F) of the Act [7] requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which the clearing agency is responsible and be designed to remove impediments to and perfect the national system for clearance and settlement of securities transactions. The Commission believes that these proposals promote the perfection of the national system by providing increased trade settlement certainty through a reduction in the time that clearing members are exposed to the risk of counterparty default. The Commission further believes that these proposals achieve this goal without compromising the safeguarding of securities and funds in the clearing corporations' custody or control or for which they are responsible.

The clearing corporations have requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing in the **Federal Register.** Following the temporary approval of the clearing corporations' original proposals, the Commission has continued to examine the effects of the clearing corporations' procedures for earlier guarantees and their revised formulas for calculating CNS clearing fund contributions. The earlier guarantee procedures and revised formulas have functioned adequately during the applicable temporary approval periods. Accelerated approval will permit NSCC, MCC, and SCCP to continue to provide their participants with earlier trade guarantees and to continue collecting clearing fund assessments based on the revised formulas. The Commission, therefore, believes there is good cause for approving the proposed rule changes prior to the thirtieth day after the date of publication of notice of the filing.

This temporary approval order will terminate on June 30, 1993. During the temporary approval period, the Commission will continue to monitor the adequacy of NSCC's, MCC's, and SCCP's procedures and safeguards applicable to earlier guarantees. The clearing corporations are subject to a continuing obligation to provide data to the Commission pertaining to the ability of the revised CNS clearing fund formulas to guard against increased risk posed by earlier guarantees.[8]

IV. Solication of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference 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 above-mentioned self-regulatory organizations. All submissions should refer to file numbers SR-NSCC-92-04, SR-MCC-92-07, and SR-SCCP-92-02 and should be submitted by July 29, 1992.

V. Conclusion

On the basis of the foregoing, the Commission preliminarily finds that the proposed rule changes are consistent with the Act and in particular with section 17A of the Act.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the proposed rule changes (SR-NSCC-92-04, SR-MCC-92-07 and SR-SCCP-92-02) be, and hereby are, approved through June 30, 1993.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-15940 Filed 7-7-92; 8:45 am]

BILLING CODE 8010-01-M

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[6] 15 U.S.C. 78q-1 (1988).

[7] 15 U.S.C. 78-1(b)(3)(F) (1988).

[8] The Commission reserves the right to amend the data request during the ensuring temporary approval period for any of the clearing corporations in order to obtain the most useful and accurate information available.

[Release No. 34-30867; File No. SR-NASD-92-19]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to Small Order Executive System Tier Size Classifications

June 29, 1992.

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 May 4, 1992, the National Association of Securities Dealers, Inc., ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. 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 NASD is proposing an interpretation of an existing rule, pertaining to the Associations periodic reclassification of securities in the appropriate Small Order Execution System ("SOES") maximum order size tiers.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the SEC, the Association 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 NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to notify the Commission of the reclassification of some 431 National Market System securities within the maximum SOES order size tier levels. The Association reviews the tier levels applicable to each security periodically to determine if the trading characteristics of the issue have changed so as to warrant a SOES tier level move. Such a review was conducted as of December 31, 1991, using fourth quarter, 1991 trading data and the established criteria:

A 1,000-share maximum order size for NASDAQ/NMS securities with an average daily nonblock volume of 3,000 shares or more a day, a bid price less than or equal to $100, and three or more market makers;

A 500-share maximum order size for NASDAQ/NMS securities with an average daily nonblock volume of 1,000 shares or more a day, a bid price less than or equal to $150, and two or more market makers;

A 200-share maximum order size for NASDAQ/NMS securities with an average daily nonblock volume of 1,000 shares or more a day, a bid price less than or equal to $250, and that have less than two market makers.

The 431 NASDAQ/NMS securities that have been reclassified as of May 4, 1992, are set out in Exhibit 2 of NASD Notice to Members 92-21.

The NASD beleives that the proposed rule change is consistent with Section 15A(b)(5) of the Act. Section 15A(b)(5) requires, *inter alia*, that the rulemaking initiatives of the NASD be designed to "foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market * * *" The NASD believes that the reclassification of securities within SOES tier levels will further these ends by providing an efficient mechanism to facilitate small order executions in the NASDAQ market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any buden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others.

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to section 19(b)(3)(A)(i) of the Act, and subparagraph (e) of Rule 19b-4 thereunder, because the proposal is "a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule * * *" In its approval order for proposed rule change SR-NASD-88-1,[1] the SEC requested that the NASD provide this information as an interpretation of an existing rule under Section 19(b)(3)(A), which renders that rule effective upon the Commission's receipt of the filing. At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by July 29, 1992.

[1]Securities Exchange Act Rel. No. 25791 (June 9, 1988), 53 FR 22549 (June 16, 1988).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-15891 Filed 7-7-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-30871; File No. SR-NASD-92-25]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to Volume Reporting for Convertible Debt Securities and Confirmation Disclosure Requirements for Regular NASDAQ Securities

June 29, 1992.

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 12, 1992, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and simultaneously granting accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing amendments to Schedule D or the NASD By-Laws to require members to furnish certain information on customer confirmation forms and to clarify the volume reporting obligations of market makers maintaining quotations in convertible debt securities in regular NASDAQ.

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 NASD 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 NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Association is proposing to amend Schedule D to the NASD By-Laws to include specific provisions for reporting daily volume in convertible debt securities to the NASD and to require members to furnish information pertaining to mark-ups and mark-downs in connection with transactions in regular NASDAQ securities to their customers.

On April 10, 1992, the Commission approved a proposed rule change requiring members to report, beginning June 15, 1992, transactions in regular NASDAQ securities within 90 seconds after execution, similar to the reporting procedures for NASDAQ National Market System ("NASDAQ/NMS") securities. At the NASD's request, the Commission deferred action on transaction reporting for convertible debt securities and approved transaction reporting for regular NASDAQ equity securities alone.[1] The NASD has modified the Automated Confirmation Transactions ("ACT") service to accept real-time last sale transaction reports in regular NASDAQ securities, and by this filing, proposed to eliminate the existing system that currently captures daily volume reports in those securities. Beginning June 15, 1992, the ACT service will be utilized to capture end-of-day volume reports for convertible debt securities and the NASD is amending Schedule D to clarify that market makers in convertible debt securities must continue to report daily volume figures in those securities using the ACT service.

Second, the rule proposal adds a new section to Schedule D that will apply the SEC's confirmation disclosure requirements, specifically the provision dealing with disclosure of mark-ups or mark-downs on customer confirmations in SEC Rule 10b–10(a)(8), to transactions in regular NASDAQ securities. The SEC rule requires broker-dealers that are not market makers to disclose mark-ups and mark-downs on riskless principal transactions and also requires market makers to disclose the difference, if any, between the price of a transaction as reported to the tape and the price to the customer. However, the rule applies only to "reported" securities, which are defined as securities reported pursuant to a national market system plan approved by the Commission.

The transaction reporting plan for regular NASDAQ securities was submitted to the SEC as an NASD rule proposal (amendments to Schedule D) and not a national market system plan (pursuant to section 11A of the Act) because different listing criteria, corporate governance requirements, margin treatment and state merit review requirements applicable to regular NASDAQ securities render them inappropriate as national market securities. Accordingly, the SEC's confirmation disclosure requirements dealing with disclosure of mark-up or mark-downs on customer confirmations do not apply to transactions in regular NASDAQ securities as they do not fall within the definition of "reported" securities. Real-time trade reporting for regular NASDAQ securities, commencing June 15, 192, makes these disclosures possible, however, and the NASD believes that it is in the best interests of investors to require members to disclose mark-ups and mark-downs taken from the reported price. The NASD notes that some members have indicated that they are currently making arrangements to supply customers with this additional disclosure, hence the proposed rule change codifying the requirements in this area would not appear to be burdensome to members.

The NASD believes the proposed rule change is consistent with section 15A(b)(6) of the Act. Section 15A(b)(6) requires that the rules of a national securities association be designed to "foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market."

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NASD requests that the Commission find good cause, pursuant to section 19(b)(2) of the Act, for approving the proposed rule change prior to the thirtieth day after publication in the **Federal Register**, due to the fact that transaction reporting for securities in regular NASDAQ was implemented on June 15, 1992. The NASD believes that the proposed reporting requirements are appropriate so that the NASD may continue to capture relevant regulatory information on the volume of transactions in convertible bonds listed on NASDAQ, and the proposed confirmation disclosure requirements are appropriate for investor protection. In light of these factors, the NASD requests that the Commission approve the rule change on an accelerated basis.

The Commission finds that the proposed rule change is consistent with the requirements of the Act, and specifically, sections 15(A)(b)(6) and 11A(a)(1)(C)(iii) of the Act. Section 15(A)(b)(6) of the Act requires that NASD rules be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and remove impediments to and perfect the mechanism of a free and open market. Section 11A(a)(1)(C)(iii) of the Act sets forth the objective of ensuring the availability to brokers, dealers and investors of information with respect to quotations for and transactions in securities.[2]

The proposed rule change clarifies that market makers must report daily volume of transactions in convertible debt securities through the ACT service. On April 10, 1992, the Commission approved a proposed rule change requiring members to report, beginning June 15, 1992, to the NASD on a real-time basis all transactions in NASDAQ securities. In approving that proposal, the Commission deferred consideration of the inclusion of convertible debt securities at the request of the NASD and subject to the NASD's representation that it would address the reporting of such securities before the June 15, 1992 effective date. Because the proposed rule change clarifies the

[1] The Commission noted that the NASD would submit a rule filing deleting the requirement for market makers in equity stocks to submit end-of-day volume reports, as required by Schedule H procedures. Securities Exchange Act Release No. 30580 April 10, 1992), 57 FR 13398.

The NASD notes that the end-of-day volume reports are required pursuant to Schedule D whereas the Schedule H reporting requirements pertain primarily to non-NASDAQ securities, and are not amended in this proposal.

[2] Although the proposed rule change is not a national market system plan pursuant to section 11A of the Act, the Commission believes that the goals of Section 11A, particularly the reporting and dissemination of transaction reports, are equally served by this proposed rule change.

requirements applicable to convertible debt, it advances the goals of Sections 11A and 15A of the Act, particularly the goal of ensuring the availability of information with respect to transactions in securities.

The proposed rule change also will provide investors with additional information regarding the quality and costs of broker-dealer services by requiring NASD members to provide more complete disclosure for principal transactions in regular NASDAQ securities. The proposed rule change requires members not acting as market makers to disclose mark-ups or mark-downs on customer confirmations in transactions in regular NASDAQ securities, similar to disclosure requirements for NASDAQ/NMS securities as provided by Rule 10b-10(a)(8).[3] The proposed rule change, by applying requirements similar to those of Rule 10b-10(a)(8) to regular NASDAQ securities, will facilitate market efficiency by providing investors greater ability to evaluate transaction costs and execution quality. The rule change thus advances the goals of Section 11A of the Act by ensuring the availability to investors of full information about their securities transactions.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof. The Commission believes that accelerated approval is appropriate because transaction reporting for regular NASDAQ securities commenced on June 15, 1992 and it is appropriate to clarify the volume reporting requirements pertaining to convertible debt securities listed on NASDAQ as soon as possible. Additionally, the amendments requiring confirmation disclosure for transactions in regular NASDAQ equivalent to that required for transactions in NASDAQ/NMS securities is appropriate in the interests of customer protection, so that customers may receive additional information relating to costs associated with transactions in regular NASDAQ.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by July 29, 1992.

It is Therefore Ordered, Pursuant to section 19(b)(2) of the Act, that the proposed amendments to Schedule D to the NASD By-laws be, and hereby are, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-15893 Filed 7-7-92; 8:45 am]

BILLING CODE 8010-01-M

[3] Rule 10b-10(a)(8) requires broker/dealers, other than market makers, that execute riskless principal trades in equity securities to disclose the amount of any mark-up, mark-down, or similar remuneration received in the transaction.

Rule 10b-10(a)(8) applies to reported securities pursuant to a Commission-approved national market system plan and does not apply to regular NASDAQ securities.

[Release No. 34-30877; File No. SR-NYSE-92-10]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Amendments to Rule 350, Compensation or Gratuities to Employees of Others

June 30, 1992.

On April 13, 1992 the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19-b-4 thereunder,[2] a proposed rule change consisting of amendments to NYSE Rule 350, Compensation or Gratuities to Employees of Others.

The proposed rule change was published for comment in Securities Exchange Act Release No. 30679 (May 5, 1992), 57 FR 20719 (May 14, 1992). No comments were received on the proposal.

NYSE Rule 350(a) presently sets a limitation of $50 per person per year for any gratuity given by members, member organizations, allied members and employees to certain persons (*i.e.*, principals, officers or employees of the Exchange or of other members or member organizations or of securities, commodities or news and financial organizations) without the prior written consent of the recipient's employer. Rule 350(a) also permits gratuities in excess of the stated amount with the prior consent of the recipient's employer and, in the case of Floor employees, prior written consent of the employer and of the Exchange.

Currently, Rule 350(b) sets a limitation of $100 per person per year for compensation for services rendered by specified types of Floor operations employees of members and member organizations, with prior employer approval.

The Exchange has stated in its filing that one of the purposes of Rule 350 is to protect against any improprieties which might arise in connection with the giving of substantial gifts to certain persons without their employer's knowledge.

The Exchange states that the $50 limitation set forth in Rule 350(a) has been in effect since 1978 when the rule was amended to increase the monetary limitation from $25 to $50 due to inflation. The $100 limitation set forth in Rule 350(b) was adopted in the 1960s and has not been increased since that time.

The Exchange proposes to amend Rule 350(a) to increase from $50 to $100 the amount of a gratuity which a member, allied member, member organization or employee thereof may give to principals, officers or employees of other members of member organizations or of securities, commodities or news and financial organizations without the prior written consent of the recipient's employer. The $50 limitation will not change for gratuities given by a member, allied member, member organization or employee thereof to principals, officers or employees of the Exchange and its subsidiaries.

The Exchange also proposes to amend Rule 350(b) to increase from $100 to $200 the limitation on compensation for services rendered by operations employees of the type specified in the rule, with prior employer approval. The proposed amendments to Rule 350(b) will also clarify and codify that the rule applies to operations employees of other members and member organizations and not of the Exchange.

The Exchange notes that the proposed rule change will not change the categories of persons covered by the rule nor will it change the requirement

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1991).

that members and member organizations retain a record of all gratuities and compensation for at least three years.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission believes the proposal is consistent with section 6(b)(5) requirements that the rules of the Exchange be designed to prevent fraudulent and manipulative acts and practices, and in general, to protect investors and the public interest.

The Commission believes that the Exchange Rule 350 is designed to prevent fraudulent acts and practices which might arise in connection with the giving of valuable gifts without the employer's knowledge. In particular, Rule 350 requires the principal employer (*i.e*, the relevant Exchange member and/or the Exchange) to review a gratuity or compensation arrangement to determine whether a conflict of interest exists. Under the proposed rule change, the principal employer will still be required to approve in writing any of the covered gratuity or compensation arrangements, and thus would have to make a review of the proposed arrangements.

The proposed rule change will only change the dollar limitations in the rule. The Commission believes that increasing the dollar limitations is reasonable given the amount of time that has elapsed since the last increase for gratuities. In particular, because Rule 350(a) has not been changed since 1978 and Rule 350(b) has not changed since the 1960s, and because, even with the increase, the dollar amounts are relatively low, the Commission feels that it is appropriate to raise these dollar limitations to take into account the effects of inflation.

It is Therefore Ordered, Pursuant to section 19(b) (2) of the Act, that the proposed rule change (SR-NYSE-92-10) be, and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret J. McFarland,
Deputy Secretary.

[FR Doc. 92-15892 Filed 7-7-92; 8:45 am]
BILLING CODE 8010-01-M

[3] 17 CFR 200.30-3(a)(12) (1991).

[Release No. 34-30876; File No. SR-PSE-92-16]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by Pacific Stock Exchange, Inc. Relating to the Charges for Alternate Specialist Transactions

June 30, 1992.

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 May 26, 1992, the Pacific Stock Exchange, Inc. ("PSE" 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 PSE proposes to adopt a change in its alternate specialist fees. Specifically, the PSE will offset the current $5.00 charge for alternate specialist transactions effected off-board by reducing by that amount the charge for each alternate specialist non-Intermarket Trading System ("ITS") transaction that is effected on the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

PSE rules authorize Specialist and Alternate Specialist ("AS") activities. A registered Specialist on the PSE is responsible for making fair and orderly markets in assigned equities; matching buyers and sellers who wish to trade in assigned stocks; buying and selling for his/her own account when orders cannot be matched; and acting as a floor broker's agent in obtaining executions for orders away from the market.

The PSE rules allowing AS activity provide that an AS can be called upon to make bids and/or offers whenever conditions require additional market depth or liquidity. The AS, similar to the registered Specialist, is treated as a dealer for capital and margin purposes. In 1990, the Exchange submitted a Board approved rule filing tightening AS requirements, including a provision that requires an AS to clear both primary Specialist Posts on the two PSE equity floors before entering into a trade.

As AS pays the initial registration fee and a one time fee for each additional issue. There is also an ongoing monthly fee for each AS issue traded. The AS pays an ITS fee per net outgoing trades, the same as a registered Specialist,[1] and also pays a $5.00 transaction fee on off-board trades; *i.e.* non-ITS trades executed off the PSE. The charge was intended to raise revenue and compensate the Exchange for the use of its facilities, charge for the privileges enjoyed by AS, and provide an incentive to execute trades on the PSE.

By changing the current fee structure to allow the AS to offset the current $5.00 off-board charge by reducing by that amount the charge for each non-ITS transaction effected on the Exchange, the PSE hopes to improve the liquidity of PSE markets by having more specialists execute trades on the PSE, particularly after regular hours.[2] The Exchange states that the AS transaction fee for outgoing offboard trades will read: "$5.00 transaction fee per outgoing offboard trade (charge for outgoing trades offset by cumulative credit for incoming trades)." [3]

The PSE believes that the proposal is similar to the ITS charge/credit system already in place at the PSE.[4]

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act in

[1] In computing the ITS fee, the charge for outgoing trades is offset by cumulative credit for incoming trades.

[2] The Exchange stated that "after regular hours" refers to the continuation of auction market trading from 1:00 p.m. to 1:50 p.m. (PT). Conversation between David P. Semak, Vice President, Regulation, PSE, and Elizabeth M. Cosgrove, Attorney, SEC, on June 26, 1992.

[3] Conservation between David P. Semak, Vice President, Regulation, PSE, and Elizabeth M. Cosgrove, Attorney, SEC, on June 17, 1992 clarifying that the Exchange is adding the following phrase to the AS transaction fee: "charge for outgoing trades offset by cumulative credit for incoming trades."

[4] *See supra* note 1.

general and furthers the objectives of Section 6(b)(4) in particular in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among PSE's members.[5]

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange and therefore has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b-4 thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at 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 MSE. All submissions should refer to File No. SR-PSE-92-16 and should be submitted by July 29, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 92-15894 Filed 7-7-92; 8:45 am]
BILLING CODE 8010-01-M

[5] The Commission believes the proposed fee offset is appropriate because it is limited to alternate specialists whose duty it is to provide liquidity in securities traded on the exchange.

DEPARTMENT OF STATE

[Public Notice 1648]

Shipping Coordinating Committee Subcommittee on Safety of Life at Sea Working Group on Bulk Chemicals; Meeting

The Working Group on Bulk Chemicals of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting at 9 a.m. on August 26, 1992, in room 2415, at U.S. Coast Guard Headquarters, 2100 2d Street, SW., Washington, DC 20593-0001. The purpose of the meeting is to finalize preparations for the 22d Session of the Subcommittee on Bulk Chemicals of the International Maritime Organization (IMO) which is scheduled for September 7-11, 1992, at the IMO Headquarters in London.

Among other things, the items of particular interest are:

a. Amendments and interpretation of the Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk (BCH Code) and the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk (IBC Code).

b. Amendments and interpretation of the provisions of Annex II of the International Convention for the Prevention of Pollution from Ships (MARPOL 73/78).

c. Amendments and interpretation of the provisions of the Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk (GC Code) and the International Code for the Construction of Equipment of Ships Carrying Liquefied Gases in Bulk (IGC Code).

d. Transboundary movement of wastes by sea.

e. Prevention of air pollution from ships including fuel oil quality.

f. Review of existing ships' safety standards.

g. Draft HNS convention—Review of the Hazardous and Noxious Substances Working Group Report.

h. Review of the International Convention on Oil Pollution Preparedness, Response and Cooperation, 1990 (OPRC).

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing: CDR K.J. Eldridge, U.S. Coast Guard (G-MTH-1), 2100 Second Street, SW, Washington, DC 20593-0001 or by calling (202) 267-1217.

Dated: June 22, 1992.

Geoffrey Ogden,
Chairman, Shipping Coordinating Committee.

[FR Doc. 92-15883 Filed 7-7-92; 8:45 am]
BILLING CODE 4710-07-M

[Public Notice 1649]

Shipping Coordinating Committee; Subcommittee on Safety of Life at Sea Working Group on Radiocommunications; Meetings

The Working Group on Radiocommunications of the Subcommittee on Safety of Life at Sea will conduct open meetings at 9:30 a.m. on August 20, September 17, October 15, November 19, and December 17, 1992. These meetings will be held in the Department of Transportation Headquarters Building, 400 Seventh Street, SW., Washington, DC 20950.

The purpose of these meetings is to prepare for the 38th Session of the International Maritime Organization (IMO) Subcommittee on Radiocommunication which is scheduled for January 1993 at the IMO headquarters in London, England.

Agenda items include preparation for the 38th Session, primarily related to the implementation of the Global Maritime Distress and Safety System (GMDSS).

Members of the public may attend these meetings up to the seating capacity of the room.

For further information and meeting room number, contact Mr. Ronald J. Grandmaison, U.S. Coast Guard Headquarters (G-TTM), 2100 Second Street, SW., Washington, DC 20593-0001. Telephone: (202) 267-1389.

Dated: June 18, 1992.

Geoffrey Ogden,
Chairman, Shipping Coordinating Committee.

[FR Doc. 92-15882 Filed 7-7-92; 8:45 am]
BILLING CODE 4710-07-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee; Generalized System of Preferences (GSP); Results of the Review of Petitions Requesting Changes in the List of Countries and Articles Eligible for Duty-Free Treatment Under the GSP in the 1991 Annual Review

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of results of 1991 Annual Review of the GSP.

SUMMARY: The purpose of this notice is to announce the disposition of the petitions accepted for review in the 1991 Annual Review of the GSP program.

FOR FURTHER INFORMATION CONTACT: GSP Subcommittee, Office of the United States Trade Representative, 600 17th Street, NW., room 517, Washington, DC 20506. The telephone number is (202) 395-6971.

SUPPLEMENTARY INFORMATION: This publication contains the dispositions of the petitions accepted for review in the 1991 Annual Review of the GSP program (56 FR 20484 and 56 FR 42080). These petitions requested changes in the list of articles and countries eligible for duty-free treatment under the GSP program. The GSP is provided for in the Trade Act of 1974, as amended (19 U.S.C. 2461-2465) (the 1974 Act). The review was conducted pursuant to regulations codified as 15 CFR 2007. These changes will take effect on July 1, 1992. The President's decisions concerning the 1991 Annual Review have also been reflected in a proclamation (57 FR 26981) and in a recent USTR press release (the press release is available by contacting the USTR Public Affairs Office at (202) 395-3230). All communications with respect to this notice should be addressed to the Director, Generalized System of Preferences, room 517, 600 17th Street, NW., Washington, DC 20506.

Reviews were also conducted concerning the beneficiary status of seven GSP beneficiary countries based on their practices in the area of internationally recognized worker rights. This includes reviews of Bangladesh, El Salvador, and Syria, which were continued from the 1990 Annual Review and reviews of Sri Lanka, Mauritania, Panama, and Thailand, which were accepted for review in the 1991 Annual Review. After reviewing these requests, the President determined that Sri Lanka and Bangladesh have taken or are taking steps to afford internationally recognized worker rights. The President also determined that Syria is not taking such steps and therefore will be suspended from the GSP program. Panama, Mauritania, and El Salvador will continue to be reviewed as part of the upcoming 1992 Annual Review. The review of the worker rights practices of Thailand will be continued until December 15, 1992.

The practices of Malta and Guatemala were also reviewed concerning their alleged failure to provide adequate and effective protection for intellectual property rights. These reviews will be continued as part of the 1992 Annual Review.

The review of Peru's actions regarding an alleged expropriation without compensation, which was accepted for review in the 1990 Annual Review and continued in the 1991 Annual Review, has been extended. Additionally, the implementation of a de minimis waiver for copper wire in HTS subheading 7413.00.10 and two petitions for Peru on products in HTS subheadings 0814.00.40 and 1604.19.25 has been deferred indefinitely.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

ANNEX I—1991 GSP ANNUAL REVIEW

Case No.	HTS No.	Petitioning county	Product	1991 Imports GSP beneficiaries ($ millions)
Petitions to Add Products to GSP: Granted				
91-4	0712.1000	Argentina	Dried Potatoes	0.0
91-13	0814.0040	Peru*	Lime peel	0.0
91-14	1210.2000	Yugoslavia	Hop Cones	0.0
91-16	1604.1925	Peru*	Bonito, Yellowtail, Pollack	0.0
91-18	2005.7011	Turk./Arg.	Green Olives, not pitted under 13kg	0.0
91-19	2005.7013	Turk./Arg.	Green Olives, not pitted, other	0.0
91-20	2005.7015	Turk/Arg.	Green Olives, other, over quota	0.1
91-21	2005.7021	Argentina	Green Olives, pitted or stuffed, under 1kg	0.0
91-22	2005.7022	Argentina	Green Olives, pitted or stuffed, over 1kg	0.1
91-23	2005.7025	Turk./Arg.	Green Olives, other	1.4
91-25	2005.7075	Turkey	Olives, not green, other	0.6
91-28	2008.5020	Argentina	Apricot Pulp	0.0
91-31	2410.1040	Turkey	Oriental Tobacco	241.2
91-32	2902.9060	Argentina	Biphenyl in Flakes	0.0
91-37	3926.2050	Turkey	Plastic Apparel & Clothing	13.3
91-40	7202.4100	Turkey	High Carbon Ferrochromium	43.7
91-41	7202.4950	Turkey	Low Carbon Ferrochromium	19.0
91-42	7318.1520	Chile	Bolts, Nuts, washers, Iron or Steel	13.1
91-43	7318.1540	Chile	Machine Screws, Iron or Steel	0.3
91-44	7318.1560	Chile	Screws and Bolts, Iron or Steel	0.4
91-45	7318.1600	Chile	Nuts, Iron or Steel, threaded	5.1
91-46	8483.5080	Turkey	Flywheels and Pulleys	5.2
91-47	8527.2940	Brazil	Radiobroadcast Receivers FM only or AM/FM only	51.8
			Total	395.4
Petitions to Add Products to GSP: Denied				
91-1	0409.0000	Mexico	Natural Honey	13.0
91-2	0703.1040	Mexico	Green Onions	90.5
91-3	0709.9040.80	Mexico	Cilantro	5.6
91-5	0712.2020	Mexico	Dried Onion Powder	0.3
91-6	0712.2040	Arg./Mex	Dried Onions	2.2
91-7	0712.9040	Arg./Mex	Dried Garlic	0.4

ANNEX I—1991 GSP ANNUAL REVIEW—Continued

Case No.	HTS No.	Petitioning county	Product	1991 Imports GSP beneficiaries ($ millions)
91-8	0712.9075	Argentina	Dried Tomatoes	8.8
91-9	0804.2040	Mexico	Whole Figs	0.2
91-10	0804.2080	Mexico	Other Figs	1.9
91-11	0806.1060	Peru	Grapes	71.3
91-12	0806.2020	Mexico	Seeded Raisins	0.0
91-15	1604.1330	Peru	Sardines	1.8
91-17	1901.9030	Mexico	Cajeta	0.0
91-24	2005.7050	Turkey	Olives, Not Green, Not Pitted	0.2
91-26	2005.7083	Turkey	Other Olives	0.2
91-27	2008.4000	Argentina	Canned Pears	0.2
91-29	2008.9210	Thailand	Tropical Fruit Salad	13.3
91-30	2204.3000	Argentina	Grape Must	0.0
91-33	2906.2100	Mexico	Benzyl Alcohol	0.1
91-34	2917.3600	Mexico	Terephthalic Acid & Its Salts	0.0
91-35	2922.4920	Mexico	Aromatic Drugs of Amino Acids	0.6
91-36	3301.1300	Argentina	Lemon Oil	13.0
91-38	3926.3050	Mexico	Plastic Fittings for Furniture	10.6
				234.2

ANNEX II—1991 GSP ANNUAL REVIEW

Case No.	HTS No.	Petitioning country	Product	1991 Imports petitioning country ($ millions)
Petitions for Waivers of Competitive Need Limits: Granted				
91-59	2836.9100	Chile	Lithium Carbonates	7.4
91-67	7113.1910	Peru*	Rope, Curb for Jewelry	33.6
	7413.0010	Peru	Stranded Copper Wire	3.6
91-82	9502.1040	Malaysia	Unstuffed Dolls	1.0
91-83	9502-1080	Malaysia	Unstuffed Dolls	0.8
				46.4
Petitions for Waivers of Competitive Need Limits: Denied				
91-52	0705.1140	Mexico	Head Lettuce Imported 9/16-7/31	3.5
91-53	0807-1020	Mexico	Cantaloupes imported 99/16-7/31	55.0
91-54	0807.1070	Mexico	Other melons imported 12/1-5/31	16.9
91-55	0810.9040	Mexico	Prickly Pears	9.8
91-56	1905.9090	Mexico	Taco Shells, corn chips	19.1
91-57	2091.9039	Mexico	Jalapeno, Serrano peppers	34.1
91-58	2603.0000	Mexico	Cooper ores and concentrates	54.2
91-60	3402.9010	Mexico	Synthetic detergents	5.5
91-61	3902.1000	Mexico	Polypropylene resins	0.2
91-62	3902.3000	Mexico	Propylene copolymer resins	0.0
91-63	3920.7100	Mexico	Cellophane	9.9
91-64	3926.9087	Mexico	Plastic Document Binders	8.2
91-65	6910.1000	Mexico	Ceramic Sanitary Fixtures	1.6
91-66	6912.0044	Brazil	Ceramic Mugs and Steins	8.8
91-68	7321.1130	Mexico	Gas Stoves	94.4
91-69	7401.1000	Mexico	Copper mattes	2.9
91-70	7402.0000	Mexico	Copper anodes	4.3
91-71	8301.4060	Mexico	Locks of base metal	85.5
91-72	8407.3420.80	Brazil	Piston Engines	31.6
91-73	8409.9191	Mexico	Parts, Int. Comb. engines	74.9
91-74	8415.8200	Mexico	Air conditioners	31.2
91-75	8415.9000	Mexico	Parts, air conditioners	76.0
91-76	8428.9000	Mexico	Garage Door Openers	77.0
91-77	8527.2110.10	Brazil	Radio tape players, autos	44.3
91-78	8539.9000	Mexico	Parts, electrical filament lamps	26.9
91-79	8544.5160	Mexico	Insulated Electrical Conductors	230.8
91-81	9025.1120	Brazil	Clinical Thermometers	1.6
				1058.5

ANNEX III—1991 GSP ANNUAL REVIEW

Case No.	HTS No.	Principal country affected	Product	1991 Imports GSP beneficiaries ($ millions)
Petitions to Remove Products from GSP: Granted				
91-50	7320.1060	Mexico	Steel Leaf Springs (vehicles >4 met.tons GVW)	25.0
Petitions to Remove from GSP: Denied				
91-52	7314.2000	Mexico	Steel Wire Fencing	0.7
91-51	7321.1130	Mexico	Gas Stoves	94.4
				95.1
Petitions to Add Products to GSP: Withdrawn				
91-39	5608.1100	Mexico	Fishing Nets	0.2

* Implementation of Peru petitions deferred indefinitely.

[FR Doc. 92-5910 Filed 7-7-92; 8:45 am]
BILLING CODE 3190-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular: Type Certification of Very Light Airplanes With Powerplants and Propellers Certificated to Parts 33 and 35 of the Federal Aviation Regulations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of proposed advisory circular (AC) and request for comments.

SUMMARY: This notice announces the availability of and request for comments on a proponent AC, which provides information and guidance concerning type certification of very light airplanes with powerplants and propellers certificated to parts 33 and 35 of the Federal Aviation Regulations (FAR).

DATES: Comments must be received on or before September 8, 1992.

ADDRESSES: Send all comments on the proposed AC to: Federal Aviation Administration, Small Airplane Directorate, Aircraft Certification Service, Standards Office (ACE-110), 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Julea Bell, Standards Staff (ACE-110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone number (816) 426-6941.

SUPPLEMENTARY INFORMATION: Any person may obtain a copy of this proposed AC by contacting the person named above under "**FOR FURTHER INFORMATION CONTACT.**"

COMMENTS INVITED: Interested parties are invited to submit comments on the proposed AC. Commenters must identify AC 23-XX-20 and submit comments to the address specified above. All communications received on or before the closing date for comments will be considered by the FAA before issuing the final AC. The proposed AC and comments received may be inspected at the Standards Office (ACE-110), room 1544, Federal Office Building, 601 East 12th Street, Kansas City, Missouri, between the hours of 7:30 a.m. and 4 p.m. weekdays, except Federal holidays.

BACKGROUND: This AC is the result of a cooperative effort of the Experimental Aircraft Association (EAA), the Sport Airplane Manufacturers Association (SAMA), operators of these airplanes, and the Federal Aviation Administration (FAA). It was proposed to the FAA that the requirements of the Joint Aviation Requirements—Very Light Aircraft (JAR-VLA) as instituted by the Joint Airworthiness Authorities (JAA) on April 26, 1990, would provide an equivalent level of safety to the applicable requirements of part 23 (amendment 23-42) of the FAR. In response to this proposal, the FAA reviewed the requirements of the JAR-VLA and the applicable portions of this amendment of part 23 (225 sections). The requirements of JAR-VLA were found to correspond directly to 204 sections of part 23; either being word-for-word identical or so similar that no substantive differences could be identified. Of the 21 sections where substantive differences were identified, a detailed analysis was conducted regarding the level of safety imposed by these sections and the corresponding requirements of JAR-VLA. Except for those JAR-VLA sections which allow installations of JAR-22 certificated powerplants and propellers, it was determined that each of these requirements of JAR-VLA could be used as a certification basis when coupled with the imposition of any additional certification requirements (as determined by the uniqueness of the airplane design) to make a finding of equivalency to the corresponding part 23 requirement. This will ensure that the level of safety envisioned by part 23 will be attained. In a like manner, where a particular section of part 23 did not have a corresponding JAR-VLA requirement, it was determined that either the applicable part 23 requirement could be complied with or the exemption process could be pursued. Thus, literal compliance to the intent (level of safety) of each applicable section of part 23 will be achieved.

These approvals will be made through the normal development and process of issue papers as described in FAA Order 8100.5. These issue papers are usually the product of the joint efforts of the applicant and the applicable aircraft certification office (ACO) personnel. To expedite this process, this AC will allow, for the present, all applications to be made to one centralized location; i.e., the Chicago ACO, where a team has been formed for this purpose and where many of the issues have been addressed. Copies of FAA Order 8100.5 or other applicable FAA orders are available for review at any FAA ACO.

It should be noted that future amendments of part 23 and/or JAR-VLA will be evaluated for applicability to the certification of these airplanes. Judgments that a new or amended part 23 section is applicable or not applicable will be made by weighing each with the level of safety that is appropriate for

these airplanes. Those changes that unnecessarily raise the level of safety will be identified and such as discussed in subsequent revisions. Changes that are determined to be appropriate will, in a like manner, be addressed in subsequent revisions of this AC.

Accordingly, the FAA is proposing and requesting comments on AC 23-XX-20, which will provide an acceptable means of compliance with part 23 of the FAR for type certification of certain small airplanes.

Issued in Kansas City, Missouri, June 30, 1992.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service

[FR Doc. 92-15921 Filed 7-7-92; 8:45 am]

BILLING CODE 4910-13-M

Aviation Magnet Secondary School Program

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of solicitation for Aviation Magnet Secondary School grant applications.

SUMMARY: This solicitation represents the Federal Aviation Administration (FAA) Aviation Magnet Secondary School Grant Program. The Federal Aviation Administration is authorized by section 317 of the U.S. Department of Transportation & Related Agencies Appropriations Act 1992, Public Law 102-143 and Senate Report Number 102-148 to solicit competitive proposals for Aviation Magnet Secondary School grants from public or nonprofit private secondary schools to support aviation magnet school programs. The FAA expects to award grants to a maximum of four (4) aviation magnet secondary schools in the United States and its territories or possessions. Preference will be given to institutions having a court-ordered or a court-approved desegregation plan. A total of $50,000 is available. Successful applicants will be required to provide funds to match the federal grant amount dollar for dollar. In no event shall the total federal share of any program exceed 50% of the total allowable cost of the program.

The grant funds may be used for equipment, books, and other instructional resources to be used in the actual teaching of the aviation magnet secondary school curriculum. No federal grant funds shall be used for salaries, operating expenses, research and development, travel, consultant fees, indirect costs, office supplies or other expendable items, automobiles, aircraft, maintenance agreements, printing costs, promotional and marketing materials or equipment, buildings, parking lots, land, commercial airport facilities, taxiways, runways, or for any program in support of a commercial activity. Applications need to distinguish between description of current aviation magnet school activities, and what would be added with grant funds and matching funds.

Proposal Review

The proposal will be reviewed, evaluated, and ranked against the evaluation criteria by a panel of education and aviation specialists. This review will be used by the FAA in the selection of applicants for grant awards.

For purposes of review, all proposals received by the FAA will be placed into one of two competitive classes: (1) Eligible institutions with court-ordered or court-approved desegregation programs; and (2) other eligible institutions. Grant awards will be made on a competitive basis within each competitive class. Any award within a given competitive class may range from $10,000 to $50,000 maximum. Each proposal will be reviewed, evaluated and ranked, within the competitive class to which it is assigned by the FAA. There may be no award in either class.

The FAA does not intend to fund all proposed programs or all components of a program.

Submit Proposals To: Phillip S. Woodruff, Director of Aviation Education, Federal Aviation Administration Headquarters, APA-100, room 907B, 800 Independence Avenue, SW., Washington, DC. 20591, Telephone: (202) 267-3476.

Closing Date

Six identical copies of the Proposal must be received by the FAA no later than August 7, 1992 (4 p.m. EDT). One copy of the proposal must contain original signatures on the cover sheet. Proposals received after the closing date will not be considered.

Proposals submitted by mail: A mailed proposal must be sent to the address shown above. Any proposal received after 4 p.m. EDT on the closing date will be treated as late and will not be considered. A proposal that is mailed by U.S. Postal Service certified or registered mail at least five (5) days before the closing date will be considered timely even if it is received after the closing date, and a proposal sent by U.S. Postal Service Express Mail delivery at least two (2) Federal working days prior to the closing date will be considered timely even if it is received after the closing date. Proposals submitted by messenger: A hand-delivered proposal must be taken to the FAA at the address listed above. The office of the Director of Aviation Education will accept hand delivered proposals between the hours of 8 a.m. and 4 p.m. EDT, except on weekends and Federal Holidays. A hand delivered proposal will not be accepted after 4 p.m. EDT on the closing date.

Each institution will be notified when its application has been received. No supplemental material received after the application deadline will be considered unless it has been requested by the FAA.

Background

The FAA is engaged in a comprehensive program to modernize the Nation's air transportation system to meet the challenge of aviation growth in the coming decades. The modernization program takes advantage of current technological advances to increase the capacity of the Nation's air transportation system while reducing relative costs to the Nation's taxpayers.

The FAA recognizes the increasing complexity of technical and managerial skills that will be needed to accommodate the technological advances in equipment, systems, and configurations being planned and implemented throughout the aviation industry. The FAA sponsors the Aviation Magnet Secondary School grant program to assure that future aviation needs are adequately met and to assure that aviation education opportunities are available to minority students at the secondary level.

Aviation Magnet Secondary School Grant Program

Authority

This grant is authorized by section 317 of the U.S. Department of Transportation & Related Agencies Appropriations, Act of 1992, Public Law 102-143 and Senate Report Number 102-148. Authorized funds may be used for equipment, books, and other instructional resources to be used in the actual teaching of the curriculum to the extent that such items are in direct support of the aviation magnet school programs. The FAA expects to award grants to a maximum of four (4) aviation magnet school in the United States, its territories and possessions. Preference will be given to institutions having a court-approved or court-ordered desegregation plan. Individual awards may range from $10,000 to the maximum of $50,000. In no event shall the total Federal share of any program exceed 50% of the total allowable cost of the program.

No federal grant funds shall be used for salaries, operating expenses, research and development, travel,

consultant fees, indirect costs, office supplies or other expendable items, automobiles, aircraft, maintenance agreements, printing costs, promotional and marketing materials or equipment, buildings, parking lots, land, commercial airport facilities, taxiways, runways, or any program in support of a commercial activity.

Eligibility

Eligible institutions must be accredited secondary schools in the United States or territories or its possessions.

Proposal Format and Content

Each FAA-sponsored, Aviation Magnet Secondary School grant program is subject to applicable FAA regulations, and OMB Circulars A-21, A-73, A-88, A-110, and A-133. Proposals must contain the following information in the following order:

1. Cover Sheet

Type the title "Aviation Magnet Secondary School Grant Proposal" near the top of the cover sheet. Type the legal name of the proposed grantee institution, its mailing address, and its IRS Employer Identification Number in the center of the cover sheet. Type the names, titles, telephone numbers, and FAX numbers of the proposed authorized Project Director and of another official authorized to execute a grant agreement on behalf of the proposed grantee institution in the lower left and right corners, respectively, of the cover sheet. The cover sheet of one copy of the proposal must bear the original signatures of the above individuals and the dates of those signatures. The signatures of the authorized individuals signify institutional endorsement of the proposal, cognizance of the eligibility and limitation requirements, and a commitment to provide the specific support, including meeting fiscal obligations, for the proposed activities in the event that the grant is made.

2. Standard Form 424

Submit the standard forms listed below with each grant proposal. These forms may be obtained by telephoning or writing to the FAA Director of Aviation Education at the address listed above. Applications without these forms will be rejected.

(a) Standard Form 424 (Rev. 4-88), Application for Federal Assistance.

(b) All required certifications regarding lobbying; debarment, suspension and other responsibility matters; and drug-free workplace requirements.

3. Table of Contents

Include a table of contents with page numbers.

4. Project Summary

Include a concise summary of the proposed program. State the goals and objectives, and the long-range benefits of the program. State the associated costs including cost-sharing figures. The reader should be able to identify quickly the nature of the program and the requested funding level. The summary should not exceed two (2) double-spaced typewritten pages.

5. Narrative

The narrative should be clearly written and not exceed ten (10) double-spaced typewritten pages in length. The narrative must contain the following:

(a) Introduction

Present a brief description of the institution, including: historical background, full-time student enrollment, student body profile, location (rural, urban, etc.), fields of emphasis, and status as an aviation magnet secondary school program.

(b) Background

Describe the evolution of the institution's involvement in the aviation magnet school program. Provide information and statistics on the occupational areas that aviation magnet school graduates are expected to be entering within the aviation industry and the FAA. Provide the following information in an "easy to read" chart format.

(1) Partnership with Government, Education, Industry: Describe the financial and non-financial partnerships at the national, regional, state and local levels which support the institution's aviation magnet school programs.

(2) Describe the institution's magnet school programs other than aviation and discuss how they interface with the institution's aviation magnet school program.

(3) Include an institutional organization chart to show how the aviation magnet school program and other magnet programs fit into the institutional structure.

(4) Describe institutional activities to recruit aviation magnet school students, including minority and female recruitment activities.

(5) Submit one copy of an official course catalog and/or other brochure(s) showing the aviation magnet school course offerings to students during the current academic year.

Institutions that do not submit the above information will be rejected.

(c) Strategic Plan

Present a 5-year strategic plan for the institution's aviation magnet secondary school program. Discuss the components of the plan and how the institutions anticipates achieving the goals and objectives of the Strategic Plan. Justify the feasibility of the plan in relation to the programmed work force needs of the aviation industry and FAA, over-all direction of the institution, fiscal concerns, etc.

(d) Program Plan

Discuss in detail the proposed Program Plan with stated goals and objectives. Relate the Program Plan to the Strategic Plan. Applicants may submit photographs, architectural drawings, site plans, or other visual representations that would aid the reviewing panel in assessing the relative merits of the proposed program.

(1) Explain how the program will directly support the courses in the required core and the areas of concentration of the institution.

(2) Explain how the program will either enhance current recognized aviation magnet school courses or provide the development of new aviation magnet school courses.

(3) Explain how aviation magnet school program students and other students will directly or indirectly benefit from the program.

(4) Provide a chart indicating the number of students who will benefit from the program over the next five (5) years.

(5) Present a detailed discussion, from program design to conclusion, of the components of the Program Plan and the activities and tasks necessary to bring the program to a successful conclusion. The program is considered completed when the measurements discussed under the Evaluation/Assessment Plan described in paragraph (h) below, have been applied and analyzed. This should occur within 12 months of the time the facility and/or equipment becomes available to students following a grant award.

(6) Provide a milestone chart for the Program Plan.

(7) Identify the sources of non-Federal funding and show evidence that the funds will be available i.e., provide a letter of commitment for funds which will be held available and accountable for cost sharing obligations.

(8) Describe and explain the mechanism that will be used to manage and monitor the progress of the program in terms of the milestones and budget expenditures.

(e) Program Personnel Plan

(1) Identify and describe the relevant skills of those individuals who will have major responsibilities for the proposed program. Indicate the amount of time each person will be required to devote to the program.

(2) Discuss the role of the program director. Provide information showing that the director has appropriate qualifications, well-defined responsibilities, sufficient time, and adequate academic and institutional authority and support to effectively manage the program.

(3) Discuss the number and qualifications of faculty necessary to adequately utilize the funded program. Demonstrate the institutional commitment to provide the necessary facility positions. Indicate if personnel are current faculty members or must be hired. If the latter, provide a discussion of planned activities to staff the position(s).

(f) Budget Plan

The proposal must contain a budget plan that includes a *detailed itemization* of proposed expenditures for direct costs associated with the program according to the following categories:

Item	Fed $	Percent	Non-Fed $	Percent	Total
(a) Institutional Resources:					
(1) Equipment					
(2) Books					
(3) Instructional Resources					
(b) Facilities:					
(1) Construction [1]					
(2) Renovation [1]					
(3) Stationary equipment [1]					
(c) Travel [1]					
(d) Consultant Services [1]					
(e) Salaries [1]					
(f) Other direct costs [1]					
Total					

[1] Costs directly related to activities on proposal program, though not qualified for Federal funding.

Each category must contain line item entries of allowable costs and be subtotaled. (See OMB Circular A-21 for discussion of allowable costs). The line item entries must be allocated appropriately between Federal and non-Federal funding. FAA grant finds may only be dedicated to category "a". In no event shall the total Federal grant funds provided for an aviation magnet school program exceed 50% of the total allowable cost of the program. Budgets which do not include an itemized list of expenditures will be rejected.

(g) Institutional Need.

Provide a detailed justification for the requested grant funding in terms of financial need.

(1) Discuss the consequences of not funding the proposed program. Explain and identify the funding sources and levels which support the institution's current aviation magnet school program.

(2) Illustrate the amount of incoming funds over the past three years which have been dedicated to the aviation magnet schools program.

(3) Provide the same information for funds dedicated to the institution's other magnet programs.

(h) Evaluation/Assessment Plan

Provide a program Evaluation/Assessment Plan. The plan must include a strategy and measurement component for each goal and objective of the grant program. The actual evaluation/assessment may be performed by the institution's staff or in collaboration with outside consultants within 12 months of the time the program and/or equipment is available to students following grant award. The results of the completed evaluation/assessment will determine whether the goals and objectives of the program have been achieved and the impact of the program upon the aviation magnet school program at the institution. These results shall be the FAA as part of the final program report.

(6) Local Review Statement

Attach a statement, signed by an appropriate official of the institution, that contains: (a) an endorsement of the proposed program; (b) a description of how the proposed program supports the institution's long range goals and objectives in aviation education; and (c) a commitment to provide the institutional resources necessary to meet cost sharing obligations, complete the proposed program, maintain the facilities and equipment to an acceptable standard, and continuing facilities support for the aviation magnet school program after the grant funds have been expended.

Reporting Requirements

Until the proposed program is completed, the FAA requires that each award institution provided verbal project reports upon request and a written annual project report which shall be submitted to the FAA within 90 days of the close of the institution's fiscal year. The report should include a summary of program progress, highlights and accomplishments, personnel changes and a status report on expenditures and account balances for each of the line items presented in the proposed Budget Plan.

In addition, a Final Project Report must be submitted to the FAA within 90 days of the completion of program activities. Report should include program accomplishments, outcomes of the implemented Evaluation Plan, and Budget Plan expenditures. The FAA anticipates that FAA representatives will make site visits to each grant institution during the lifetime of the program.

Proposal Review

The proposal will be reviewed, evaluated, and ranked against the evaluation criteria set forth below in the Evaluation Criteria included in this report, by a panel of education and aviation specialists. This review will be used by the FAA in the selection of applicants for grant awards.

The purposes of review, all proposals received by the FAA will be placed into one of two competitive classes: (1) Minority institutions (see June 1, 1984, 49 FR 22903) and (2) non-minority institutions (see June 1, 1984, 49 FR 22903) and (2) non-minority institutions. Grant awards will be made on a competitive basis within each class. Any award within a given competitive class may range from $10,000 to $50,000 maximum. Each proposal will be reviewed, evaluated and ranked, within the competitive class to which it is assigned by the FAA. There may be no award in either class.

The FAA does not intend to fund all proposed programs.

Evaluation Criteria

The evaluation criteria are designed to enable the reviewing panel and FAA officials to effectively evaluate the relative merit of submitted proposals. The proposals will be scored on a 100-point scale and will be evaluated based on the following factors;

1. *Institutional commitment* (15 point maximum).

Each proposal will be evaluated to the extent of the institution's commitment to the Aviation Magnet Secondary School Grant Program, in relation to the date of curriculum offerings and overall size of program, as follows:

(a) Number of aviation specialty options.

(b) Number of students eligible to enroll in program.

(c) Number of graduates anticipated in first year.

(d) Recruitment activities, including outreach programs for minority and female students.

(e) Projected growth of aviation magnet secondary school program over first 5 years. Extent to which programmed growth is realistic in comparison to current enrollment figures and strategic plan.

(f) Amount of institutional cost sharing funds provided toward the program, by year.

(g) Demonstrated continuing support and growth of the institution's aviation magnet secondary school program.

(h) Quality of Local Review Statement.

2. *Strategic plan* (15 points).

The feasibility of the Strategic Plan will be evaluated in terms of the following:

(a) Institution's current aviation magnet secondary school program.

(b) Institution's planned approach to meet future aviation work force needs.

(c) Potential resources, including fiscal, instructional, and administrative elements, necessary for achievement of planned goals.

3. *Program Plan* (20 points).

The Program Plan will be evaluated as follows:

(a) Appropriateness of the program in terms of institution's current aviation magnet school program.

(b) Relationship between the program and the strategic plan.

(c) Extent to which program adequately supports recognized curriculum.

(d) Number of students to benefit in relation to size of institution's overall magnet school program.

(e) Benefits to students.

(f) Evidence that institution has good understanding of activities and tasks required to bring program to conclusion.

(g) Appropriateness of proposed facilities and/or equipment in terms of program goals and objectives.

(h) Extent to which milestones are realistic and attainable.

(i) Extent to which the applicant demonstrates that non-Federal funds required for the program are available.

(j) Extent of administration and technical direction of the program.

4. *Program Personnel* (10 points).

The professional qualifications and experience of the institution's current school personnel and other key officials who will be involved in the proposed aviation magnet school program, will be evaluated as follows:

(a) Qualifications and experience of the Program Director.

(b) Qualifications and experience of program personnel in relation to the goals and objectives of the program.

(c) How well the institution has scheduled and allocated program personnel time to perform duties associated with program.

(d) How well aviation magnet school program personnel responsibilities are defined.

(e) Adequate faculty on board to utilize facilities and/or equipment *or* institutional commitment to provide necessary faculty positions and adequate staffing plan development.

5. *Budget Plan* (10 points).

The Budget Plan will be evaluated as follows:

(a) Proposed expenditures itemized by budget category and mathematical calculations are correct.

(b) Entries are detailed and consistent with program narrative.

(c) Budget figures are appropriate for goods and services being procured.

6. *Institutional Need* (15 points).

Each proposal will be evaluated to determine the extent to which the applicant institution has demonstrated the following:

(a) An overall financial need for funding.

(b) Consequences to the institution's aviation magnet school program if Federal funding not obtained.

7. *Evaluation/Assessment plan* (15 points).

The Evaluation Plan will be evaluated to determine the extent to which it demonstrates the following:

(a) Plan is adequately tied to goals and objectives of the program.

(b) Strategy and measurement components are appropriate for stated program goals and objectives.

(c) Evaluation will produce information which would be useful to other institutions in implementing similar programs.

Phillip S. Woodruff,

Director of Aviation Education, Federal Aviation Administration.

Issued in Washington, DC, on July 1, 1992.

[FR Doc. 92-15978 Filed 7-7-92; 8:45 am]

BILLING CODE 4910-13-M

RTCA, Inc.; Task Force 1; GNSS Transition and Implementation Strategy Task Force; Working Group 3: Transition; 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 meeting of Working Group 3 of the GNSS Transition and Implementation Strategy Task Force to be held July 8, 1992, at AOPA, 421 Aviation Way, Frederick, Maryland 21701, commencing at 9 a.m.

The agenda for this meeting is as follows: (1) Introduction of attendees; (2) Continue preparation of Task Force Working Group 3 recommendations; (3) Other business; (4) Adjourn.

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, 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036; (202) 833-9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on July 1, 1992.

Joyce J. Gillen,

Designated Officer.

[FR Doc. 92-15922 Filed 7-7-92; 8:45 am]

BILLING CODE 4910-13-M

RTCA, Inc.; Special Committee 169; Aeronautical Data Link Applications; Meeting

Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Public Law 92-463, 5 U.S.C., appendix I), notice is hereby given for the seventh meeting of Special Committee 169 to be held July 30-31, 1992, in the RTCA conference room, 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036, commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Chairman's introductory remarks; (2) Review of meeting agenda; (3) Approval of the summary of the sixth meeting held on May 14-15, 1992; (4) Report of Air Traffic Services Data Link Communications Working Group (WG-

1) activities; (5) Report of System Architecture and Dependencies Working Group (WG–2) activities; (6) Lincoln Laboratory Presentation on Terminal Weather Radar Information; (7) Report on GNSS Data Link Requirements; (8) Context Management Application Design Status Review; (9) Report on ATN Manual Review; (10) Develop proposals to establish new special committees; (11) Establish working groups; (12) Assignment of tasks; (13) Other business; (14) 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, 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036; (202) 833–9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on July 1, 1992.

Joyce J. Gillen,

Designated Officer.

[FR Doc. 92–15923 Filed 7–7–92; 8:45 am]

BILLING CODE 4910–13–M

RTCA, Inc.; Special Committee 172; Future Air-Ground Communications in the VHF Aeronautical Band (118–137–MHZ); 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 fourth meeting of Special Committee 172 to be held August 3–5, 1992, in the RTCA conference room, 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036, commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Chairman's introductory remarks; (2) Approval of the third meeting's minutes; (3) Working group reports; (a) VHF Communications System Recommendations Working Group (WG–1); (b) VHF Data Radio Signal-in-space MASPS Working Group (WG–2); (4) Technical presentations; (5) Working group sessions. Review current draft material; (6) Back in plenary; (a) Review working group progress; (b) Task assignment; (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, 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036; (202) 833–9339. Any member of the public may present a written statement to the committee at any time.

Issued at Washington, DC, on July 1, 1992.

Joyce J. Gillen,

Designated Officer.

[FR Doc. 92–15924 Filed 7–7–92; 8:45 am]

BILLING CODE 4910–13–M

Intent to Rule on Application to Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Dubuque Municipal Airport, Dubuque, IA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The Federal Aviation Administration (FAA) proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Dubuque Municipal Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before (August 7, 1992.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Central Region, Airports Division, 602 E. 12th Street, Kansas City, MO 64106.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Richard Wertzberger, Chairman, Dubuque Airport Commission, at the following address: Dubuque Regional Airport, 11000 Airport Road, Dubuque, Iowa 52003.

Air carriers and foreign air carriers may submit copies of written comment previously provided to the Dubuque Airport Commission under 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Ellie Anderson, PFC Coordinator, FAA, Central Region, Airports Division, 601 E. 12th Street, Kansas City, MO 64106, (816) 426–7425. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Dubuque Municipal Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On May 7, 1992, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Dubuque Airport Commission, was not substantially complete within the requirements of 158.25 of part 158. The Airport Commission submitted supplemental information on June 8, 1992, to complete the application. The FAA will approve or disapprove the supplemented application, in whole or in part, no later than October 6, 1992.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: October 1, 1992.

Proposed charge expiration date: January 31, 1994.

Total estimated PFC revenue: $108,500.00.

Brief description of proposed project(s): Construct Aircraft Rescue and Firefighting and Snow Removal Equipment storage facility; airport Master plan.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: no.

Any person may inspect the application in person at the FAA office listed above under "**FOR FURTHER INFORMATION CONTACT**".

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Dubuque Municipal Airport, Dubuque, Iowa.

Issued in Kansas City, Missouri on June 12, 1992.

George A. Hendon,

Manager, Airports Division Central Region.

[FR Doc. 92–15925 Filed 7–8–92; 8:45 am]

BILLING CODE 4910–13–M

National Highway Traffic Safety Administration

[Docket No. 74–14; Notice 75]

RIN 2127–AD82

Interim Evaluation Report; Federal Motor Vehicle Safety Standards; Passenger Car Front Seat Occupant Protection; Request for Comments

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

ACTION: Request for comments.

SUMMARY: This notice announces the publication by NHTSA of an Evaluation Report concerning Safety Standard 208, *Occupant Crash Protection.* Safety Standard No. 208 was amended on July 17, 1984 (49 FR 28962) to trigger a nationwide effort to increase safety belt use through state laws, enforcement and education, and to require that automatic occupant protection be phased into passenger cars, beginning September 1, 1986. This interim staff report evaluates the effectiveness of occupant protection, based on data available in May 1992. The report was developed in response to Executive Order 12291, which provides for Government-wide review of existing major Federal regulations. The agency's evaluation plan for Safety Standard 208 was published on January 17, 1990 (55 FR 1586). The agency seeks public review and comment on this interim evaluation report. Comments received will be used to improve the review required by Executive Order 12291.

DATES: Comments must be received no later than August 24, 1992.

ADDRESSES: Interested persons may obtain a copy of the report free of charge by sending a self-addressed mailing label to Ms. Glorious Harris (NAD-51), National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. All comments should refer to the docket and notice number of this notice and be submitted to: Docket Section, Room 5109, Nassif Building, 400 Seventh Street, SW., Washington DC 20590. (Docket hours, 9:30 a.m.-4 p.m., Monday through Friday.)

FOR FURTHER INFORMATION CONTACT: Mr. Frank Ephraim, Chief, Evaluation Division, Office of Strategic Planning and Evaluation, Plans and Policy, National Highway Traffic Safety Administration, room 5208, 400 Seventh Street, SW., Washington, DC 20590 (202-366-1574).

SUPPLEMENTARY INFORMATION: Safety Standard 208 (49 CFR 575.208) combines a nationwide effort to increase belt use through state belt laws, enforcement and education, and a requirement that *automatic occupant protection,* such as air bags or automatic belts, be phased into passenger cars (1987-90) and light trucks (1995-98). As mandated by the Intermodal Surface Transportation Efficiency Act of 1991, air bags plus manual belts will be required in all cars in 1997 and light trucks in 1998.

Pursuant to Executive Order 12291, NHTSA is conducting an evaluation of the occupant protection program, to determine the effectiveness, benefits, costs, performance characteristics and public acceptance of air bags, automatic belts, and the nationwide effort to increase belt use. Under the Executive Order, agencies review existing regulations to determine if they are achieving the Order's policy goals. This interim report, evaluating the effectiveness of occupant protection, based on data available in May 1992, is issued in response to the exceptional public interest in the occupant protection program.

The report is based on statistical analyses of accident data from the Fatal Accident Reporting System and the National Accident Sampling System, reviews of individual accident cases, and observational surveys of safety belt use on the road. Although there are not enough data for statistically significant results on every evaluation question, it is already clear that the occupant protection program is saving thousands of lives:

- In 1983, the "baseline" year just before the occupant protection program began, national belt use was 14 percent, and no states had belt laws. By the end of 1991, 42 states and the District of Columbia had belt laws, and belt use ad climbed to 59 percent or more.
- Motorized automatic shoulder belts without a disconnect feature have a use rate of 97 percent; motorized belts with a disconnect, 91 percent. The use rate for automatic non-motorized 3-point belts is 64 percent; for manual 3-point belts in air bag-equipped cars, 57 percent; and for manual belts in cars without automatic protection, 56 percent.
- The high use of motorized belts, however, is partially offset by low use of the manual lap belt accompanying the motorized system: 29 percent.
- Fatality risk of occupants in cars equipped with air bags plus manual belts (at 1991 use rates) is 23 percent lower than in "baseline" cars with manual belts at 1983 use rates. The risk in cars with motorized 2-point belts (without disconnect) is 16 percent lower than baseline; in cars with non-motorized 3-point automatic belts, 10 percent lower than baseline. All three are statistically significant fatality reductions relative to baseline, but there are not yet enough data for a definitive rank-ordering of the automatic systems.
- The overall fatality risk in 1991 cars at 1991 belt use rates is 16 percent lower than the baseline of manual-belt cars at 1983 use rates, with confidence bounds of 11 to 21 percent.
- Cars equipped with motorized 2-point belts (without disconnect) have significantly lower occupant ejection rates than cars with any other type of occupant protection. Cars with automatic 3-point belts have significantly lower ejection rates than cars with manual belts.
- Automatic occupant protection, when used, significantly reduces the risk of moderate and serious injuries.
- In summary, the combination of automatic occupant protection, state belt laws, and greater voluntary belt use have saved lives and reduced injury severity.

NHTSA welcomes public review of the evaluation study and invites the reviewers to submit comments about the data used in the report, the definition of "effectiveness," and the methods used for estimating effectiveness. The agency is interested in learning of any additional data that may be relevant to the evaluation of occupant protection, such as observational surveys of belt use (especially the use of manual lap belts in cars with automatic 2-point belts), analyses of individual accident cases, and information on the cost or consumer price of automatic occupant protection.

It is requested but not required that 10 copies of comments be submitted.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

(15 U.S. 1392, 1401, 1407; delegation of authority at 49 CFR 1.50 and 501.8.)

Issued on: July 2, 1992.

Donald C. Bischoff,

Associate Administrator for Plans and Policy.

[FR Doc. 92-15901 Filed 7-7-92; 8:45 am]

BILLING CODE 4910-59-M

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in

the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessels, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before August 7, 1992.

ADDRESS COMMENTS TO: Dockets Branch, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street, SW., Washington, DC.

NEW EXEMPTIONS

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
10819-N	Kleen Brite Laboratories, Inc., Rochester, NY.	49 CFR 176.67(i), 176.67(j)	To authorize chlorine filled tank cars to remain connected during unloading without the physical presence of an unloader. (Mode 2.)
10820-N	Clean Earth Manufacturing, Inc., Birmingham, AL.	49 CFR 173.154, 173.245(b), 49 CFR	To authorize the manufacture, mark and sell of non-DOT specification roll-on and roll-off non DOT packaging for shipment of certain waste solid, waste corrosive material and corrosive solids as defined in CFR, classed as corrosive material and solid or sludge materials classed as flammable solids. (Mode 1.)
10821-N	MedX, Inc., Miami, FL	49 CFR 173.197	To authorize shipment of certain regulated medical waste contained in plastic bags overpacked in steel bulk roll-off type containers secured to a specially designed truck. (Mode 1.)
10822-N	Gulf and Caribbean Cargo, Inc., Orlando, FL.	49 CFR 172.101, 173.27, 175.75	To authorize the transportation of Class A explosives that are not permitted for shipment by air, or are in quantities greater than those prescribed for shipment by air. (Mode 4.)
10823-N	Comdyne I, Inc., West Liberty, OH	49 CFR 173.302(a)(1), 173.304(a)(1), 175.3.	To manufacture, mark and sell non-DOT specification cylinders for use in transportation of certain flammable and non-flammable compressed gases. (Modes 1, 3, 4, 5.)
10824-N	Sun Refining and Marketing Company, Philadelphia, PA.	49 CFR 173.31(c)(1), 173.31(c)(5)	To authorize the one-time shipment of DOT 111A100W1 tank cars, containing residual amounts of corrosive materials, which are out of retest. (Mode 2.)
10825-N	Allied-Signal Inc., Morristown, NJ	49 CFR 173.29(a), 173.420	To authorize the one-time shipment to two 480m cylinders with localized thin spots on the wall, containing residual amounts of radioactive material to be purged and cleaned. (Mode 1.)
10826-N	Browning-Ferris Industries, Houston, TX	49 CFR 173.197, 259.30, CFR 172.101	To authorize shipment of container regulated medical waste contained in plastic bags overpacked in steel bulk roll-off type container secured in specifically designed trucks. (Modes 1, 2.)
10827-N	Shannon Packaging Co., Covina, CA	49 CFR 173.12(b)(1), 49 CFR Part 107	To authorize the manufacture, mark and sell of non-DOT specification quad-wall fiberboard boxes equipped with polyethylene film and aluminum foil liner specifically designed for use in transporting lab packs. (Mode 1.)
10828-N	Enicon, Division of America-Kart Corp., Bristol, IN.	49 CFR 173., 173.119, 173.125, 173.245, 173.249, 173.246(a), 173.250(a), 173.256, 173.257, 173.262, 173.263, 173.264, 173.265, 173.266, 173.269, 173.272, 173.276, 173.277, 173.283, 173.287, 173.288, 173.289, 173.292, 173.297, 173.299(a),.	To manufacture, mark and sell a composite IBC with a capacity up to 340-gallons, consisting of a rotationally molded polyethylene inner receptacle within a wire frame outer casing, for the shipment of certain hazardous materials. (Mode 1, 2.)
10829-N	Amoco Pipeline Co., Levelland, TX	49 CFR 173.119, 173.304, 173.315	To authorize the transportation of a trailer mounted mechanical displacement meter prover for use in transporting various commodities classed as flammable liquid or flammable gas. (Mode 1.)
10831-N	Trinity Industries, Inc., Dallas, TX	49 CFR 173.429(a)(1)	To authorize the transportation of non-DOT specification cylinders having welds that are not in conformance with ANSI-14.1-1971 but do comply with ASME Section VIII, Division 1 Standards for transporting uranium hexafloride, classed as radioactive material. (Mode 1.)
10832-N	Morton International Automotive Safety, Products Ogden, VT.	49 CFR 173.56, 173,57	To authorize the transportation of unclassified generate, inflators and components contained in specially designed fiberboard, plastic or metal containers as appropriate or the various sub-assemblies to be shipped as hazardous waste to disposal plant. (Mode 1.)
10833-N	Health Care Waste Services, Corp., Bronx, NY.	49 CFR 173.197	To authorize shipment of certain regulated medical waste contained in plastic bags overpacked in steel bulk roll-off type containers secured to specifically designed trucks. (Mode 1.)
10834-N	Ethyl Corp., Baton Rouge, LA	49 CFR 173.249	To authorize a one-time shipment of bromine in a DOT specification IM-101 portable tank which is filled to less than the required 88% of the volume of the tank. (Mode 1.)
10835-N	Shell Oil Co., Houston, TX	49 CFR 17.21(b) and (c), 173.22(a)(2), 173.28(c)(2).	To authorize the transportation of a 1100 gallon non-DOT specification trailer mounted meter prover tank with residual vapors of flammable or combustible liquid. (Mode 1.)

NEW EXEMPTIONS—Continued

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
10836-N	Fibre Drum Technical Council, Washington, DC.	49 CFR 172.101	To authorize the manufacture, mark and sale of open-head fiber drums not to exceed 55 gallon capacity which do not meet the performance oriented packaging standards required under Docket HM-181 for the shipment of certain hazardous materials. (Modes 1, 2.)
10837-N	Mini Mobile Systems, Inc., Boca Raton, FL.	49 CFR 173.197	To authorize the manufacture, mark and sale of a molded fiberglass bulk roll-off type container for the shipment of certain regulated medical wastes. (Mode 1.)

Note: Notice of Application No. 10793-N Witco Corporation that appeared at Page 27086 of the Federal Register for June 17, 1992, should have appeared 10812-N Witco Corporation.

This notice of receipt of applications for new exemptions is published in accordance with Part 107 of the Hazardous Materials transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on July 1, 1992.

Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 92-15869 Filed 7-7-92; 8:45 am]

BILLING CODE 4910-60-M

Office of Hazardous Materials Safety; Applications for Modifications of Exemptions or Applications To Become a Party to an Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of Applications for Modification of Exemptions or Applications to Become a Party to an Exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier Federal Register publications, they are not repeated here. Requests for modifications of exemptions (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix "X" denote a modification request. Application numbers with the suffix "P" denote a party to request. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before July 23, 1992.

ADDRESS COMMENTS TO: Dockets Unit, Research and Special Programs, Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Dockets Unit, room 8426, Nassif Building, 400 7th Street SW., Washington, DC.

Application No.	Applicant	Renewal of exemption
1862-X	Greer Hydraulics, Inc., Santa Fe Springs, CA (see footnote 1).	1862
7259-X	Monsanto Chemical Co., St. Louis, MO (see footnote 2).	7259
7765-X	Carleton Technologies, Inc., Orchard Park, NY (see footnote 3).	7765
8214-X	Morton International, Inc., Ogden, UT (see footnote 4).	8214
8901-X	Douglas Chemical Co., Liberty, MO (see footnote 5).	8901
9108-X	Trojan Corp., Spanish Fork, UT (see footnote 6).	9108
10171-X	Eurotainer USA, Somerset, NJ (see footnote 7).	10171
10172-X	Hoover Group, Inc., Beatrice, NE (see footnote 8).	10172
10785-X	Kay-Ray/Sensall, Inc., a subsidiary of Rosemount, Mt. Prospect, IL (see footnote 9).	10785
10830-X	Allied-Signal Inc., Morristown, NJ (see footnote 10).	10830

(*1*) To modify the exemption to provide for change in design pressure of welded accumulators having a capacity not over 1 gallon, not exceeding 3000 psig and provide foritional accumulators not to exceed 5 gallons.

(*2*) To authorize shipment of phosphorus pentasulfide in DOT Specification 56 portable tank having a gross weight up to 8200 pounds.

(*3*) To authorize non-DOT specification missile gas storage systems containing nitrogen or helium nonflammable gas, to be refilled a maximum of 10 times based on proof testing and to modify inspection and verification criteria.

(*4*) To modify the exemption to increase the gram capacity and provide for additional air bag module.

(*5*) To modify the exemption to provide for cargo vessel as an additional mode of transportation for use in transporting Class B poisons contained in polyethylene bottles overpacked in fiberboard boxes.

(*6*) To authorize use of contract carriers for shipment of initiating explosive, Class A in composite type packaging.

(*7*) To modify the exemption to provide for additional commodities classed as non-flammable gas for shipment in non-DOT specification IMO Type 5 portable tanks.

(*8*) To modify the exemption to provide for cargo vessel as an additional mode of transportation for use in transporting oxidizers in portable tanks.

(*9*) To reissue an exemption originally issued on an emergency basis to authorize manufacture, marking and sale of radiation detectors containing cylinders of compressed nonflammable or poisonous gas.

(*10*) To reissue exemption originally issued on an emergency basis to authorize the return shipment of numerous DOT specification cylinders, containing certain refrigerant gases, which are equipped with relief services that do not meet the specification.

Application No.	Applicant	Parties to exemption
2000-P	Praxair, Inc., Danbury, CT.	2000
2582-P	Praxair, Inc., Danbury, CT.	2582
3004-P	Bitec Southeast, Inc., Tampa, FL.	3004
3004-P	Praxair, Inc., Danbury, CT.	3004
4575-P	Praxair, Inc., Danbury, CT.	4575
4884-P	Bitec Southeast, Inc., Tampa, FL.	4884
5643-P	Praxair, Inc., Danbury, CT.	5643
5704-P	Rockwell International Corp., Canoga Park, CA.	5704
5923-P	Praxair, Inc., Danbury, CT.	5923
6349-P	Praxair, Inc., Danbury, CT.	6349
5630-P	Bitec Southeast, Inc., Tampa, FL.	6630
6530-P	Praxair, Inc., Danbury, CT.	6530
6543-P	Praxair, Inc., Danbury, CT.	6543
6563-P	Bitec Southeast, Inc., Tampa, FL.	6563
6691-P	Bitec Southeast, Inc., Tampa, FL.	6691
6691-P	Praxair, Inc., Danbury, CT.	6691
6765-P	Praxair, Inc., Danbury, CT.	6765
6805-P	Bitec Southeast, Inc., Tampa, FL.	6805
6805-P	Praxair, Inc., Danbury, CT.	6805
6810-P	U.S. Department of Energy; Washington, DC.	6810
7268-P	Praxair, Inc., Danbury, CT.	7268
7274-P	Praxair, Inc., Danbury, CT.	7274
7451-P	Praxair, Inc., Danbury, CT.	7451
7835-P	Bitec Southeast, Inc., Tampa, FL.	7835
7835-P	Praxair, Inc., Danbury, CT.	7835
7846-P	Praxair, Inc., Danbury, CT.	7846
8013-P	Bitec Southeast, Inc., Tampa, FL.	8013
8013-P	Praxair, Inc., Danbury, CT.	8013
8156-P	Bitec Southeast, Inc., Tampa, FL.	8156
8156-P	Praxair, Inc., Danbury, CT.	8156
8526-P	Rockwell Interational Corp., Los Angeles, CA.	8526
8556-P	Praxair, Inc., Danbury, CT.	8556
8862-P	Bitec Southeast, Inc., Tampa, FL.	8862
8862-P	Praxair, Inc., Danbury, CT.	8862
8915-P	Praxair, Inc., Danbury, CT.	8915
8923-P	Bitec Southeast, Inc., Tampa, FL.	8923
8923-P	Praxair, Inc., Danbury, CT.	8923
8943-P	Ross Transportation Services, Inc., Grafton, OH.	8943
8944-P	Bitec Southeast, Inc., Tampa, FL.	8944
8944-P	Praxair, Inc., Danbury, CT.	8944
9034-P	Praxair, Inc., Danbury, CT.	9034
9047-P	Bitec Southeast, Inc., Tampa, FL.	9047
9047-P	Praxair, Inc., Danbury, CT.	9047
9346-P	Niagara Mohawk Power Corp., Syrancuse, NY.	9346
9414-P	Bitec Southeast, Inc., Tampa, FL.	9414
9414-P	Praxair, Inc., Danbury, CT.	9414
9419-P	Bitec Southeast, Inc., Tampa, FL.	9419
9436-P	Praxair, Inc., Danbury, CT.	9436
9485-P	Southeastern Fumigants, Inc., Dawson, GA.	9485
9507-P	Bitec Southeast, Inc., Tampa, FL.	9507
9507-P	Presto Technologies, Inc., West Hartford, CT.	9507
9507-P	Praxair, Inc., Danbury, CT.	9507
9710-P	Praxair, Inc., Danbury, CT.	9710
9723-P	Tri-State Motor Transit Co., Joplin, Mo.	9723
9723-P	Greenfield Environmental, Carlsbad, CA.	9723
9723-P	FCI Transport, Inc., Freehold, NJ.	9723
9946-P	Praxair, Inc., Danbury, CT.	9946
10001-P	Bitec Southeast, Inc., Tampa, FL.	10001
10001-P	Praxair, Inc., Danbury, CT.	10001
10022-P	Bitec Southeast, Inc., Tampa, FL.	10022
10022-P	Praxair, Inc., Danbury, CT.	10022
10184-P	Bitec Southeast, Inc., Tampa, FL.	10184
10184-P	Praxair, Inc., Danbury, CT.	10184
10239-P	Jones-Hamilton Co., Newark, CA.	10239

This notice of receipt of applications for renewal of exemptions and for party to an exemption is published in accordance with Part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on July 1, 1992.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 92-15870 Filed 7-7-92; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Departmental Offices; Debt Management Advisory Committee Meeting

Notice is hereby given, pursuant to section 10 of Public Law 92-463, that a meeting will be held at the U.S. Treasury Department in Washington, DC on August 4 and 5, 1992, of the following debt management advisory committee:

Public Securities Association Treasury Borrowing Advisory Committee

The agenda for the Public Securities Association Treasury Borrowing Advisory Committee meeting provides for a working session on August 4 and the preparation of a written report to the Secretary of the Treasury on August 5, 1992.

Pursuant to the authority placed in Heads of Departments by section 10(d) of Public Law 92-463, and vested in me by Treasury Department Order 101-05, I hereby determine that this meeting is concerned with information exempt from disclosure under section 552b(c)(4) and (9)(A) of title 5 of the United States Code, and that the public interest requires that such meetings be closed to the public.

My reasons for this determination are as follows. The Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decision on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community, which committees have been utilized by the Department at meetings called by representatives of the Secretary. When so utilized, such a committee is recognized to be an advisory committee under Public Law 92-463.

Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of an advisory committee, premature disclosure of these reports would lead to significant financial speculation in the securities market. Thus, these meetings fall within the exemption covered by section 552b(c)(9)(A) of Title 5 of the United States Code.

The Assistant Secretary (Domestic Finance) shall be responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of committee activities and such other matters as may be informative to the

public consistent with the policy of section 552b of title 5 of the United States Code.

Dated: July 1, 1992.

John C. Dugan,

Assistant Secretary (Domestic Finance).

[FR Doc. 92-15911 Filed 7-7-92; 8:45 am]

BILLING CODE 4810-25-M

UNITED STATES INFORMATION AGENCY

Regional Scholar Exchange Program

AGENCY: United States Information Agency.

ACTION: Notice, request for proposals.

SUMMARY: The United States Information Agency (USIA) invites applications for academic exchanges from U.S. not-for-profit organizations engaged in international exchange programs and research institutes to conduct research exchanges in the humanities and social sciences of pre- and/or post-doctoral students and scholars with Armenia, Azerbaijan, Belarus, Estonia, Georgia, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan. Both existing and new projects are eligible. These exchanges are subject to the availability of funding for Fiscal Year 1993.

Support is offered for two categories: Category A, Short and/or Long-term Research Exchanges in Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Jajikistan, Turkmenistan, Ukraine, and Uzbekistan; and Category B, Short and/or Long-term Research Exchanges in Estonia, Lativa and Lithuania.

Each category has separate conditions and requirements which are stated in this announcement. Institutions may address one or both categories, but must submit a separate proposal for each category. Proposals for Category A may include all 12 countries, a regional grouping of countries, or one country. Proposals for Category B may include one, two or three of the listed countries. The goal of the program is to ensure the broadest geographic distribution in the Commonwealth of Independent States and Georgia, the Baltics, and the U.S. Programs should be for two-way exchanges, although they do not need to be evenly reciprocal. Organizations may request funding for one or both sides of the exchange. Proposals for programs that do not fit into either Category A or B will be considered technically ineligible.

DATES: Deadline for proposals: One original and 14 copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on Friday, July 31, 1992. Faxed documents will not be accepted, nor will documents postmarked on July 31, 1992, but received at a later date. It is the responsibility of each grant applicant to ensure that its proposals are received by the above deadline.

Grants awarded to organizations through this competition should begin no earlier than November 15, 1992 and may extend through August 31, 1994, but must be completed by December 31, 1994. Proposals for exchanges ending after December 31, 1994 will be considered technically ineligible.

Duration: Proposals for both categories must provide for at least three-month programs for participants, but must not exceed one year.

ADDRESSES: The original and 14 copies of the completed application, including required forms, should be submitted by the deadline to: U.S. Information Agency, Reference: Regional Scholar Exchange Program, Office of Grants Management, E/XE, room 357, 301 4th Street, SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Interested U.S. organizations should write or call: Mr. Ted Kniker or Ms. Mara Moldwin at the U.S. Information Agency, 301 4th Street, SW., Academic Exchanges Division, European Branch, E/AEE, room 208, Washington, DC 20547; telephone (202) 619-5341, to request detailed application packets, which include award criteria additional to this announcement, all necessary forms, and guidelines for preparing proposals, including specific budget preparation information.

SUPPLEMENTARY INFORMATION: Overall authority for these exchanges is contained in the Mutual Educational and Cultural Exchange Act of 1961, as amended, Public Law 87-256 (Fulbright-Hays Act). The purpose of the Act is to enable the Government of the United States to increase mutual understanding between the people of the United States and people of other countries by means of educational and cultural exchange; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations, and thus to assist in the development of friendly, sympathetic, and peaceful relations between the United States and other countries of the world. Pursuant to the Bureau of Educational and Cultural Affairs' authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social and cultural life. Programs shall also maintain their scholarly integrity and shall meet the highest standards of academic excellence or artistic achievement.

Overview

The Regional Scholar Exchange Program is intended to promote scholarly research by funding U.S. academic exchanges of pre- and postdoctoral students and scholars (including graduate students, junior faculty, and senior scholars) with Armenia, Azerbaijan, Belarus, Estonia, Georgia, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan. Participants must be citizens of the United States, Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, or Uzbekistan (Category A) or citizens of the United States, Estonia, Latvia, or Lithuania (Category B). Within the spirit of the Mutual Education and Cultural Exchange Act of 1961, the purposes of the Regional Scholar Exchange Program are (1) to provide access by US scholars to research sources in the countries listed above, (2) to provide access by scholars from these countries to research sources in the United States, and (3) to encourage scholarly cooperation in the humanities and social sciences.

Guidelines

Language qualifications

For both categories, foreign participants must have sufficient fluency in English and U.S. participants must have sufficient fluency in the language of the host country to be able to conduct research. Escort-interpreters will not be provided, nor funded by USIA.

Institutional Commitment

Proposals must include documentation of institutional support for the proposed program in the form of signed letters of endorsement from the U.S. and foreign partners' directors, or in the form of a signed agreement by the same persons. Letters of endorsement must describe each institution's or organization's commitment and make specific reference to the proposed program, each institution's activities in support of that program, and each institution's ability to provide access to archival or manuscript repositories. Documentation of support from governmental ministries or academies

will be acceptable when appropriate, replacing individual documentation from each foreign educational institution involved. Applicants must submit this documentation as part of the completed application. Applying institutions are expected to make their own arrangements with the appropriate foreign institutions. National ministries of educational and culture and academies of science are included as eligible foreign partner institutions.

Authorization to work in archives, manuscript repositories, and to use research materials is critical for U.S. scholars. Proposals should include evidence of such authorization.

Proposal Narrative

The proposal narrative describing the program must conform to the Guidelines (E/AEE-92-03) and must include any subgrants to be issued. All narratives must describe in detail the abilities of the participating organizations to adapt to the changing exchanges environments in the countries eligible for participation in this program..

Participant Selection

The proposal must include detailed descriptions of the selection processes of participants, both foreign and American. This must include procedures by which selecting officials are named. A goal for this program is to select students and scholars from geographically diverse backgrounds in the home country and place them in wide geographic distribution in the host country.

Categories A and B (Short and Long-term Research Exchange): All scholars, at a minimum, must be Ph.D. candidates and currently enrolled at a university. Applying organizations must demonstrate the ability to conduct competitive award programs that are national in scope. Programs must be based on an open, nationwide competition, incorporating peer group review mechanisms.

The selection process for U.S. participants must be merit based. Selection criteria for the U.S. participants must be based on: (1) Academic rigor of the participant's proposed project, including a demonstration of the need to study abroad; (2) feasibility of the participant's proposed project, including time-frame and methodology; (3) language proficiency in the language of the host country by the participant; and (4) a solid foundation of background knowledge and research through general literature available in Western repositories.

The selection process for foreign researchers should be merit based and the result of a country-wide or multi-country wide competition. Selection criteria for the foreign participants should be based on: (1) Academic rigor of the participant's proposed project, including a demonstration of the need to study abroad; (2) feasibility of the participant's proposed project, including time-frame and methodology; (3) English language proficiency by the participant; and (4) a solid foundation of background and research through general literature available in the repositories of the foreign region.

Orientation Programs

Participants should be provided with a substantive and comprehensive orientation to the countries of their visits, and proposals should described these orientation programs, including costs, in detail.

Proposed Budget

Funding anticipated for Category A is estimated at $1,300,000, which includes all program and administrative costs. Funding anticipated for Category B is estimated at $240,000, which includes all program and administrative costs. The following budgetary guidance applies to both Categories A and B: Project awards to U.S. organizations will be made in a wide range of amounts. The Agency reserves the right to reduce, revise or increase proposal budgets in accordance with the needs of the program. No more than 10% of the request for funding should be designated for short term research awards. For organizations with less than four years of experience in international exchange activities, grants will be limited to a maximum of $60,000, and proposed budgets should not exceed this amount. All organizations must submit a comprehensive line-item budget, the details and format of which are contained in the application packet. The budget should list all sources of support for the program fiscal year 1993, including both cash and in-kind contributions.

Allowable Costs

Grants-funded items of expenditure will be limited to the following categories:

Categories A and B:

—International Travel (via American flag carrier);
—Domestic travel;
—Maintenance (lodging, meals, incidental expenses, ext.);
—Stipend (not to exceed $250 per month);
—Academic program costs (e.g. book allowance);
—Orientation costs (speaker honoraria are not to exceed $150 per day per speaker);
—Cultural enrichment expenses (admissions, tickets, etc.; limited to $150 per participant);
—Excursionary travel and lodging for cultural enrichment (not to exceed $200.00 per participant);
—Administration (salaries, benefits, communications, other direct costs and indirect costs), including administration of tax withholding and reporting as required by Federal, State and local authorities and in accordance with relevant tax treaties.[1];
—Taxes and visa fees;
—Application should demonstrate substantial cost-sharing (dollar and in-kind) in both program and administrative expenses, including tuition waivers and overseas partner contributions.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines established herein and in the application packet, including the Guidelines for Preparing Proposals (EAEE-92-03). Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the appropriate geographic area office, and the budget and contracts offices. Proposals may also be reviewed by the Agency's Office of General Counsel. Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with USIA's contracting officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the following criteria:

a. Quality of program plan—including academic rigor and excellence, thorough conception of project, demonstration of meeting participants' needs, contributions to understanding the partner country, proposed follow-up, and qualifications of program staff and participants.

b. Reasonable, feasible, and flexible objectives—the capacity of the organization to conduct the program. Proposals should clearly demonstrate

[1] Please Note: It is required that requested administrative funds, including indirect costs and administrative expenses for orientation, not exceed 20 percent of the total amount requested from USIA; administrative expenses should be cost-shared.

how the institution will meet the program objectives and plan.

c. Track record—relevant Agency and outside assessments of the organization's experience with international programs; for organizations that have not worked with USIA, the demonstrated potential to achieve program goals will be evaluated.

d. Multiplier effect/impact—the positive effect of the program on long-term mutual understanding, the inclusion of maximum sharing of information, and the establishment of long-term institutional and individual linkages.

e. Value of U.S.-partner country relations—the assessment by USIA's geographic area office of the need, potential impact, and significance of the project with the partner country.

f. Cost effectiveness—greatest return on each grant dollar, degree of cost-sharing exhibited.

g. Diversity and pluralism—preference will be given to proposals that demonstrate efforts to include participants from diverse regions, and of different socio-economic and ethnic backgrounds, to the extent feasible for the applicant institutions.

h. Adherence of proposed activities to the criteria and conditions described above.

i. Institutional commitment as demonstrated by financial and other support to the program.

j. Follow-on Activities—proposals should provide a plan for continued follow-on activity (without USIA support) which insures that USIA supported programs are not isolated events.

k. Evaluation plan—proposals should provide a plan for evaluation by the grantee institution.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of this request for proposals does not constitute an award commitment on the part of the government. Final award cannot be made until funds have been fully appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified in writing of the results of the review process on or about November 1, 1992. All funded proposals will be subject to periodic reporting and evaluation requirements.

Dated: June 29, 1992.

Barry Fulton,

Deputy Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 92-15894 Filed 7-7-92; 8:45 am]

BILLING CODE 8230-01-M

Corrections

Federal Register
Vol. 57, No. 131
Wednesday, July 8, 1992

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 THE HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 412 and 413

[BPD-756-P]

RIN 0938-AF79

Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 1993 Rates

Correction

In proposed rule document 92-12635 beginning on page 23618 in the issue of Thursday, June 4, 1992, make the following corrections:

§ 412.98 [Corrected]

1. On page 23680, in the third column, in § 412.98(a), in the sixth line, "be" should read "a".

§ 412.232 [Corrected]

2. On page 23683, in the first column, in § 412.232, in amendatory instruction 4., "§ 421.232," should read "In § 412.232".

§ 412.328 [Corrected]

3. On page 23684, in the third column, the amendatory instruction appearing before § 412.328 should be designated "3.".

4. On page 23685, in the first column, in § 412.328(b)(2), the third line should read "capital costs per discharge, a discharge".

5. On the same page, in the same column, in § 412.328(c)(1), in the fifth line, "on" should read "of".

§ 412.331 [Corrected]

6. On page 23686, in the first column in § 412.331(b)(1)(ii), in the ninth line, after "reporting" insert "period (or combination of cost reporting".

Addendum [Corrected]

7. On page 23723, in Table 4a, in the entry for "Cincinnati", the second column should read "0.9821".

8. On page 23745, in Table 6a, in the entry for "Diagnosis code 099.50", in the column designated "DRG", insert "358, 359, 368"; in the column designated "MDC", remove "358, 359, 368" and insert "13"; and in the column designated "CC", remove "13".

9. On page 23746, in Table 6a, in the entry for "Diagnosis code 482.31", in the third entry, in the column designated "DRG", insert "489"; in the column designated "MDC", remove "489" and insert "25"; in the column designated "CC", remove "25"; and in the column designated "Description", remove "D".

10. On page 23746, in Table 6a, in the entry for "Diagnosis code 524.11", in the column designated "DRG", "197" should read "187".

11. On page 23747, in Table 6a, in the entry for "Diagnosis code 710.5", in the column designated "MDC", "09" should read "08".

12. On page 23747, in Table 6B, in the entry for "Procedure code 81.97", the column entries for "MDC" and "DRG" should read:

MDC	DRG
08	233, 234
21	442, 443
24	486

13. On page 23748, in Table 6C, in the entry for "Diagnosis code 099.4", in the column designated "DRG", insert "358, 359, 368"; in the column designated "MDC", remove "358, 359, and 368" and insert "13"; and in the column designed "CC", remove "13".

14. On the same page, in Table 6C, in the entry for "Diagnosis code 320.8", the column entries for "MDC" and "DRG" should read:

MDC	DRG
01	20
15	387, 389[a]

15. On page 23748, in Table 6D, in the entry for "Procedure code 46.12", the column entries for "MDC" and "DRG" should read:

MDC	DRG
06	148, 149
17	400, 406, 407
21	442, 443
24	486

16. On pages 23748 and 23749, in Table 6E, in the following "Diagnosis codes", in the column designated "CC", insert "Y": "200.10 through 481" and "665.10 through 665.14". In addition, in "Diagnosis code 201.20", in the "Description" column, "Hodgkin's" was misspelled; in "Diagnosis code 201.90", in the "Description" column, insert "unspecified," after "disease,"; in "Diagnosis code 202.90", in the "Description" column, "histiocytic" was misspelled; in "Diagnosis code 481", the column designated "DRG", should read "89, 90, 91"; in "Diagnosis code V34.00", in the "Description" column, after "cesarean" add "delivery"; in 'Diagnosis code V35.00", in the "Description" column, "cesarean" was misspelled.

17. On page 23749, in Table 6F, in the entry for "Procedure Code 81.59", the column entries for "MDC" and "DRG" should read:

MDC	DRG
08	233, 234
21	442, 443
24	486

Appendix A [Corrected]

18. On pages 23819 and 23820, in Table I, make the following changes:

a. In the entry for "Large urban areas (populations over 1 mission)", the fifth figure column should read "-0.2".

b. In the entry for "Urban Hospitals", the fifth figure column should read "-0.1"; in the entry for "Urban Hospitals, 300-499" the third figure column should read "-0.2" and the fifth figure column should read "-0.1"; and in the entry for "Urban Hospitals, 500 or more beds", the fifth figure column should read "-0.4".

c. In the entry for "Rural Hospitals", the second figure column should read "-0.1"; in the entry for "Rural Hospitals, 0-49 beds", the second figure column should read "-0.2"; in the entry for "Rural Hospitals, 50-99 beds", the second figure column should read -0.1"; and in the entry for "Rural Hospitals, 200 or more beds", the third figure column should read "-0.4".

d. In the entry for "Urban by Region: New England", the second figure column should read "-0.2".

e. In the entry for "Disproportionate share hospitals (DSH): Other rural DSH hospitals, Fewer than 100 beds", the second figure column should read "-0.2".

19. On page 23826, in Table III, in the first column, in the seventh line, "Hospitals" was misspelled.

BILLING CODE 1505-01-D

federal register

Wednesday
July 8, 1992

Part II

Department of Health and Human Services

Administration for Children and Families

Runaway and Homeless Youth Program, Financial Assistance for FY 1992 Availability and Request for Applications; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. 93550.92-3]

Runaway and Homeless Youth Program, Transitional Living Program (TLP) for Homeless Youth, Availability of Financial Assistance for FY 1992 and Request for Applications

AGENCY: Administration on Children, Youth, and Families (ACYF), Administration for Children and Families (ACF).

ACTION: Announcement of availability of financial assistance and request for applications for transitional living projects for homeless youth.

SUMMARY: The Family and Youth Services Bureau of the Administration on Children, Youth and Families announces the availability of fiscal year 1992 funds for competing new discretionary grants under the Transitional Living Program (TLP) for Homeless Youth (Part B of the Runaway and Homeless Youth Act). The purposes of this program are to: (1) Provide shelter, skill training and support services in local communities to assist homeless youth in making a smooth transition to self-sufficiency and to prevent long-term dependency on social services; and (2) provide technical assistance to grantees which provide these services. Technical assistance to TLP grantees is being provided through a separate mechanism and, therefore, is not covered under this announcement.

This announcement contains all of the necessary application materials to apply for a TLP grant. Approximately $1,900,000 is available to support grant awards under this announcement. An estimated nine grants will be awarded.

DATES: The deadline or closing date for receipt of all applications under this announcement is: August 24, 1992.

ADDRESSES: Application receipt point: Transitional Living Program for Homeless Youth, Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 200 Independence Avenue, SW., room 341-F.2, Hubert H. Humphrey Building, Washington, DC 20201. Attn: William J. McCarron. ACF-92-3-ACYF/Transitional Living.

FOR FURTHER INFORMATION CONTACT: Pamela A. Johnson, Administration on Children, Youth and Families, Family and Youth Services Bureau, P.O. Box 1182, Washington, DC 20013, Telephone: (202) 245-0049.

SUPPLEMENTARY INFORMATION:

Part I. General Information

A. Program Purpose

The Transitional Living Program (TLP) for Homeless Youth is authorized under part B, section 321(a) of the Runaway and Homeless Youth Act (the Act), 42 U.S.C. 5714-1 *et seq.* The specific purposes of the TLP are to:

(1) Provide stable, safe living accommodations while a homeless youth is a program participant;

(2) Provide the services necessary to assist homeless youth in developing both the skills and personal characteristics needed to enable them to live independently;

(3) Provide education, information and counseling aimed at preventing, treating and reducing substance abuse among homeless youth;

(4) Provide homeless youth with appropriate referrals and access to medical and mental health treatment; and

(5) Provide services and referrals necessary to assist youth in preparing for and obtaining employment.

Funds available under Part B of the Act are to be used to enhance the capacities of youth-serving agencies to effectively address the service needs of homeless older adolescents and young adults. This program was authorized by Congress to support community-based efforts designed to foster a positive transition to self-sufficient living for homeless youth.

For the purposes of this Program, those eligible for services include youth who are "truly" homeless (having no legal domicile) and are living on the street or under other unsafe conditions; those who have been ejected from their families; or those who have become ineligible for services under the jurisdiction of an institutional social service system. This program is not designed to serve youth currently under the jurisdiction of a State or local probation, parole, or child welfare agency or who are otherwise wards of the State.

The TLP affords youth service agencies with an opportunity to serve homeless youth in a manner which is comprehensive and directed towards ensuring a successful transition to self-sufficiency. The TLP also improves the availability of comprehensive transitional living services for homeless youth, which reduces the risk of exploitation and danger to which these youth are exposed while living on the streets without positive economic or social supports.

The overall purpose of the TLP is to support programs which assist homeless youth in making a successful transition to self-sufficient living and to prevent long-term dependency on social services.

B. Definitions

For the purposes of this program announcement, the following definitions apply:

(1) *Homeless youth* means an individual who is not less than 16 years of age and not more than 21 years of age; for whom it is not possible to live in a safe environment with a relative; and who has no other safe alternative living arrangement. (section 321(b)(1) of the Act)

(2) *Transitional living youth project* means a project that provides shelter and services designed to promote transition to self-sufficient living and to prevent long-term dependency on social services. (section 321(b)(2) of the Act)

(3) *Community-based* means located within the community and maintained with community and consumer participation in the planning, operation, and evaluation of the programs.

(4) *State* means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, the Commonwealth of the Northern Marianas, and the Trust Territory of the Pacific Islands (Palau).

C. Background

The Family and Youth Services Bureau (FYSB) within the Administration on Children, Youth and Families (ACYF) administers programs that target services to at-risk youth. The TLP specifically targets services to homeless youth. While all adolescents are faced with adjustment issues as they approach adulthood, homeless youth experience more severe problems and are at greater risk in terms of their ability to successfully make the transition to independent living. Their basic human needs (shelter, food, clothing) are not being met, nor are their developmental needs receiving adequate attention. Moreover, homeless youth lack a supportive, safe environment in which they can develop a positive sense of identity and self-sufficiency. An individual must have a sense of continuity of experiences in order to connect what they were as a child to what they are becoming as an adult. Homeless youth, who lack a stable family environment to provide this continuity, are in need of a support system that will assist them in making

the major transition to adulthood and independent living.

It is estimated that about one-fourth of the youth served by runaway and homeless youth programs are homeless. This means that many of the youth served cannot return home or move to another safe living arrangement with a relative, in most cases because of severe family dysfunction. Other homeless youth have "aged out" of the child welfare system and are no longer eligible for foster care. These young people are often lacking both the skills and the personal characteristics which enable them to live independently. Therefore, without social and economic supports, homeless youth are not likely to make a successful transition to independence, and are at high risk of being involved in dangerous lifestyles and problematic behaviors such as drug and alcohol abuse and prostitution. More than two-thirds of homeless youth report using drugs or alcohol, and many homeless youth have experienced long-term physical and sexual abuse in their families.

Homeless youth need a range of services to develop the skills necessary to make the transition from homelessness to self-sufficiency. Since 1978, homeless youth have been an identified population eligible to receive services under the Runaway and Homeless Youth Act. It has become apparent over the years that the service goals for homeless and runaway youth are quite different. For runaway youth, family reunification is often desirable and appropriate; for homeless youth, reunification is typically not feasible. In many instances, programs serving these populations are able to provide only limited assistance to homeless youth, whose needs are more complex and long-term than those of runaway youth. Part B of the Runaway and Homeless Youth Act is intended to address the unique problems and needs of homeless youth.

Throughout the 1980's, discretionary funds under the Runaway and Homeless Youth Act were used to support the development of model programs and practices to serve the needs of homeless youth. Several different types of transitional living program models have been developed and effectively implemented to serve homeless youth. These models have been replicated in other communities where the need exists and resources are available.

As the TLP enters its third year of operation, ACYF has implemented several support activities designed to enhance grantee capacity and effectiveness. These activities include technical assistance and training for service providers, the development of a management information system and a national evaluation study to assess the effectiveness of the services provided and their impact on the youth served. Grantees funded under this announcement are expected to participate fully in these and other similar efforts which may be developed.

Grants awarded under the Transitional Living Program for Homeless Youth are authorized by the Anti-Drug Abuse Act of 1988 (Pub. L. 100–690), formerly the Juvenile Justice and Delinquency Prevention Act of 1974 (Pub. L. 93–415) and is codified under Part B of the Runaway and Homeless Youth Act (the Act), 42 U.S.C. 5714–1 *et seq.*

All interested applicants should be aware that, in implementing the Transitional Living Program for Homeless Youth, certain sections of parts C and D of the Runaway and Homeless Youth Act are applicable, and are reflected throughout this announcement as necessary. In part C, section 341 (42 USC 5714a) requires the Department to provide informational assistance to potential grantees. Section 342 (42 USC 5714b) permits the lease of surplus Federal property for use as shelter facilities by runaway and homeless youth centers or by transitional living programs. Part D sets forth the Administrative Provisions of the Act. The TLP grantees must also meet the requirements of section 362 (42 USC 5716) on the Federal share of funds and section 363 (42 USC 5731) on the confidentiality of client records.

Grants awarded under this program may not be used as matching funds (non-Federal share) for other Federal programs or to supplant funds available under the Title IV–E Foster Care Independent Living Initiatives or any other Federally-funded program.

D. Additional Resources

The Administration on Children, Youth and Families, through an Interagency Agreement with the Public Health Service, DHHS, is working to improve access to medical services for runaway and homeless youth. The Bureau of Health Care Delivery and Assistance (BHCDA) of the Public Health Service, with funds made available under the Stewart B. McKinney Homeless Assistance Act of 1987, has awarded grants to public and private non-profit organizations across the country to provide primary health care to homeless populations. These grantees are listed in appendix C. Applicants are encouraged to coordinate with these programs.

Also, the Office of Special Needs Assistance Programs within the Department of Housing and Urban Development (HUD) offers several housing programs which could benefit providers serving homeless populations including youth. These programs include the Transitional Housing Program which supports the development of innovative approaches to providing short-term (24 months or less) housing and support services to homeless persons who are capable of making the transition to independent living; and the Emergency Shelter Grants Program which, among other purposes, provides funds to meet the costs of operating shelters, essential social services to homeless individuals and services to help prevent homelessness. Under the Supplemental Assistance for Facilities to Assist the Homeless (SAFAH) Program, particularly innovative approaches to satisfying the immediate and long-term needs of the homeless are supported through several categories of activities. These activities include, but are not limited to, grants for housing rehabilitation, supportive services, and operating costs for facilities to assist the homeless.

Finally, Title V of the Stuart McKinney Act establishes a procedure for the identification and use of Federal real property for facilities to assist the homeless. States, units of local government, and private non-profit organizations may submit applications for property determined suitable for homeless assistance use. This program is jointly administered by HUD, HHS, and the General Services Administration (GSA). HUD publishes a weekly **Federal Register** notice listing property availability. Homeless assistance providers have 30 days from the date a suitable property appears in the **Federal Register** to advise HHS of their interest in the property.

Private, non-profit organizations, in addition to States and units of local governments, are eligible to apply for these programs which may be a valuable resource for transitional living service providers. Specific information on application procedures and time lines as well as a more detailed explanation of these homeless assistance programs are available from the HUD Field Offices. The Field Office addresses are listed in appendix E.

Applicants are encouraged to contact these organizations and, where possible, access and coordinate with these resources.

E. Available Funds and Duration of Projects

In FY 1992, the Administration on Children, Youth and Families (ACYF) expects to award approximately $1,900,000 in Transitional Living Program grants. The maximum Federal share for a 36-month project period is $600,000. An applicant should not request more than $200,000 for any 12-month budget period.

Grant applicants may request project periods of up to three years (Standard Form 424A, Rev. 4–88, Budget Information, Section E). Budget forecasts for the second and third years of the proposed project should be included as part of the application. The subsequent award of funds for a second or third year will depend upon satisfactory performance by the grantee (including timely submission of required reports) and on the availability of appropriated funds.

Grant awards will be made from late August 1992 through the end of September 1992. Due to the large volume of applications expected, applicants are asked to refrain from directly contacting the Family and Youth Services Bureau to inquire about the status of their application.

F. Eligible Applicants

Any State, unit of local government (or combination of units of local government), public or non-profit, private agency organization, institution or other non-profit entity is eligible to apply under this announcement. Federally recognized Indian Tribes are eligible to apply for grants as local units of government. Non-Federally recognized Indian Tribes and urban Indian organizations are eligible to apply for grants as private, non-profit agencies. Collaborative applications between State and community-based agencies and collaborative applications between two or more community-based agencies are also eligible for consideration under this grant program. However, only one entity may be designated as the direct recipient of Federal funds.

Non-profit applicants who have not previously received financial support from the Administration on Children, Youth and Families must submit proof of their non-profit status with their grant application. This can be done either by making reference to the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations or by submitting a copy of its letter from IRS (IRS Code, sections 501 (c)(3) and 501 (c)(6)). Non-profit applicants cannot be funded without acceptable proof of this status. Although for-profit entities may participate as sub-grantees, they do not qualify as applicants under this grant announcement.

Applicants are reminded that organizations awarded grants under Part B of the Act must be the primary service providers. Any subgrant or other support service arrangement must be identified and described in the application, including a description of the specific terms of the agreement and the signatures of the parties involved.

Applicants must indicate a willingness to cooperate with third party contractors funded by ACYF, including participation in any management information (data collection) and technical assistance system operated by ACYF.

Applicants are further reminded that TLP grants may be awarded to agencies which will operate a group home facility, *or* to agencies which will provide shelter through a series of host homes or supervised apartments, *or* to agencies which will employ a combination of these or other types of housing options. In general, shelter provision as it is currently practiced in the field can be described in the following manner. Host homes are facilities providing shelter, usually in the home of a family, under contract to accept homeless youth assigned by the TLP service provider, and are licensed according to State or local laws. A supervised apartment is a single unit dwelling or multiple unit apartment house operated under the auspices of the TLP service provider for the purpose of housing program participants. A group home is a single site residential facility designed to house TLP clients who may be new to the program and/or require a higher level of supervision. These dwellings operate in accordance with State or local housing codes and licensure.

G. Applicant Share of Project Costs

Section 362(a) of the Runaway and Homeless Youth Act requires that the grantee provide a non-Federal match that equals at least 10 percent of the Federal funds awarded under this announcement. For example, if the applicant requests $100,000 in Federal funds for one budget period (line 15a of Standard Form 424), then the non-Federal share (the sum of lines 15b, 15c, 15d, and 15e) must equal or exceed $10,000. For the TLP, the maximum Federal share over a 36-month project period is $600,000. Therefore, the total non-Federal share must equal or exceed $60,000.

The non-Federal portion may be cash, in-kind contributions or grantee incurred costs (including the facility, equipment or services) and must be project-related and allowable under the cost principles provided in 45 CFR parts 74 and 92, the Department's regulations on the Administration of Grants. Federal Independent Living Initiatives funds provided to States and services or other resources purchased with these funds may not be used to match Transitional Living Program grants.

Part II. Requirements of the Runaway and Homeless Youth Act, Part B

Section 322(a) of the Act requires that, to be eligible for assistance under this part, an applicant shall propose to establish, strengthen, or fund a transitional living youth project for homeless youth as defined in section 321(b)(2) and shall submit a plan in which the applicant agrees, as part of such project:

1. To provide, directly or indirectly, shelter (such as group homes, host family homes and supervised apartments) and services (including information and counseling services in basic life skills, interpersonal skill building, decision making, educational advancement, job attainment skills, and mental and physical health care) to homeless youth;

2. To provide such shelter and services to individual homeless youth throughout a continuous period not to exceed 540 days (18 months);

3. To provide, directly or indirectly, on-site supervision at each shelter facility that is not a family home;

4. To provide assurances that such shelter facility used to carry out such project shall have the capacity to accommodate not more than 20 individuals (excluding staff);

5. To provide and train a sufficient number of staff to ensure that all homeless youth participating in the project receive adequate supervision and services;

6. To provide a written transitional living plan for each youth, based on an assessment of such youth's strengths and needs, designed to help the transition from supervised participation in such a project to independent living or another appropriate living arrangement;

7. To ensure proper referrals of homeless youth to social service, law enforcement, educational, vocational, training, welfare, housing, legal services, and health care programs and to help integrate and coordinate such services for youth;

8. To provide for the establishment of outreach programs designed to attract individuals who are eligible to participate in the project;

9. To submit an annual report on the activities carried out with funds under this part, the achievements of the project by the applicant, and statistical summaries describing the number and characteristics of the homeless youth who participated in the project in the year for which the report is submitted;

10. To implement accounting procedures and fiscal control devices sufficient to account for income and expenditures of the project;

11. To submit an annual budget that estimates the itemized costs to be incurred in the year for which the applicant requests a grant;

12. To keep adequate statistical records on the number and characteristics of homeless youth served and to ensure nondisclosure of the identity of individual homeless youth in reports or other documents based on such statistical records;

13. To provide assurances that records maintained on individual homeless youth will not be disclosed without the consent of the individual youth and parent or legal guardian to anyone other than an agency compiling statistical records or a government agency involved in the disposition of criminal charges against the youth; and

14. To provide such other information as may be reasonably required by the Administration on Children, Youth and Families.

Section 322(b) of the Act requires that, in selecting eligible applicants to receive grants under this part, the Department give priority to entities that have experience in providing shelter and the types of services required to be provided under this announcement.

Part III. Responsibilities of the Grantee

Applicants for funding under this program announcement must present a plan in the program narrative section of their application that demonstrates that they are able to meet the requirements of the Act listed in part II, including the following specific responsibilities:

A. Shelter

1. Assure that shelter will be or is provided through one or a combination of the following or similar forms: (a) A group home facility; (b) family host homes; or (c) supervised apartments (section 322(a)(1)). Applicants should indicate if the shelter is to be provided directly or indirectly, and must document the availability of shelter facilities. When shelter is to be provided indirectly, applicants must provide evidence of formal written agreements with service providers regarding the terms under which shelter will be provided.

2. Assure that each facility used for housing shall accommodate no more than 20 youth at any given time (section 322(a)(4)); shall have a sufficient number of staff to ensure on-site supervision at each shelter option that is not a family home (section 322(a)(3)); and is in compliance with State and local licensing requirements;

3. Assure that shelter facilities, host family homes and/or supervised apartments will receive adequate, on-site supervision (section 322(a)(5)) including periodic, unannounced visits from project staff.

4. The lease of surplus Federal facilities for use as transitional living shelter facilities may be considered if it is determined that the applicant meets the requirements in section 342(a)(1) through (3) of the Act (42 U.S.C. 5714b(a)(1) through (3)). Each surplus Federal facility used for this purpose must be made available for a period not less than 2 years, and no rent or fee shall be charged to the applicant in connection with use of such a facility (section 342(b)(1)). Any structural modifications or additions to surplus Federal facilities become the property of the government of the United States. All such modifications or additions may be made only after receiving prior written consent from the appropriate Department of Health and Human Services official (section 342(b)(2)).

B. Services

Include a description of the core services to be provided, as mandated by section 322(a)(1) of the Act. The descriptions should include, but are not necessarily limited to, the following services:

1. Basic life skills information and counseling, such as personal finances, housekeeping, menu planning and food preparation, leisure-time activities, transportation, and obtaining vital documents (Social Security card, birth certificate).

2. Interpersonal skill building, such as positive relationships with peers and adults, communication, decisionmaking, and stress management.

3. Educational advancement, such as GED preparation and attainment, post-secondary training (college, technical school, military, etc.), and vocational education.

4. Job preparation and attainment, such as career counseling, job preparation training, dress and grooming, job placement and job maintenance.

5. Mental health care, such as counseling (individual and group), drug abuse education, prevention and referral services, and mental health counseling.

6. Physical health care, such as routine physicals, health assessments, family planning/parenting skills, and emergency treatment.

C. Administration

1. Describe the procedures to be employed to provide for a coordinated approach to the development, implementation and monitoring of an individualized, written transitional living plan for each program client which addresses the areas in section B, above, and is appropriate to the individual needs of the client (section 322(a)(6)).

2. Describe how the applicant will ensure that individual clients meet the eligibility criteria established by the Act. This may include a discussion of the intake and assessment activities which will be conducted with a client prior to acceptance into the TLP project. Applicants are encouraged to include samples of any forms to be used to determine eligibility and appropriate services.

3. Assure that the clients will substantively participate in the assessment of their needs and in decisions about the services to be received.

4. Assure that the outreach programs to be established are designed to attract individuals who are eligible to participate in the project (section 322(a)(8)).

5. Describe how the project has established or will establish formal service linkages with other social service, law enforcement, educational, housing, vocational, welfare, legal service, drug treatment and health care agencies in order to ensure appropriate referrals for the project clients where and when needed (section 322(a)(7)). This may include establishing a case management team composed of practitioners from the agencies involved in providing services.

6. Assure cost-effective use of TLP funds by taking maximum advantage of existing resources within the State which would help in the establishment, operation, or coordination of a TLP, including those resources which are supported by Federal Independent Living Initiatives funds. Also, describe efforts to be undertaken over the length of the project which may increase non-Federal resources available to support the TLP. (The names and addresses of State Independent Living Initiatives

Coordinators can be found in appendix F.)

7. Provide an assurance that housing and services will be available to a client for a continuous period not to exceed 540 days (18 months) (section 322(a)(3)).

8. Describe the methods to be employed in collecting statistical records and evaluative data and for submitting annual reports on such information to the Department of Health and Human Services (section 322(a)(9)).

9. Describe how the applicant will ensure the confidentiality of client records (section 322(a)(13)).

Part IV. Evaluation Criteria

In considering how the applicant will carry out the responsibilities addressed in parts II and III of this announcement, the application will be reviewed and evaluated against the following criteria:

Criterion 1. Objectives and Need for Assistance (20 Points)

The extent to which the application reflects a good understanding of the objectives of the TLP; pinpoints any relevant physical, economic, social, financial, institutional, or other problems requiring a solution in the geographic areas that the project is proposing to serve; demonstrates the need for the assistance and states the goals or service objectives of the project; states the principal and subordinate objectives of the project; provides supporting documentation or other testimonies from concerned interests other than the applicant; and gives a precise location of the project sites and areas to be served by the proposed project. Maps or other graphic aids may be attached. (The applicant may refer to part I, sections D and E of this announcement.)

Criterion 2. Results or Benefits Expected (20 Points)

The extent to which the application identifies the results and benefits to be derived from the project and which are consistent with the objectives of the TLP; states the numbers of clients to be served; and describes the types of services to be offered; and describes the plans for evaluating the effectiveness of the project, including assessing its outcomes and accomplishments and the service delivery models employed.

Criterion 3. Approach (35 Points)

The extent to which the application outlines a sound and workable plan of action as required by section 322(a) of the Act and described in parts II and III above pertaining to the scope of the project; details how the proposed work will be accomplished; cites factors which might accelerate or decelerate the work; gives acceptable reasons for taking this approach as opposed to others; describes and supports any unusual features of the project, such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvements; and provides for projections of the accomplishments to be achieved. The extent to which the project will take advantage of existing resources within the community and State to help establish, operate, or coordinate TLP services. The application lists the activities to be carried out in chronological order and shows a reasonable schedule of accomplishments and target dates. To the extent applicable, the application identifies the kinds of data to be collected and maintained, and discusses the data that will be used for reporting and evaluation purposes.

Criterion 4. Staff Background and Organizational Experience (15 Points)

The extent to which the resumes of the program director and key project staff (including names, addresses, training, background and other qualifying experience) and the organization's experience demonstrates the ability to effectively and efficiently administer a project of the size, complexity, and scope proposed; and reflects the ability to coordinate activities with other agencies.

The application also lists each organization, cooperator, consultant, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

Criterion 5. Budget Appropriateness (10 Points)

The extent to which the project's costs (overall costs, average cost per youth served, costs for different services) are reasonable in view of the activities to be carried out and the anticipated outcomes. The extent to which assurances are provided that the applicant can and will contribute the non-Federal share of the total project cost. (Applicants may refer to the budget information presented in Standard Forms 424 and 424A and in the associated budget justification, and to the results or benefits expected as identified under Criterion 2.)

Part V. Application Process

A. Availability of Forms

All of the forms and instructions needed for submitting an application for Federal assistance under this announcement are included in appendices A and B. Single sided copies of these forms should be reproduced and used to prepare the application package.

A complete application consists of:

1. Standard Form 424: Application for Federal Assistance;

2. Standard Form 424A: Budget Information;

3. Budget Justification (Type on standard size plain white paper) (pages iv-v).

4. Assurances—The assurances in (4) (a), (b) and (c) below must be signed and returned.

(a) Standard Form 424B:Non-Construction Programs;

(b) Certification Regarding Lobbying;

(c) The Anti-Drug Abuse Act of 1988 Certification;

(d) Debarment Certification; and

(e) Drug-Free Workplace Certification.

5. Organizational Capability Statement. Applicants should provide a brief (no more than two pages, single-spaced) description of how the applicant agency is organized and the types and costs of services it provides, including services to clients other than homeless youth. Provide an organizational chart showing any superordinate, parallel, or subordinate agencies to the specific agency that will provide the direct services to homeless youth, and indicate the purposes, clients and overall budgets of these other agencies. If the agency has multiple sites, list these sites. Discuss the experience of the applicant organization in providing services to homeless youth.

6. Program Narrative Statement. A narrative description of the project, organized under the following headings which addresses the requirements identified in parts II and III: (A) Objectives and Need for Assistance; (B) Results and Benefits Expected; (C) Approach; (D) Staff Background and Organizational Experience; (E) Budget Appropriateness.

The Program Narrative Statement must be typed, double-spaced, single sided, on 8½ x 11 inch bond paper. All pages of the narrative (including charts, tables, and maps) must be sequentially numbered, beginning with the "Objectives and Need for Assistance" section as page number one. The narrative must not exceed 35 double-spaced pages.

Applications with narratives exceeding 35 single-spaced pages will not be considered for funding.

7. Appendices/ Attachments: Letters of support and/or agreement, exhibits, and other supporting documents must not exceed 15 pages.

B. Application Submission

Each application must be signed by an individual authorized to act on behalf of the applicant agency, organization, institution, or other entity and to assume responsibility for the obligations imposed by the terms and conditions of any grant awarded.

Applications must be prepared in accordance with the guidance provided in this announcement and the instructions in the attached application package. Each application will be copied by the government in order to provide the total of six copies needed for review panels and filing. To make copying as trouble-free and accurate as possible, the following requirements should be followed:

1. Applicants may attach only photocopies (no originals) of any additional materials, such as resumes, letters of support or agreement, news clippings, or descriptions of the program's participation in local, State or regional coalitions of youth service agencies which would give further support to the application. Resumes must be limited to one page.

2. The absolute maximum for supporting documentation is 15 pages, including letters of support or agreement. Documentation which ACYF staff determines to be excessive will not be provided to the independent panel reviewers.

Note: Include only photocopies of the materials. Do not use separate covers, binders, clips, tabs, plastic inserts, pages with pockets, separately bound brochures, folded maps or charts, or any other items that cannot be processed easily on a photocopy machine with automatic feed. Do not bind, clip, or fasten in any way separate subsections of the application, including supporting documentation.

One signed original and two copies of the application, including all attachments, are required to be submitted to the application receipt point specified below. The original copy of the application must have original signatures, signed in black ink. Each copy should be stapled (back and front) in the upper left corner.

The Catalog of Federal Domestic Assistance Number (93.550) and Title (Transitional Living Program for Homeless Youth) must be clearly identified on the application (SF 424, box 10).

Completed applications must be sent to: Transitional Living Program for Homeless Youth, Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, room 341-F.2, Hubert H. Humphrey, 200 Independence Avenue, SW., Washington, DC 20201. Attention: William J. McCarron. Hand-delivered applications will be accepted at the ACF agency during the normal working hours of 8:30 a.m. to 5 p.m., Monday through Friday, except holidays.

C. Closing Date for the Receipt of Applications

The closing date for receipt of applications under this announcement is: August 24, 1992.

1. Deadlines

Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date at the address specified in the application submission section of this announcement, or

b. Sent on or before the deadline date and received by the granting agency in time for the independent review under Chapter 1-62 of the HHS Grants Administration Manual. Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks are not acceptable as proof of timely mailing.

2. Late Applications

Applications which do not meet the criteria in the above paragraph of this section are considered late applications. The granting agency will notify each late applicant that its application will not be considered in the current competition.

3. Extension of Deadline

The Administration on Children, Youth and Families may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc., or when there is a widespread disruption of the mails. However, if the granting agency does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicants.

D. Assistance to Prospective Grantees

Prospective grantees can receive informational assistance in developing applications and application procedures from the appropriate ACYF Regional Youth Contacts listed in Appendix E, or from the Family and Youth Services Bureau in Washington, DC (see address at the beginning of this announcement). Prospective grantees may also contact one of the ten Runaway and Homeless Youth technical assistance and training providers. Contact information for technical assistance and training providers is provided in appendix G.

E. Application Consideration

Each application which is complete and conforms to the requirements of this program announcement will be scored against the criteria outlined in part III of this announcement. The review will be conducted in Washington, DC, by panels of non-Federal experts knowledgeable about issues related to runaway and homeless youth and transitional/independent living services for adolescents. The results of the competitive review will be analyzed by Federal staff and will be the primary factor taken into consideration by the Associate Commissioner, Family and Youth Services Bureau who, in consultation with ACF Regional officials, will recommend to the Commissioner, ACYF, the programs to be funded. The Commissioner will make the final selection of the applicants to be funded. Consideration will also be given to ensuring that a variety of geographic areas are served and that a variety of project designs and models are represented. The Commissioner may also elect not to fund any applicants that have known management, fiscal or other problems or situations which make it unlikely that they would be able to provide effective services. As required by section 322(b) of the Act, the Department will give priority to entities that have experience in providing shelter and the types of services required to be provided under this announcement to homeless youth in selecting eligible applicants to receive grants.

Successful applicants will be notified through the issuance of a Financial Assistance Award. The award will set forth the amount of Federal funds awarded, the terms and conditions of the grant award, the effective date of the grant, the total project period, the budget period for which support is given, and the amount of the non-Federal matching share.

Organizations whose applications have been disapproved will be notified in writing by the Commissioner of the Administration on Children, Youth and Families.

F. Paperwork Reduction Act of 1980

Under the Paperwork Reduction Act of 1980, Public Law 96-511, the Department is required to submit to the Office of Management and Budget (OMB) for review and approval any reporting and record keeping requirements in regulations including program announcements. This program announcement does not contain information collection requirements

beyond those approved for ACF grant applications by OMB.

G. Waiver of Executive Order 12372 Requirements for a 60-day Comment Period for the States' Single Point of Contact (SPOC)

This program is covered under Executive Order (E.O.) 12372, "Intergovernmental Review of Federal Programs," and 45 CFR part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and territories except Alaska, Idaho, Kansas, Louisiana, Minnesota, Nebraska, Pennsylvania, Virginia, American Samoa and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these ten areas need take no action regarding E.O. 12372. Applications for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372.

Other applicants should contact their SPOC as soon as possible to alert them to the perspective application and receive any necessary instructions. Applicants must submit any required material to the SPOC as early as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or date of contact if no submittal is required) on the SF–424, Block 16a. The Administration on Children and Families will notify the State of any applicant who fails to indicate SPOC contact (when required) on the application form.

ACF must obligate the funds for these awards by September 30th, 1992. Therefore, the required 60-day comment period for the State process review and recommendation has been reduced and will end on September 23, 1992 in order for ACF to receive, consider and accommodate SPOC input. SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to differentiate clearly between mere advisory comments and those official State process recommendations which they intend to trigger the "accommodate or explain" rule.

When comments are submitted directly to ACF, they should be addressed to: Transitional Living Program for Homeless Youth, Department of Health and Human Services, Administration for Children and Families, Grants and Contracts Management, 200 Independence Avenue, SW., room 345–F.2, Hubert H. Humphrey Building, Washington, DC 20201, HDS–92–3–ACYF/Transitional Living.

A list of the Single Points of Contact for each State and Territory is included as appendix H of this announcement.

H. Checklist for a Complete Application.

The Checklist below should be typed on 8½" by 11" plain white paper, completed, and included as the first page of the application package.

Checklist

____ Checklist for a complete application;
____ One original application signed in black ink and datedplus two copies;
____ A completed SPOC certification with the date of SPOC contact entered in item 16 page 1 of SF 424; The original and both copies of the application include the following:
____ SF 424 (The original application will have the word "ORIGINAL" hand printed in bold block letters at the top of the SF 424);
____ SF 424A;
____ Budget Justification;
____ SF 424B;
____ Certification Regarding Lobbying;
____ Program Narrative Statement with a maximum of 35 double-spaced pages;
____ Supporting Documents.

(Catalog of Federal Domestic Assistance Number 93.550, Transitional Living Program for Homeless Youth.)

Dated: June 29, 1992.

Wade F. Horn,

Commissioner, Administration on Children, Youth and Families.

BILLING CODE 4130-01-M

Appendix A&B

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

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:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT:		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	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 4130-01-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.

Item: Entry:

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.)

BILLING CODE 4130-01-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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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).

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 totals 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.

Line 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.

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 CFR 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. 290dd–3 and 290ee–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

Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) 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 awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) 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 contract, grant loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more that $100,000 for each such failure.

State for Loan Guarantee and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any 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 commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature

Title

Organization

Date

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR Part 76, certifies to the best of its knowledge and believe 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 3-year period preceding this proposal 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 or otherwise criminally or civilly charged by a governmental entity (Federal, State of local) with commission of any of the offenses enumerated in paragraph (1) (b) of this certification; and

(d) Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transaction" provided below without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

(To Be Supplied to Lower Tier Participants)

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

(b) Where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled "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.

BILLING CODE 4130-01-M

U.S. Department of Health and Human Services

Certification Regarding Drug-Free Workplace Requirements

Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990 Federal Register, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may taken action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios.)

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"**Controlled substance**" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 USC 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

"**Conviction**" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"**Criminal drug statute**" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"**Employee**" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

The grantee 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 ongoing 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 ten 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 every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. 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).

The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (use attachments, if needed):

Place of Performance (Street address, City, County, State, ZIP Code)_____

Check ___ if there are workplaces on file that are not identified here.

Sections 76.630(c) and (d)(2) and 76.635(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, S.W., Washington, D.C. 20201.

DGMO Form#2 Revised May 1990

BILLING CODE 4130-01-C

Appendix C: Health Care for the Homeless Public Health Service Grantees

Region I

Connecticut

Charter Oak Terrace/Rice Heights Health Center, 81 Overlook Terrace, Hartford, CT 06016, Alfreda Turner, (203) 238-1638/238-0857

Southwest Community Health Center, 381 Bird Street, Bridgeport, CT 06605, Janet Stern, (203) 576-8368

Windham Area Community Action Program, Inc., 231 Broad Street, Danielson, CT 06239, Kerrie J. Clark, (203) 774-0400

Massachusetts

Boston Health Care for Homeless Project, 723 Massachusetts Avenue, Boston, MA 02118, Dr. James O'Connell, (617) 534-4623

Franklin County Dial/Self, 196 Federal Street, Greenville, MA 01301, Melanie Goodman, (413) 774-7054

New England Consortium for Families and Youth, 14 Beacon Street, Suite 706, Boston, MA 02128, Nancy Jackson, (617) 742-8555

Springfield Health Services for the Homeless, 1414 State Street, Springfield, MA 01109, John Cipolla, (413) 787-6755

Worcester Area Community Mental Health Center, Inc., POB 229, Greendale Station, Worcester, MA 01606, David Higgins, (508) 756-4354

Maine

Portland Public Health Division, 389 Congress Street, Room 307, Portland, ME 04101, Meredith L. Tipton, (207) 774-4581

New Hampshire

City of Manchester Public Health Department, 795 Elm Street, Suite 302, Manchester, NH 03101, Fred Rusczek, (603) 624-6466

Travelers Aid Society, 177 Union Street, Providence, RI 02903, Marion F. Avarista, (401) 521-2255

Vermont

Community Health Center of Burlington, 279 North Winooski Avenue, Burlington, VT 05401, Marilyn McKenzie, (802) 662-9011

Region II

New Jersey

Newark Homeless Health Care Project, DHHS, 15 Roseville Avenue, Newark, NJ 07107, Bobbi M. Ruffin, (201) 783-5705

Jersey City Family Hlth. Ctr., Medical and Social Services for the Homeless, 114 Clifton Place, Murdock Hall, 2nd Floor, Jersey City, NJ 07304, Carol Lightsey, (201) 915-2528

Henry J. Austin Health Center, Health Care for the Homeless, 321 N. Warren Street, Trenton, NJ 08618, Derek Beckford, (609) 695-7122

New York

William F. Ryan Community Health Center, 110 West 87th Street, New York, NY 10025, Julio Bellber, (212) 645-2500

United Hospital Fund, 55 Fifth Avenue, New York, NY 10003, Bruce Vladeck, (212) 645-2500

Bowery Residents Committee, Human Services Corp., 181 Chrystie Street, New York, NY 10002, Joyce Wolbarst, (212) 533-5700

Westchester Health Network, Neighborhood Health Association of Mt. Vernon, 280 Dobbs Ferry Road, White Plains, NY 10007, Georganne Chapin, (914) 240-3080

Under 21—Covenant House, 460 West 41st Street, New York, NY 10036, Joseph Borge, (212) 330-0585

St. Vincent's Hospital, Dept. of Community Medicine, 153 West 11th Street, New York, NY 10011, Dr. Phillip Brickner, (212) 790-2706

NY Children's Health Project, 317 East 84th Street, New York, NY 10021, Dr. Irwin E. Redlener, (212) 535-8779

Puerto Rico

San Juan Department of Health, Calle Cerra 900 PDA 15, Santurce, PR 00907, Pedro A. Borras, M.D., (809) 721-3207

Region III

District of Columbia

Health Care for the Homeless Project, Inc., 1511 K Street, NW., Suite 500, Washington, DC 20005, Melvin Wilson, (202) 628-5000

Maryland

Health Care for the Homeless, 232 North Liberty Street, Baltimore, MD 21201, Jackie Gaines, (410) 637-5533

Pennsylvania

Primary Health Care Services of NW Pennsylvania, 1720 Holland Street, Erie, PA 16503, Darlene Collins, (814) 453-5744

Philadelphia Health Management Corporation, 260 South Broad Street, 20th Flr., Philadelphia, PA 19102, Richard Cohen, Ph.D., (215) 985-2553

Primary Care Health Services, Alma Illery Medical Center, 7227 Hamilton Avenue, Pittsburgh, PA 15208, Wilford A. Payne, (412) 244-4700

Rural Health Corporation of Northeastern Pennsylvania, 116 South Main Street, Wilkes-Barre, PA 18701, Stanford Weiss, (717) 625-6741

Virginia

The Daily Planet, 302 West Canal Street, Richmond, VA 23220, Sheila Crowley, (804) 783-0678

Peninsula Institute for Community Health, Health Care for Homeless, 707 Howmet Drive, Suite C, Hampton, VA 23661, Edwina S. David, (804) 825-0465

West Virginia

Valley Health Systems, Inc., 401 Tenth Street, Suite 410, Huntington, WV 25701, Steve Shattis, M.D., (304) 525-3334

REGION IV

Alabama

Birmingham Health Care for the Homeless Coalition, P.O. Box 11523, Birmingham, AL 35202, Karen J. McGee, (205) 252-9624

Florida

Pinellas County Department of Social Services, Mobile Medical Team, 647 First Avenue North, St. Petersburg, FL 33701, Evelyn Rust, (813) 892-7577

Broward County Board of County Commissioners, Health Care for the Homeless, 115 South Andrews Drive, Rm. 428, Ft. Lauderdale, FL 33021, Henry Thompson, (305) 581-1888

Camillus Health Concern, 311 Northeast First Avenue, Miami, FL 33103, Marland Bluhm, (305) 577-4840

Tampa Community Health Center, Sine Domus Health Center, P.O. Box 5299, Tampa, FL 33675, Norbert Heib, Jr., (813) 248-6263

Georgia

Atlanta Community Health Program for the Homeless, Georgia Hill Street Neighborhood Facility, 250 Georgia Ave., SE., Atlanta, GA 30312, Lorine Spencer, (404) 522-5659

Kentucky

Lexington-Fayette County Health Department, 650 Newton Pike, Lexington, KY 40508, Dr. John Poundstone, (606) 252-2371

Seven Counties Services, Inc., 101 W. Muhammad Ali Blvd., Louisville, KY 40201, Howard Bracco, Ph.D., (502) 589-8926,

Mississippi

Jackson-Hinds Comprehensive Health Department, P.O. Box 3437, Jackson, MS 39207, Aaron Shirley, M.D., (602) 364-5116

North Carolina

Lincoln Community Health Center, Inc., 1301 Fayetteville Street, Durham, NC 27707, Evelyn Schmidt, M.D., (919) 688-9078

Wake Health Services, Inc., P.O. Box 95104, Raleigh, NC 27625, Malvise Scott, (919) 790-2270

South Carolina

Midlands Primary Health Care Center, Inc., P.O. Box 248, Eastover, SC 29044, John Patrick, (803) 353-8741

Tennessee

Chattanooga Hamilton County Health Department, 921 East Third Street, Chattanooga, TN 37403, Howard Roddy, (615) 265-5708

Memphis Health Center, Inc., Memphis Health Care for the Homeless, 360 E. H. Crump Boulevard, Memphis, TN 38126, Phillip L. Williams, (901) 775-2000

Region V

Illinois

Travelers and Immigrants Aid, Health Care for the Homeless Program, 327 South LaSalle, Chicago, IL 60657, Sid Mohn, (312) 281-4288

Crusaders Central Clinic Association, 120 Tay Street, Rockford, IL 61102, John Frana, (815) 968-7613

Indiana

Indiana Health Centers, Inc., 21 North Pennsylvania, Indianapolis, IN 46204, Lynn Clothier, (219) 234-9003

East Side Promise, Inc., People's Health Center, 2340 East 10th Street, Indianapolis, IN 46201, Dave Robinson, (317) 633-7360

Michigan

Visiting Nurse Services of Southern Michigan, 311 E. Michigan Ave., Ste. 200, Battle Creek, MI 49017, Sally Whitten, (619) 962-0303

Ingham County Health Dept., P.O. Box 30161, Lansing, MI 48909, Bruce B. Bragg, (517) 887-4311

St. Mary's Health Services, 200 Jefferson, SE., Grand Rapids, MI 49503, William A. Himmelsback, Jr., (616) 774-6162

Family Health Center, Inc., 17 West Paterson Street, Kalamazoo, MI 49007, Grace M. Lockett, (616) 349-2641

Detroit Health Care for the Homeless, 3611 Cass Avenue, Detroit, MI 48201, Cynthia Reynolds-Caine, (313) 832-2450

Downriver Community Services, P.O. Box 306, 329 Columbia Street, Algonac, MI 48001, Alice M. Johnson, (313) 794-4982, Ext. 14

Hamilton Family Health Center, 4001 North Saginaw Street, Flint, MI 48505, Gerald E. Matthews, Ph.D., (313) 789-9141

Minnesota

Hennepin County Homeless Assistance Project, Health Services Bldg., Level 3, 525 Portland Avenue, South, Minneapolis, MN 55415, Allain Hankey, (612) 348-5553

West Side Community Health Center, 153 Concord Street, St. Paul, MN 55107, Jane Berg, (612) 222-1816

Ohio

ECCO Family Health Center, Health Care for the Homeless Project, 1166 East Main Street, Columbus, OH 43205, Jewel Barron, (614) 253-0861

Cordelia Martin Health Center, 905 Nebraska Avenue, Toledo, OH 43607, Paula W. Steward, (419) 255-7883

Cincinnati Health Network, 400 Oak Street, Suite 225, Cincinnati, OH 45219, Randall Garland, (513) 961-0600

Federation for Community Planning, Health Care for the Homeless, 614 Superior Building, Cleveland, OH 44113, Dr. Ralph Brody, (216) 781-2944

Wisconsin

Coalition for Community Health Center, 2770 North 5th Street, Milwaukee, WI 53212, Mark Rosnow, (414) 226-8883

Region VI

Louisiana

New Orleans Health Department, Health Care for the Homeless Clinic, 914 Union Street, New Orleans, LA 70112, Brobson Lutz, M.D., (504) 528-3750

New Mexico

Albuquerque Health Care for the Homeless, P.O. Box 25141, Albuquerque, NM 87125, Marsha McMurrary-Avila, (503) 247-3361

Youth Shelters & Family Services, P.O. Box 8135, Santa Fe, NM 87504, Ann Begin (505) 473-0240

Oklahoma

National Resource Center for Youth Services, 202 W. 8th, Tulsa, OK 74119, James M. Walker, (918) 585-2986

Community Health Center, Inc., Healing Hands Hlth. Care, Srvcs., Mary Mahoney, 6291/2 West Main, Oklahoma City, OK 73102, Michael K. Fire, (405) 272-0476

Morton Comprehensive Health Services, Inc., 603 East Pine, Tulsa, OK 74106, Leona Young, (918) 587-2171

Texas

South Plains Health Provider Organization, 824 Martin Road, Amarillo, TX 79107, Henry Hawley, (806) 374-734 1

City of Dallas, Dept. of Health & Human Srvcs., 1500 Marilla 7/A/N, Dallas, TX 75201, Adela N. Gonzales, (214) 670-3968

Harris County Hospital District, P.O. Box 66769, Houston, TX 77266, Lois Moore, (713) 529-4624

Guadalupe Economic Services Corporation, 1416 First Street, Lubbock, TX 79401, Richard Lopez, (806) 744-4416

San Antonio Centro Del Barrio, 301 S. Frio, Suite 180, San Antonio, TX 78201-4414, Ronald Kemp, (319) 236-1332

Region VII

Iowa

Community Health Care, Inc., 428 Western Avenue, Davenport, IA 52801, William Rodgers, (319) 322-7899

Polk County Health Services, Broadlawns Medical CenterHomeless Outreach Program, 18th and Hickman Road, Des Moines, IA 50703, Lynn Ferrell, (515) 282-2599

People's Community Health Clinic, Inc., 403 Sycamore, Suite 2, Waterloo, IA 50703, Ronald Kemp, (319) 236-1332

Kansas

Hunter Health Clinic, Inc., 2318 East Central, Wichita, KS 67214, Bert Steeves, (316) 262-3611

Missouri

Swope Parkway Health Center, 4900 Swope Parkway, Kansas City, MO 64130, E. Frank Ellis, (816) 923-5800

Grace Hill Neighborhood Health Center, 2500 Hadley Street, St. Louis, MO 63106, Richard Gram, (314) 241-2200

Nebraska

Charles Drew Health Center, P.O. Box 111609, Omaha, NE 68111, Robert Patterson, (402) 453-1433

Region VIII

Colorado

Volunteers of America, 1865 Larimer Street, Denver, CO 80202, Linda Sinton, (303) 297-0408

Colorado Coalition for the Homeless, Stout Street Clinic, 2100 Broadway, Denver, CO 80205, John Parvensky, (303) 293-2220

Community Health Center of Colorado Springs, 2828 International Circle, Colorado Springs, CO 80901, Karen Marczynski, (719) 632-3700

Montana

Blackfeet Tribe, Blackfeet Child Abuse Prevention, White Buffalo Home, P.O. Box 1210, Browning, MT 59417, Violet Butterfly, (406) 338-2243

North Dakota

Fargo-Moorhead Health Care for the Homeless Project, 401 Third Avenue, North Fargo, ND 58102-4839, Sherlyn Dahl, R.N., (701) 241-1360

South Dakota

Health Care for the Homeless, 30 Main Street, Rapid City, SD 57701, Nancy Glassgow, (605) 394-2230

Utah

Salt Lake Community, Health Center, Inc., 2300 West 1700 South, Salt Lake City, UT 84104, Susan Reed, (801) 359-7917

Region IX

Arizona

El Rio Santa Cruz Neighborhood Health Center, P.O. Box 1271, Tucson, AZ 85701, Robert Gomez, (602) 792-9890

Maricopa County Department of Health Services, 806 West Madison, Phoenix, AZ 85006, Adolfo Echeveste, (602) 258-2122

California

The Family Health Foundation of Alviso, Inc., 1621 Gold Street, Alviso, CA 95002, Rick Ugarte, (408) 262-7944

Clinical Sierra Vista, Inc., P.O. Box 457, Lamont, CA 93241, Stephen Schilling, (805) 845-3731

Logan Heights Family Health Center, 1809 National Avenue, San Diego, CA 92113, Fran Bulter-Cohen, (619) 234-0360

Merced Family Health Centers, Inc., P.O. Box 858, Merced, CA 95341, Michael Sullivan, (209) 383-1846

San Francisco Community Clinic Consortium, 1520 Stockton Street, San Francisco, CA 94133, Kimberly Kent-Wyard, (818) 896-0531

Nipomo Community Medical Center, Inc., P.O. Box 430, 150 Tegas Place, Nipomo, CA 93444, Ronald Castle, (805) 929-3211

West Contra Cost Community Health Care Corporation, Martin Luther King, Jr. Family Health Center, 101 Broadway Street, Richmond, CA 94804, Wilbur Kelly, (415) 233-3994

Sacramento County Health Dept., 3701 Branch Center Road, Sacramento, CA 95827, Sonia Parker, (916) 366-2171

Santa Cruz County Health Services Agency, Homeless Persons Health Project, 739 River Street, Santa Cruz, CA 95060, Elizabeth McCarty, (408) 425-3480

Alameda County Health Care Services Agency, Alameda County Health Care for the Homeless Program, 1900 Fruitvale Avenue, Suite 3-E, Oakland, CA 94801, Barbara Cowan, MPH, (415) 532-1930

Santa Barbara County Health Care Services, 300 San Antonio Road, Rm. M331, Santa Barbara, CA 93110, Lawrence Hart, M.D., (805) 681-5145

San Mateo County Department of Health Services, Alcohol and Drug Program, 225 West 37th Avenue, San Mateo, CA 94403, Carolina Janet, (415) 573-3703

Hawaii

Waianae Coast District Comprehensive Health and Hospital Board, Inc., 86-260 Farrington Highway, Waianae, HI 96792, Michael Tweedell, (808) 696-7081

Region X

Idaho

Terry Reilly Health Services, 211-16th Avenue North, Nampa, ID 83687-4058, Erwin Teaber, (208) 467-4431

Oregon

White Bird Clinic, 341 East Twelfth Street, Eugene, OR 97401, Robert Dritz, (503) 342-8255

Multnomah County Health Div., 426 SW Stark, Portland, OR 97204, Billie Odegaard, (206) 627-8588.

Northwest Human Services, 881 Center Street, NE., Salem, OR 97301, Karen Hill, (503) 588-5828

Washington

Sea Mar Community Health Ctr., 8720 Fourteenth Avenue, South, Seattle, WA 98108, Rogelio Riojas, (206) 428-4075

Central Seattle Community Health Centers, 105 Fourteenth Ave., Ste. 2-C, Seattle, WA 98122, William Hobson, (206) 461-6910

Appendix D: HUD Field Offices

Region I

Connecticut

Daniel Kolesar, 330 Main Street, Hartford, CT 06106-1860, (203) 240-4508

Massachusetts; Rhode Island

Frank Del Vecchio, Thomas P. O'Neill, Jr., Federal Building, 10 Causeway Street, Boston, MA 02222-1092, (617) 565-5343

Maine; New Hampshire; Vermont

David Lafond, Norris Cotten Federation Building, 275 Chestnut Street, Manchester, NH 03101-2487, (603) 666-7640

Region II

New York (Up State)

Michael F. Merrill, Lafayette Court, 465 Main Street, Buffalo, NY 14203-1780, (716) 846-5768

New York (Down State)

Joan Dabelko, 26 Federal Plaza, New York, NY 10278-0068, (212) 264-2885

New Jersey

Frank Sagarese, Military Park Building, 60 Park Place, Newark, NJ 07102, (201) 877-1776

Puerto Rico

Carmen R. Caberera, 159 Carlos Chardon Avenue, San Juan, PR 00918-1804, (809) 766-5576

Region III

Pennsylvania (Eastern)

John Kane, Liberty Square Building, 105 S. 7th Street, Philadelphia, PA 19106-1096, (215) 597-2665

Pennsylvania (Western); West Virginia

Bruce Crawford, Old Post Office Building and Courthouse Building, 700 Grant Street, Pittsburgh, PA 15219-1906, (412) 644-5493

Maryland

Harold Young, Equitable Building, 3rd Floor, 10 N. Calvert Street, Baltimore, MD 21202-1865, (301) 962-2417

District of Columbia

James H. McDaniel, 820 First Street, NE, Washington, D.C. 20002, (202) 275-0094

Virginia

Joseph Aversano, Federal Building, 400 N. 8th Street, P.O. Box 10170, Richmond, VA 23240

Region IV

Alabama

Jasper H. Boatright, Beacon Ride Tower, 600 Beacon Park West, Suite 300, Birmingham, AL 35209-3144, (205) 731-1672

Florida

James N. Nichol, 325 W. Adams Street, Jacksonville, FL 32202-4303, (904) 791-3587

Georgia

Charles N. Straub, Russell Federal Building, Room 688, 75 Spring Street, SW., Atlanta, GA 30303-4303, (494) 331-5139

Kentucky

Ben Cook, P.O. Box 1044, 601 W. Broadway, Louisville, KY 40201-1044, (502) 582-5394

Mississippi

Jeanie E. Smith, Dr. A.H. McCoy Federal Building, 100 W. W. Capitol Street, Room 910, Jackson, MS 39269-1096, (601) 965-4765

North Carolina

Charles T. Ferebee, 415 N. Edgeworth Street, Greensboro, NC 27401-2107, (919) 333-5711

South Carolina

Louise E. Bradley, Acting, Federal Building, 1835-45 Assembly Street, Columbia, SC 29201-2480, (803) 765-5564

Tennessee

Virginia Peck, 710 Locust Street, Knoxville, TN 37902-2526, (615) 549-9422

Region V

Illinois

Richard Wilson, 547 W. Jackson Blvd., Chicago, IL 60606-5760, (312) 353-1696

Indiana

Robert Poffenberger, 151 N. Delaware Street, Indianapolis, IN 46204, (317) 226-5169

Michigan

Richard Paul, Patrick McNamara, 477 Michigan Avenue, Detroit, MI 48226-2592, (313) 226-4343

Minnesota

Shawn Buckley, 220 2nd Street South, Minneapolis, MN 55401-2195, (612) 370-3019

Ohio

Jack E. Riordan, 200 North High Street, Columbus, OH 43215-2499, (614) 469-6743

Wisconsin

Lana J. Vacha, Henry J. Reuss Federal Plaza, 310 W. Wisconsin Avenue, Suite 1380, Milwaukee, WI 53203-2289, (414) 297-3113

Region VI

Arkansas

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Louisiana

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Oklahoma

Katie Worsham, Murrah Federal Building, 200 NW 5th Street, Oklahoma City, OK 73102-3202, (405) 231-4973

Texas (Northern); New Mexico

R.D. Smith, 1600 Throckmorton, P.O. Box 2905, Fort Worth, TX 76113-2905, (817) 885-5483

Texas (Southern)

Robert W. Hicks, Washington Square, 800 Dolorosa, San Antonio, TX 78297-4563, (512) 229-6820

Region VII

Iowa; Nebraska

Gregory A. Bevirt, Braiker/Brandeis, 210 South 16th Street, Omaha, NE 68102-1622, (402) 221-3703

Kansas, Missouri (Western)

Miquel Madrigal, Gateway Towers 2, 400 State Avenue, Kansas City, KS 66101-2406, (913) 236-2184

Missouri, (Eastern)

David H. Long, 122 Spruce Street, St. Louis, MO 63103-2836, (314) 539-6524

Region VIII

Colorado; Montana; North Dakota; South Dakota; Utah; Wyoming

Barbara Richards, Executive Tower, 1405 Curtis Street, Denver, CO 80202-2349, (303) 844-3811

Region IX

Arizona; Nevada (Las Vegas, Clark County)

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California (Northern); Remainder of Nevada

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California (Southern)

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Hawaii

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Region X

Alaska

Collen Craig, Federal Building, 222 W. 8th Avenue, #64, Anchorage, AK 99513-7537, (907) 271-3669

Idaho; Oregon

John G. Bonham, 520 W. 6th Avenue, Portland, OR 97204-1596, (503) 326-7018

Washington

John Peters, Arcade Plaza, 1321 2nd Avenue, Seattle, WA 98101-2054, (206) 442-0374

Appendix E: Regional Youth Contacts

Region I: Sue Rosen, Administration for Children and Families, John F. Kennedy Federal Building, Room 2011, Boston, Massachusetts 02203 (CT, MA, ME, NH, RI, VT), (617) 565-2480

Region II: Estelle Haferling, Administration for Children and Families, 26 Federal Plaza, Room 4149, New York, NY 10278 (NJ, NY, PR, VI), (212) 264-5768

Region III: David Lett, Administration for Children and Families, 3535 Market Street, Post Office Box 13714, Philadelphia, PA 19101 (DC, DE, MD, PA, VA, WV), (215) 596-1224

Region IV: Viola Brown, Administration for Children and Families, 101 Marietta Tower, Suite 903, Atlanta, GA 30323 (AL, FL, GA, KY, MS, NC, SC, TN), (404) 331-2128

Region V: William Sullivan, Administration for Children and Families, 105 West Adams, 23rd Floor, Chicago, IL 60603 (IL, IN, MI, MN, OH, WI), (312) 353-8322

Region VI: Ralph Rogers, Administration for Children and Families, 1200 Main Tower, 20th Floor, Dallas, TX 75202 (AR, LA, NM, OK, TX), (214) 767-4540

Region VII: Linda Bitner, Administration for Children and Families, Federal Office Building, Room 384, 601 East 12th Street, Kansas City, MO 64106 (IA, KS, MO, NE), (816) 426-5401

Region VIII: Bob Rease, Administration for Children and Families, Federal Office Building, 1961 Stout Street, 9th Floor, Denver, CO 80294 (CO, MT, ND, SD, UT, WY), (303) 844-3109

Region IX: Carolyn Mangrum, Administration for Children and Families, 50 United Nations Plaza, San Francisco, CA 94102 (AZ, CA, HI, NV, American Samoa, Guam, Northern Mariana Islands, Marshall Islands, Federated States of Micronesia, Palau), (415) 556-7408

Region X: Steve Ice, Administration for Children and Families, 2201 Sixth Avenue, Mail Stop RX 32, Seattle, WA 98121 (AK, ID, OR, WA), (206) 442-0482

Appendix F: Independent Living State Coordinators (Title IV-E)

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Bob Gilfillan, Arizona Department of Economic Security, 1400 West Washington, Phoenix, Arizona 85007, 602-542-5120

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Debra Bridgeforth, Illinois Department of Children and Family Services, Research and Demonstration Unit, 100 W. Randolph St., Rm. 6-200, Chicago, Illinois 60601, 312-814-4118

Sheri Stevens, Family and Social Services Administration, 402 W. Washington St., Indianapolis, Indiana 46207, 317-232-4467

Janet Davenport, Social & Rehabilitation Service, Smith Wilson Building, 300 S.W. Oakley, Topeka, Kansas 66606-1861, 913-296-4657

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Nancy Goddard, Maine Department of Human Services, State House, Station 11, Augusta, Maine 04333, 207-289-5060

Ted Forrest, Michigan Department of Social Services, 235 S. Grand Ave., Lansing, Michigan 48909, 517-373-2047

Lyle Johnson, Adolescent & Child Care Services Section, Minnesota Department of Human Services, 444 Lafayette Road, St. Paul, Minnesota 55155-3831, 612-296-2785

Fred Proebsting, Division of Family Services, P.O. Box 88, Jefferson City, Missouri 65102, 314-751-4319

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Judy Williams, Independent Living Program, Department of Family Services, P.O. Box 8005, Helena, Montana 59604, 406-444-5918

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Mary Furnas, Department of Social Services, P.O. Box 95026, Lincoln, Nebraska 68509-5026, 402-471-3121

Dorothy Doucette, New Hampshire Division for Children and Youth Services, Bureau of Children, 6 Hazen Drive, Concord, New Hampshire 03301, 603-271-4720

Karen Beckmeyer, Division of Youth & Family Services, Capital Center N717, 50 East State St., Trenton, New Jersey 08625, 609-984-8201

Annjentte Torres, Independent Living Coordinator, P.O. Box 2348, Santa Fe, New Mexico 87504, 505-827-4248

Mike Capello, Nevada State Welfare Social Services, 2527 North Carson Street, Carson City, Nevada 89710, 702-687-4783

Suzzane Sennett, State of New York, Department of Social Services, 40 N. Pearl St., Albany, New York 12243, 518-474-9574

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Sherrill Mullen, Independent Living Coordinator, State of Oklahoma, Department of Human Services, P.O. Box 25352, Oklahoma City, Oklahoma 73125, 405-521-3438

Lee Cornforth, Oregon Childrens Service Division, 198 Commercial Street, SE, Salem, Oregon 97310, 503-378-4452

Jane Johnston, Independent Living Program, Shippenberg University, 313 Horton Hall, Shippenberg, Pennsylvania 17257, 717-532-1659

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Carol Henderson, Office of Children and Family Service, South Carolina Department of Social Services, P.O. Box 1520, Columbia, South Carolina 29202-1520, 803-734-5670

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Governor's Drive, Pierre, South Dakota 57501-2291, 605-773-3227

Gail York Crawford, Social Services Policy Development, Tennessee Department of Human Services, 400 Deaderick Street, 14th Floor, Nashville, Tennessee 37219, 615-741-3251

Thomas Chapmond, Independent Living Coordinator, Texas Department of Human Services, P.O. Box 149030, Austin, Texas 78714-9030, 512-450-3309

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Jean Fiorito, Vermont Department of Social Services, 103 S. Main Street, Waterbury, Vermont 05676, 801-241-2131

Deborah Buford, Independent Living Coordinator, Washington Department of, Social and Health Services/DCFS, Office Bldg. 2, Mail Stop OB-41, 12th and Franklin Streets, Olympia, Washington 98504-0095, 206-721-4842

Ruth Murphy, Wisconsin Department of Health and Social Services, One W. Wilson St., P.O. Box 7851, Madison, Wisconsin 53707-7851, 608-266-5330

Shirlee Lively, Office of Social Services, WV Department of Health and Human Resources, Capital Center-Building 6, Room 805, Charleston, West Virginia 25305, 304-348-7980

Steve Vajda, Program Consultant, Independent Living Program, Department of Family Services, 324 Hathaway Building, Cheyenne, Wyoming 82001, 307-777-6081

Appendix G: Runaway and Homeless Youth Technical Assistance and Training Providers

Family and Youth Services Bureau

Training and Technical Assistance Providers

Region	Program
I	Massachusetts Committee for Children and Youth, 14 Beacon Street, Suite 706, Boston, MA 02108, Nancy Jackson, (617) 742-8555
II	Empire State Coalition, 121 Avenue of America, Room 507, New York, NY 10013, Margo Hirsch, (212) 966-6477
III	Mid-Atlantic Network of Youth and Family Services, Inc., 9400 McKnight Road, Suite 106, Pittsburgh, PA 15237, Nancy Johnson, (412) 366-6562
IV	Southeastern Network of Youth and Family Services, 337 S. Milledge Avenue, Suite 209, Athens, GA 30605, Gail Kurtz, (404) 354-4568
V	Michigan Network of Runaway and Youth Services, 115 West Allegan, Suite 310, Lansing, MI 48933, Bruce Haas, (517) 484-5262
VI	Southwest Network of Youth Services, 404 West 40th Street, Austin, TX 78751, Theresa Andreas-Tod, (512) 459-1455
VII	M.I.N.K., A Network of Runaway and Youth Serving Agencies, P.O. Box 14403, Parkville, MO 64152, Jack McClure, (816) 741-8700
VIII	Mountain Plains Youth Services, 311 N. Washington, Bismarck, ND 58501, Linda Wood, (701) 255-7229
IX	Western States Youth Services Network, 1306 Ross Street, Suite B, Petaluma, CA 94954, Nancy Fastenau, (707) 763-2213
X	Northwest Network of Runaway and Youth Services, 94 Third Street, Ashland, OR 97501, Ginger Baggett, (503) 482-8890

Appendix H: 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 N. 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—Room 406, Honolulu, Hawaii 96813, Telephone (808) 548-5893, FAX (808) 548-8172

Illinois

Tom Berkshire, State Single Point of Contact, Office of the Governor, State of Illinois, Springfield, Illinois 62706, Telephone (217) 782-8639

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

Debbie Anglin, 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 Builders Alliance, P.O. Box 30242, Lansing, Michigan 48909, Telephone (517) 373-6223.

Mississippi

Cathy Mallette, Clearinghouse Officer, Department of Finance and Administration, Office of Policy Development, 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, Attn: John B. Walker, Clearinghouse Coordinator

New Hampshire

Jeffery 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

Aurelia M. Sandoval, State Budget Division, DFA, Room 190, Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone (505) 827-3640, FAX (505) 827-3006

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

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) 734-0493

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, Governor's Office of Budget and Planning, P.O. Box 12428, Austin, Texas 78711, Telephone (512) 463-1778

Utah

Utah State Clearinghouse, Office of Planning and Budget, ATTN: Carolyn Wright, Room 116 State Capitol, Salt Lake City, Utah 84114, Telephone (801) 538-1535

Vermont

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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

William C. Carey, Federal/State Relations, IGA Relations, 101 South Webster Street, P.O. Box 7864, Milwaukee, Wisconsin 53707, Telephone (608) 266-1741

Please direct correspondence and questions to: William C. Carey, Section Chief, Federal/State Relations Office, Wisconsin Department of Administration, (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

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Northern Mariana Islands

State Single Point of Contact, Planning and Budget Office, Office of the Governor, Saipan, CM, Northern Mariana Islands 96950

Puerto Rico

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[FR Doc. 92-15764 Filed 7-7-92; 8:45 am]

BILLING CODE 4130-01-M

federal register

Wednesday
July 8, 1992

Part III

Department of Education

34 CFR Part 74 et al.

Education Department General Administrative Regulations; Final Regulations

DEPARTMENT OF EDUCATION

34 CFR Parts 74, 75, 76, 77, 237, 263, 300, 356, 562, 630, 653, 654, and 762

RIN 1880-AA24

Education Department General Administrative Regulations

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the Education Department General Administrative Regulations (EDGAR) to reduce burden by deleting unnecessary requirements and provisions and to include provisions for the award and administration of cooperative agreements under 31 U.S.C. chapter 63. The Secretary adds regulations that make ineligible certain individuals who are applicants for financial aid or discretionary grants. Those applicants who are not current in repaying a debt to the Federal Government or are in default on a debt to the Federal Government are ineligible for discretionary grants and other forms of financial assistance unless they have made satisfactory arrangements to repay the debt. The Secretary revises the standards for receiving continuation awards to require grantees to make substantial progress in meeting the objectives of the project in order to receive a continuation award. Certain EDGAR provisions relating to preapplications are transferred to the program regulations for the only program that currently uses preapplications.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments, with the exception of §§ 74.75, 75.261, 75.720 and 76.720. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register on the effective date of the rule. Sections 74.75, 75.261, 75.720 and 76.720 will become effective after the information collection requirements contained in those sections have been submitted by the Department of Education and approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980. If you want to know the effective date of these regulations, call or write the Department of Education (ED) contact person. A document announcing the effective date will be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Sherlyn Williams, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, SW., room 3636, ROB-3, Washington, DC 20202-4700. Telephone: (202) 708-5580. Deaf and hearing impaired individuals may call 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.

SUPPLEMENTARY INFORMATION: On August 18, 1988, the Secretary published a notice of proposed rulemaking (NPRM) proposing certain amendments to EDGAR in the **Federal Register** (53 FR 31580). Some of the provisions were made obsolete by laws passed since EDGAR became effective. Other provisions duplicated existing statutory or regulatory requirements. The Secretary believes these amended regulations will assist the Department in its efforts to reduce regulatory burden on the public and to promote efficient operation of departmental programs.

The NPRM included a discussion of the major issues (53 FR 31580-31584). The substantive differences between the revisions published in the NPRM and these final regulations relate to provisions that establish complaint procedures under State-administered programs.

The Department received over 50 comments from the public on the Secretary's proposed removal §§ 76.780-76.782, the provisions that establish complaint procedures under State-administered programs. The comments raised several concerns, including a concern that the regulations not be removed from EDGAR, that various aspects of the procedures be strengthened, and that the procedures should be limited in certain ways.

In the NPRM, the Secretary proposed to remove the State complaint procedures from EDGAR and to transfer those procedures to Part B of the Individuals with Disabilities Education Act (IDEA) (formerly, the Education of the Handicapped Act). In doing so, the Secretary noted that the complaint procedures had originated under the Part B program and that the procedures had not been used under most programs of the Department. Four of the comments received by the Department asked that the State complaint procedures be kept in EDGAR. The commenters believed that the reason that the State-administered programs other than Part B of IDEA did not use the procedures was because there was a lack of awareness about the procedures under those programs. However, the Secretary believes that complaint procedures are most appropriate for the following programs that focus on the special needs of individuals or are designed to assist disadvantaged children:

- Part B of IDEA (34 CFR part 300)
- Chapter 1 State-Operated or Supported Programs for Handicapped Children (34 CFR part 302)
- Part H of IDEA (34 CFR part 303)
- The Chapter 1 Program in Local Educational Agencies (34 CFR part 200)
- Chapter 1 Migrant Education Program (34 CFR part 210)
- Chapter 1 Program for Neglected or Delinquent Children (34 CFR part 203)

Thus, the Secretary has decided to remove State complaint procedures from EDGAR. The four Chapter 1 programs and the part H program listed above already include the complaint procedures contained in EDGAR. This final rulemaking document adds those procedures to the part B program. The Secretary has published an NPRM for the part B program that proposes to add certain protections to the complaint procedures under that program and has requested comment on this proposal (56 FR 41266; August 19, 1991). The Secretary may issue NPRMs, as appropriate, for the other programs identified above to consider the need for similar added protections for those programs.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, over 60 parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations as a result of the comments received on the NPRM follows. In addition, the Secretary has reviewed the proposed regulations since publication of the NPRM and has made some changes. These changes are discussed under the section of the regulations to which they pertain.

General

Some commenters provided comments on provisions not proposed in the NPRM or already addressed in amendments to EDGAR that were previously published on July 24, 1987 (52 FR 27801). The Secretary will not respond to each of these commenters directly in this final rulemaking document. However, all comments received by the Department on provisions not included in these revisions will be considered in future proposals to amend EDGAR. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under applicable statutory authority—are also not addressed.

Parts 75 and 76 EDGAR currently contain numerous cross-references to

part 74 and specific sections in that part. Part 74 now applies only to grants made to institutions of higher education, hospitals, and nonprofit organizations. Grants to State and local governments and federally-recognized Indian tribal governments are now covered by part 80 of EDGAR. Those sections in EDGAR that are being amended by this document have been revised to refer to part 74 or part 80, as appropriate. The Department intends to publish revisions to those cross-references not corrected in this rulemaking document when part 80 is revised in response to the NPRM published on November 4, 1988 (53 FR 44716).

Cost Principles—General

Comment: Several organizations representing entities with substantial interests in ED grants questioned the Department's practice of restating OMB circulars as appendices to regulations in EDGAR. These commenters thought that, as those circulars are amended by OMB in the future, their inclusion in appendices could result in different rules being applied by ED unless the Department were to take stringent steps to keep the appendices current.

Discussion: Any inconsistencies created by disparity between the Department's adoption of the circulars as appendices and the circulars as promulgated by OMB are contrary to the current Federal effort to strengthen accountability in Federal programs and to keep burden to a minimum through uniform principles for management of all Federal programs. The Secretary has now established a chart similar to that used in the common regulations implementing OMB Circular A-102 in § 80.22 (see 53 FR 8034 March 11, 1988), indicating which cost principles are applicable to the various kinds of entities subject to part 74.

Each of the cost principle circulars listed in the chart was established after the adopting agency offered the public an opportunity to comment on the proposed cost principles. Each of the cost principles provides guidance to all Federal agencies regarding what costs are allowable for a specific class of entities. The Secretary has decided to adopt the cost principles in their current form without further comment. These cost principles apply except to the extent program regulations or the regulations in EDGAR require a different outcome. For example, many of the programs administered by the Department are subject to statutory supplement-not-supplant provisions. Under these programs, which prohibit a State from using Federal funds to supplant State and local funds, EDGAR has a specific restricted indirect cost rate formula that eliminates certain costs from the numerator of the indirect cost rate that would otherwise be permitted under general indirect cost principles (see 34 CFR 75.563–75.568).

The OMB circulars that contain cost principles are available from the Publications Division of OMB in their current form. The current form of OMB Circular A-122, "Cost Principles for Nonprofit Organizations," includes its original publication in the **Federal Register** on July 8, 1980, at 45 FR 46022, with corrections published on March 17, 1981, at 46 FR 17185 and amendments published on April 27, 1984, at 49 FR 18260, with corrections published on May 8, 1984, at 49 FR 19588.

OMB Circular A-21, "Cost Principles for Educational Institutions," was originally published in the **Federal Register** on March 6, 1979, at 44 FR 12368. The Circular has been amended several times, as follows: On August 3, 1982, at 47 FR 33658, on June 9, 1986, at 51 FR 20908, on December 2, 1986, at 51 FR 43487, and on October 3, 1991 at 56 FR 50224.

The cost principles for hospitals are published in the Code of Federal Regulations (CFR) as an appendix to 45 CFR part 74. The cost principles for commercial (for-profit) organizations are also published in the CFR as a part in the Federal Acquisition Regulation at 48 CFR part 31.

If OMB publishes amendments to any of these Circulars at a future date, the Secretary will promptly publish a document in the **Federal Register** adopting those amendments.

Change: Appendix D is removed and a chart listing applicable cost principles is added in a new § 74.171.

Comment: One commenter asked that the requirement for prior approval for purchase of automatic data processing equipment be removed from the cost principles for State and local governments as formerly adopted in appendix C to part 74. Another commenter suggested the department revise appendix C to remove certain prior approval requirements.

Discussion: This appendix no longer exists. It implemented OMB Circular A-87, "Cost Principles for State and Local Governments." OMB Circular A-87 is currently implemented in part 80 by reference to the **Federal Register** notices containing the most recent amendments to that Circular. OMB Circular A-87 was promulgated by OMB, and the Secretary has little discretion to promulgate implementing regulations containing an outcome different from the outcome under the Circular unless a statue for a particular program requires such a different outcome. If that were the case, the change would be accomplished in appropriate program regulations. Thus, the prior approval requirement for the purchase of automatic data processing equipment has not been removed.

Change: None.

Section 74.3 Definitions

Comment: Regarding the definition of "grant", several commenters questioned the removal of the provision of financial assistance awarded under a contract as being within the scope of definition of a grant. These commenters thought that the regulations in part 74 should apply to all grants, cooperative agreements and contracts.

Discussion: The intent of the proposed change to the definition of grant was to clarify that the Federal Grant and Cooperative Agreement Act prohibits the Federal Government from making assistance available through contracts. However, under that Act cooperative agreements are treated the same as grants for most purposes including the purposes of grants administration covered by part 74. Therefore, the Department lacks authority to include assistance contracts within the scope of grants.

Change: The Department has decided to adopt the definition of "grant" that is currently embodied in the common regulations implementing OMB Circular A-102 and codified for the Department at 34 CFR part 80. The definition achieves the same objectives as the proposed amendment and is consistent with the Department's implementation of government-wide regulations for State and local governmental entities.

Section 74.47 Interest Earned on Advances of Grant Funds

Comment: One commenter from a public school system wanted to know what programs were subject to section 487 of the Higher Education Act of 1965 (HEA).

Discussion: Programs subject to section 487 of the HEA, as amended, are not subject to part 74. Therefore, the requirements in § 74.47 do not apply to those programs. However, to respond to the commenter's question, section 487 applies generally to the student grant, loan, and work-study programs authorized under title IV, HEA. Some of the well-known programs subject to this exception are the Pell Grant Program, the Supplemental Educational Opportunity Grant Program, the Perkins Loan Program, and the College Work-Study Program. However, section 487 does not apply to the State Student

Incentive Grant Program and the Byrd Honors Scholarship Program.

Change: None.

Comment: A commenter was concerned that the $100 annual exemption for the costs of administration for maintaining funds in the interest bearing account was insufficient. The commenter was also concerned that at times they use their own funds to support grant activities before Federal funds are paid.

Discussion: The current OMB Circular A-110 provision, upon which this amendment was based, authorizes agencies to permit grantees to retain only $100 per year for administrative expenses. Therefore, the Department cannot adopt a different dollar threshold. As a general matter, ED pays grantees by advance, except in cases where a grantee has been placed on reimbursement due to prior grant administration problems. Therefore, a grantee would not usually have to use its own funds to cover expenses before Federal funds are paid.

Change: None.

Section 74.52 Basic Rule: Costs and Contributions Acceptable

Comment: Several commenters thought that they should be able to apply any indirect costs above an indirect cost ceiling to meet cost-sharing or matching requirements. These commenters cited a provision in OMB Circular A-21 which provides "the cost of a sponsored agreement is comprised of the allowable direct costs incident to its performance, plus the allocable portion of the allowable indirect costs of the institution * * *" as the basis for their argument that these costs should be allowed for cost-sharing and matching.

Discussion: A ceiling on indirect costs for educational training grant programs has been in existence since before the Department was created. Under that provision, the Department restricts the indirect cost rate to the lesser of the negotiated indirect cost rate or eight percent. Whichever rate applies, it determines the total allowed for indirect cost recovery by the grantee under an educational training grant program. Therefore, because the costs in excess of the ceiling are unallowable they are not covered under the A-21 provision permitting recovery of the allocable portion of the allowable excess indirect costs.

Change: None.

Section 74.73 Accounting Basis for Reports; the Financial Status Report

Comment: One comment was received from a public school system that was confused about whether it would be required to report on a cash or accrual basis. The reason it was concerned is because it keeps accounts on both a cash and a modified accrual basis.

Discussion: After publication of the NPRM for part 74, the new 34 CFR part 80 applying to State and local governments became effective October 1, 1988 (see 34 CFR 80.41). Thus, the commenter would not be subject to the rule in part 74. For grantees subject to part 74, if a grantee's accounts are maintained on a cash basis the grantee shall report on a cash basis, and if a grantee's accounts are maintained on an accrual basis the grantee shall report on an accrual basis.

Change: None.

Section 74.96 Establishing Frequency of Payments

Comment: One commenter questioned the need for establishing, in the grant award document, the frequency of payment request. According to the commenter OMB Circular A-110 provides sufficient guidance on this matter.

Discussion: OMB Circular A-110 does not apply to Department programs except to the extent adopted by the Department through regulations. The Treasury Circular 1075 and its implementing regulations, 31 CFR part 205, have the most recent government-wide requirements regarding frequency of requests for payments. The Secretary has decided to adopt those requirements.

Change: Section 74.96 has been revised to refer to 31 CFR part 205 (which contains Treasury Circular 1075) as the basis for determining how frequently a grantee may request payments.

Section 74.144 Inventions and Patents

Comment: One commenter suggested that the Department adopt Department of Commerce regulations regarding inventions and patents.

Discussion: The Department made no proposal to change this section in the NPRM. This issue was raised under a government-wide NPRM published November 4, 1988 (53 FR 44716) to consolidate regulations implementing OMB Circular A-102 and A-110. OMB has dropped the effort to consolidate these two circulars into a single common regulation. However, an interagency task force is currently preparing revisions to the common regulation implementing OMB Circular A-102. The proposed rule for A-102 will address the inventions and patents issue. The Department will take appropriate action as part of that rulemaking procedure.

Change: The reference in § 74.144 to 34 CFR part 8 is removed because that part no longer exists.

Section 74.172 Institutions of Higher Education

Comment: Several commenters objected to restating the OMB cost principles for institutions of higher education in an appendix to part 74. These commenters pointed out that revisions to the cost principles are not timely reflected in Department appendices and therefore create cost principles for Department grants that are inconsistent with the principles of other Federal agencies. For example, one commenter pointed out that the Department had not yet adopted the revised ceiling for certain components of the indirect cost rate for institutions of higher education issued by OMB as a revision to Circular A-21 on December 2, 1988. Additionally, commenters noted that, to the extent the cost principle appendices are not inconsistent with the applicable OMB circular, they are redundant.

Discussion: This issue was addressed earlier in this preamble. The Secretary agrees with these comments and has made a change.

Change: Section 74.172 is deleted. A new § 74.171 is established that adopts current OMB cost principles for each kind of entity subject to part 74.

Section 74.175 Subgrants to Commercial Organizations

Comment: One commenter suggested renaming this section to more accurately reflect its contents.

Discussion: The Secretary agrees with this comment and has decided to make a change.

Change: The section has been renamed "Cost principles applicable to the subgrants and cost-type contracts under grants." Also, paragraph (b) has been removed because the cost principles for commercial organizations are now contained in the chart established in § 74.171.

Section 75.1 Programs to Which Part 75 Applies

Comment: None.

Discussion: A correction is made to § 75.1(b) to clarify that the only portions of Public Law 81-874 (the impact Aid Program) to which otherwise relevant provisions of part 75 apply are the entitlement increase for children with disabilities under section 3(d)(2)(C) of Public Law 81-874 (20 U.S.C. 238(d)(2)(C)), and disaster assistance under section 7 of that law (20 U.S.C. 241-1). This clarification was previously

contained in a table incorporated in § 75.1(a), but was omitted inadvertently when § 75.1(a) was revised and the table was removed.

Change: Section 75.1(b) has been revised to clarify that, with respect to the Impact Aid Program, the term "direct grant program" includes only the entitlement increase for children with disabilities and disaster assistance portions of the program.

Section 75.3 ED General Grant Regulations Apply to These Programs

Comment: One commenter was concerned that the proposed removal of § 75.3 would make it difficult to determine what other general regulations applied to a program.

Discussion: As a matter of practice, the Department lists applicable regulations, including EDGAR regulations, in the program regulations, application notices, and application packages. Therefore, there is no practical need to list in part 75 of EDGAR the other EDGAR regulations that might apply to a program.

Change: None.

Section 75.60 Individuals Ineligible To Receive Assistance

Comment: None.

Discussion: The Secretary has reviewed the language regarding ineligibility of individuals to receive certain kinds of assistance based on a failure to pay financial commitments to the Federal Government and has decided to make a change.

Section 75.60, as proposed, would have provided that an individual is ineligible to receive a fellowship, scholarship, or discretionary grant funded by the Department if the individual was not current in repayment a debt to the Federal Government under certain kinds of programs and transactions and had not made satisfactory arrangements to repay the debt. The Secretary has decided that the phrase "not current in repaying a debt" may not be fully consistent with the concept of default as used in the Department's regulations regarding student financial aid. In order to make the terms in this regulation consistent with the terms understood by holders of loans subject to the student financial aid regulations in 34 CFR part 668, the final regulations add the phrase "in default on a debt" to the phrase "not current in repaying a debt" to clarify that an individual may owe funds under either a loan or a fellowship, scholarship, or discretionary grant.

Change: The phrase "in default on a debt" has been added to the phrase "not current in repaying a debt."

Section 75.61 Certification of Eligibility; Effect of Ineligibility

Comment: None.

Discussion: The proposed requirement to submit a certification including a statement that the individual has not been debarred or suspended by the Department or another Federal agency under Executive Order 12549 has been removed from these final regulations as duplicative of regulatory requirements under the Department's Nonprocurement Debarment and Suspension Regulations in 34 CFR part 85.

Change: The certification requirement in § 75.61 is revised to cover only eligibility under these regulations and under section 5301 of the Anti-Drug Abuse Act of 1988, as amended.

Section 75.62 Requirements Applicable to Entities Making Certain Awards

Comment: Two organizations were concerned that fellowships, scholarships, and direct discretionary grants to individuals might be delayed if, under § 75.62(d), the Secretary required entities to submit a list of proposed recipients.

Discussion: In proposing § 75.62(d) the Secretary was concerned that the Department have a mechanism to ensure that individuals did not falsely certify to an entity regarding their eligibility for Department funds. However, the Secretary is aware that delays in disbursing funds to entities that make awards for the Department could impose hardship on those entities. The Secretary does not intend to delay awards made by entities for the Department. The Secretary will exercise discretion only as necessary to ensure compliance and will not unnecessarily disturb the timely processing of awards subject to this section.

Change: None.

Comment: One commenter mistakenly thought that a contract between a grantee and a consultant would be subject to the eligibility requirements in §§ 75.60–75.62.

Discussion: This is not the case. These sections only apply to fellowships, scholarships, and direct discretionary grants to individuals.

Change: None.

Comment: None.

Discussion: The proposed requirement to submit a certification including a statement that the individual has not been debarred and suspended by the Department or another Federal agency under Executive Order 12549 has been removed from these final regulations as duplicative of regulatory requirements under the Department's Nonprocurement Debarment and Suspension Regulations at 34 CFR part 85.

Change: The certification requirement in § 75.61 is revised to cover only eligibility under these regulations and under section 5301 of the Anti-Drug Abuse Act of 1988, as amended.

Section 75.105 Annual Priorities

Comment: One commenter recommended that the practice of establishing absolute priorities through regulations be eliminated. The commenter was concerned that absolute priorities might reduce competition and circumvent congressional intent by establishing "set asides" that were not established by Congress.

Discussion: The Department has had in effect, since January 1981, regulations describing how the Department establishes annual priorities for grant competitions. The regulations, 34 CFR 75.105, describe three kinds of priorities—invitational, competitive preference, and absolute priorities. The proposed amendment merely clarified the language in § 75.105(c)(3) to make clear that the Secretary establishes a separate competition for applicants that meet an absolute priority.

The Secretary ensures that the establishment of any priorities are in furtherance of, and not contrary to, congressional intent. The Secretary establishes priorities, including absolute priorities, in order to meet rapidly changing national needs in the educational community. Absolute priorities, of course, constitute restrictions on competitions and are subject to the rulemaking requirements of the General Education Provisions Act, section 431, and the Administrative Procedure Act (5 U.S.C. 553). The Secretary solicits public comment in accordance with those applicable rulemaking requirements when establishing new competitive and absolute priorities.

Change: None.

Comment: None.

Discussion: The Secretary believes there is a need for clarification regarding application of the current rule regarding competitive preference.

Change: The Secretary has decided to revise § 75.105(c)(2)(i) to clarify that, under a competitive preference, the Secretary may award a range of additional points to an application, depending upon how well the application meets the competitive preference.

Sections 75.111 Describe the Project; 75.113 Describe the Key Personnel; 75.114 Describe the Resources; 75.115 Describe the Evaluation Plan; and 75.116 Demonstrate Capability; Include Evaluation of Completed Project

Comment: One commenter was concerned that the removal of §§ 75.111, 75.113, 75.114 and 75.115 would permit the Department to fund formula grantees that did not have a clear sense of purpose or a means to evaluate the effectiveness of their programs.

Discussion: The authorizing statute and implementing program regulations for direct formula grant programs establish eligibility requirements. These program-specific requirements are sufficient to ensure that the programs meet their intended purpose. These EDGAR provisions and § 75.116 are removed in accordance with the policy of the Paperwork Reduction Act of 1980. As stated in the preamble to the NPRM, the Paperwork Reduction Act of 1980 and OMB's implementing regulations prohibit Federal agencies from collecting information that is not essential to determine funding under a program.

Change: None.

Sections 75.200 How Applications for New Grants and Cooperative Agreements Are Selected for Funding; Standards for Use of Cooperative Agreements; and 75.262 Conversion of a Grant or a Cooperative Agreement

Comment: One commenter questioned the need for regulations on cooperative agreements. This commenter suggested the Department had been awarding cooperative agreements for some time and that the commenter was unaware of any problems in the award and administration of these agreements.

Discussion: As stated in the preamble to the NPRM, the Department is awarding more cooperative agreements each year. The Secretary has determined that all applicants should be aware of the possibility of receiving these types of awards and the criteria for receiving and administering them.

Change: None.

Comment: Two commenters recommended that the Department apply the requirements of OMB Circular A-110, "Grants and Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations," to all cooperative agreements.

Discussion: OMB Circular A-110 provides guidance to Federal agencies regarding administering grants and cooperative agreements that should be applied to certain types of organizations. The Department has implemented those requirements in 34 CFR part 74. The Department already applies part 74 to the organizations that are subject to that part.

Change: None.

Comment: Three commenters did not think that the Secretary could convert grants to cooperative agreements or cooperative agreements to grants and, therefore, proposed that the criteria for conversion from one form of assistance to the other should not be implemented.

Discussion: The Federal Grant and Cooperative Agreement Act and its legislative history clearly indicate that Congress envisioned conversion between these two types of award instruments. For example, 31 U.S.C. 6308 provides that a project may be funded under both a grant and cooperative agreement, depending on the nature of the project during its different stages. The OMB guidance on this subject also supports conversions between grants and cooperative agreements (43 FR 36860, August 18, 1978). The Secretary does not envision frequent use of this authority. However, the exercise of good stewardship over Federal grant funds requires that the Secretary make changes to awards if necessary to ensure that program objectives are met in the most efficient manner.

Change: None.

Section 75.216 Applications Not Evaluated for Funding

Comment: One commenter thought the amendment to § 75.216 eliminated a requirement to explain the reason an application was not evaluated.

Discussion: This is not the case. The current § 75.216 requires the Secretary to return an application that is not evaluated. The Secretary proposed only to eliminate this requirement to reduce costs to the Department in managing grant competitions.

A related amendment was made to § 75.218, "Applications not selected for funding" to broaden its scope. As revised, § 75.218 now requires the Secretary to inform an applicant if its application is not evaluated or selected. As revised, § 75.216 only contains the standards for whether an application will be evaluated under a particular program.

Change: None.

Section 75.218 Applications Not Evaluated or Selected for Funding

Comment: Three commenters were concerned about the Secretary's proposed elimination of the requirement to explain why an application was not selected.

Discussion: Currently, the Secretary informs an applicant if its application is not selected. These letters may be brief in their explanation, and sometimes applicants request additional information. The Secretary has always provided that additional information if requested. The Secretary did not intend, through these amendments, to put an end to that practice. In response to the comments, the Secretary has decided to clarify § 75.218.

Change: Section 75.218 is revised to explicitly state the current practice.

Section 75.233 Setting the Amount of the Grant

Comment: One commenter was concerned that the proposed changed to § 75.233 were an attempt by the Department to circumvent statutory cost-sharing or matching requirements. Another commenter thought the current language in EDGAR was clearer regarding the Secretary's authority to set the amount of the grant.

Discussion: In response to the first commenter, the Secretary did not intend any changes to the matching requirements in statutes. Rather, the intent was to make it clear that the 100 percent rule was subject to statutory requirements. In some cases, even if cost-sharing or matching requirements do not apply, the Secretary may not fund 100 percent of the costs of the project because the applicant proposes to earn income under the grant that could be included in the overall costs of the grant. In other cases, an applicant may have resources of its own, such that it only requests seed money to get a project started.

Change: None.

Section 75.261 Extension of a Project Period

Comment: One commenter thought that the 45-day period for requesting an extension of a grant was too restrictive.

Discussion: After considering this comment, the Secretary has decided to relax the proposed rule so that a grantee may give notice about the need to extend a grant after the start of the 45-day period if certain conditions exist. Under the final rule, the Secretary may permit a grantee to give notice after the start of the 45-day period if it could not reasonably have known of the need to extend the project before the start of the time period or if the failure to give notice was unavoidable.

Change: Section 75.261 has been revised so that the 45-day timing requirement may be waived under certain circumstances. The Secretary has also decided to add a requirement that a grantee must include in its written

statement the period of time for which the extension is requested.

Section 75.518 Minimum Wage Rates

Comment: One commenter thought the proposed removal of § 75.518, which informed grantees of their obligation to pay minimum wage required by law, was unwise because the requirement is controversial.

Discussion: The Secretary proposed to remove the reference to minimum wage rates because they are established in Federal law and the section, which merely informs grantees of the requirement, does not add any force to the Federal Government's ability to enforce the requirement.

Change: None.

Section 75.580 Coordination With Other Activities; and 75.581 Methods of Coordination

Comment: None.

Discussion: These sections were designed, in part, to meet a statutory requirement for coordination. The statute is no longer effective (See section 210 of the Elementary and Secondary Education Act, as added by section 201 of Public Law 95–561, and removed by Public Law 97–35, section 587(a)). The Secretary did not intend that discretionary grantees stop coordinating Federal programs, only to remove detailed requirements regarding that coordination.

Change: The Secretary has decided to retain the general coordination requirement contained in paragraph (a) of the current regulation.

Section 75.590 Evaluation by the Grantee

Comment: One commenter was concerned that removing the list of traditionally underrepresented groups and private school students, if required to be served, from § 75.590(c) indicated an insensitivity to ensuring that the needs of these groups were met in programs administered by the Department.

Discussion: The list was removed because most programs of the Department are very specific regarding the types of persons that may be served. For example, if a program requires grantees to serve infants and toddlers it would be inappropriate to evaluate the effect of this program on the elderly. Therefore, the Secretary has decided to eliminate the list. The Secretary is, of course, concerned that the groups of persons included in the list be appropriately served to the extent they can be served under the programs of the Department. These concerns will be addressed in program regulations, as needed.

Change: None.

Section 75.621 Copyright Policy for Grantees

Comment: None.

Discussion: The NPRM for this document proposed to make a technical amendment to this section to remove a reference to copyright policy for contractors. However, that amendment was made when the Education Department Acquisition Regulation (EDAR) was published as final regulations on May 26, 1988 (53 FR 19118).

Change: Section 75.621 is being amended to refer to the copyright policy established in both part 74 and part 80.

Section 76.125 What Is the Purpose of These Regulations?

Comment: Although no comment was received on § 76.125, the Secretary has reviewed that section since publication of the NPRM and has decided to make a change.

Discussion: The Secretary has decided to remove the chart of programs which an Insular Area may propose to include in a consolidated grant and replace it with a simple description of the category of programs that may be proposed for consolidation by an Insular Area. The Secretary has determined that Insular Areas may propose to consolidate any two or more State-administered formula grant programs and carry out any one or more of those programs. The chart was intended to inform Insular Areas of those programs that could be consolidated. However, the chart was often incomplete or out-of-date due to new or amended legislation. Therefore, the chart in § 76.125 has been removed.

Change: The chart in § 76.125 is removed and conforming amendments are made to paragraphs (a) and (c).

Section 76.300 Contact the State for Procedures To Follow

Comment: One commenter was concerned because he thought that the effect of the amendment to § 76.300 was to eliminate a State's responsibility under the current EDGAR to inform subgrant applicants, upon request, of the procedures the applicant must follow to apply for assistance. The commenter also thought that the proposed revision would eliminate any State responsibility to have procedures for applicants to use in applying for subgrants. Another commenter suggested adding a phrase to § 76.300 to indicate that the State should establish procedures for an applicant to follow in amending its application.

Discussion: The Secretary did not intend to eliminate a State's responsibility to establish procedures for applicants to follow in applying for subgrants. The Secretary has decided not to change the current § 76.300. The requirement to maintain procedures is in proposed § 76.700. The concerns of the second commenter are addressed below under § 76.700.

Change: The amendment proposed in the NPRM is not adopted.

Section 76.401 Disapproval of an Application—Opportunity for a Hearing

Comment: One commenter was concerned that this section did not list chapters 1 and 2 of title I of the Elementary and Secondary Education Act (ESEA) as programs for which a hearing is required before a State may disapprove an application for a subgrant.

Discussion: Both chapters 1 and 2 of the ESEA are subject to section 425 of the General Education Provisions Act (GEPA), which requires that a State educational agency provide a local educational agency a hearing before it disapproves the local educational agency's application for a subgrant. This GEPA requirement is implemented in § 76.401. Notices of final rulemaking were published for chapter 1 (May 19, 1989, 54 FR 21752) and chapter 2 (April 18, 1990, 55 FR 14810) in which the Secretary amended the chart in § 76.401 to include those programs.

Change: The chapter 1 and chapter 2 programs are included in the final chart.

Comment: None.

Discussion: The list published in the NPRM did not include the chapter 1, State-Operated or Supported Programs for Handicapped Children. That program requires that a State offer a subrecipient a hearing before it denies an application for assistance.

Change: The chapter 1, State-Operated or Supported Programs for Handicapped Children has been added to the list in § 76.401.

Section 76.563 Restricted Indirect Cost Rate—Programs Covered

Comment: None.

Discussion: In the NPRM the Department proposed to revise this section for clarity. Since that time, the Department has published final regulations for chapter 2 that revise this section. Therefore, the proposal in the NPRM for this EDGAR rulemaking effort is no longer necessary.

Change: The proposed revision to § 76.563 is not made.

Sections 76.580 Coordination With Other Activities; and 76.581 Methods of Coordination

Comment: One commenter recommended that these sections not be removed, stating that a coordination requirement was useful to State agencies in directing the effective and efficient use of Federal funds by State and local agencies.

Discussion: These sections were designed, in part, to meet a statutory requirement for coordination. That statute is no longer effective (See section 210 of the Elementary and Secondary Education Act, as added by section 201 of Public Law 95–561, and removed by Public Law 97–35, section 587(a)). The Secretary did not intend that State agencies stop coordinating Federal programs, only to remove detailed requirements regarding that coordination.

Change: The Secretary has decided to retain the general coordination requirement contained in paragraph (a) of the current regulation.

Section 76.684 Day Care Services

Comment: One commenter asked whether the removal of this section had been evaluated for its effect on day care centers funded under Part H of the Education of the Handicapped Act (now IDEA).

Discussion: Section 76.684 requires a State or subgrantee that uses funds to provide day care services to comply with Department of Health and Human Services (HHS) day care regulations in 45 CFR part 71. However, HHS revoked those regulations on February 22, 1982, as a result of the passage of the Omnibus Budget Reconciliation Act of 1981, Public Law 97–35. Therefore, the reference to 45 CFR part 71 is obsolete and its removal will not affect services provided under part H of IDEA.

Change: None.

Section 76.770 A State Shall Have Procedures To Ensure Compliance

Comment: One commenter suggested that § 76.770, as proposed for revision, would impose more burdensome administrative requirements on a State educational agency than the current § 76.770 which requires States to monitor projects. The commenter also was concerned that the section duplicated monitoring requirements in part 74 and appeared to impose a requirement to evaluate projects under all Departmental programs, whether or not an evaluation is required by statute under certain programs. Finally, the commenter thought that the phrase "other administrative responsibilities" was too vague for States to be held accountable.

Discussion: The requirement to monitor projects has been dropped as duplicative of the monitoring requirement in part 80. Part 74 has not applied to State and local government grants made since October 1, 1988. Pursuant to a common rulemaking document published in the **Federal Register** on March 11, 1988, (See 53 FR 8034), uniform requirements applicable to State educational agencies are now in part 80. The requirements in the proposed § 76.770 would not be more burdensome than the current EDGAR requirements. Under the current § 76.772, a State has to assist in the evaluation of all projects subject to part 76. Under the proposed revision to § 76.770, a State need only have procedures to ensure that projects are evaluated. Finally, in order to avoid any ambiguity about what procedures may be required, the Secretary has revised the requirements regarding other administrative responsibilities so that the State must make its own determination regarding what procedures are necessary for administration of State-administered formula grant programs.

Change: § 76.770 has been revised to remove the requirement for States to monitor projects, which is covered under part 80 in § 80.40 and to limit State administrative responsibilities to those determined necessary by the State.

Section 76.901 Office of Administrative Law Judges

Comment: None.

Discussion: Section 76.901 is revised to refer to the authority of the Office of Administrative Law Judges (OALJ). The OALJ was established under the Hawkins-Stafford Amendments of 1988, Public Law 100–297. The OALJ replaces the Education Appeal Board (EAB). The OALJ has jurisdiction over cases arising after October 25, 1988. The EAB continues to have jurisdiction over cases arising before that date.

Change: A technical revision is made to § 76.901.

Section 77.1 Definitions That Apply to All Department Programs

Comment: One commenter asked the Department to establish a definition for "instructional educational materials." The commenter pointed out that many statutes define these terms for the purposes of certain programs.

Discussion: The differences in program statutes, noted by the commenter, preclude a common definition of this term.

Change: None.

Waiver of Proposed Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)) and the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, regarding adoption of OMB Circulars A–21 and A–122, OMB has already offered a full opportunity to comment on those proposed Circulars. Therefore, the Secretary has determined, under 5 U.S.C. 553(b)(B), that proposed rulemaking is unnecessary and contrary to the public interest. Accordingly, for good cause, the Secretary waives proposed rulemaking and adopts OMB Circulars. Therefore, the Secretary has determined, under 5 U.S.C. 553(b)(B), that proposed rulemaking is unnecessary and contrary to the public interest. Accordingly, for good cause, the Secretary waives proposed rulemaking and adopts OMB Circulars A–21 and A–122.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects

34 CFR Part 74

Administrative practice and procedure, Education Department, Grant programs-education, Grant administration.

34 CFR Part 75

Education Department, Grant programs-education, Grant administration, Incorporation by reference.

34 CFR Part 76

Education Department, Grant programs-education, Grant administration, Intergovernmental relations, State-administered programs.

34 CFR Part 77

Definitions.

34 CFR Part 237

Colleges and universities, Education, Elementary and secondary education, Scholarships and fellowships, Teachers.

34 CFR Part 263

Business and administration, Colleges and universities, Education, Engineers, Health professions, Indians-education, Law, Medical and dental schools, Natural resources, Psychology and clinical psychology, Scholarships and fellowships, Teachers.

34 CFR Part 300

Administrative practice and procedure, Education, Education of handicapped, Equal educational opportunity, Grant programs-education, Privacy, Private schools.

34 CFR Part 356

Education, Educational research, Fellowships.

34 CFR Part 562

Bilingual education, Education, Elementary and secondary education, Grant programs-education, Reporting and recordkeeping requirements, Scholarships and fellowships.

34 CFR Part 630

Colleges and universities, Education, Government contracts, Grant programs-education, Reporting and recordkeeping requirements.

34 CFR Part 653

Education, Grant programs, State-administered, Student aid.

34 CFR Part 654

Education, Grant programs, Student aid.

34 CFR Part 762

Education, Educational research, Fellowships, Teachers.

(Catalog of Federal Domestic Assistance Number does not apply.)

Dated: June 23, 1992.

Lamar Alexander,

Secretary of Education.

The Secretary amends parts 74, 75, 76, 77, 237, 263, 300, 356, 562, 630, 653, 654, and 762 of title 34 of the Code of Federal Regulations as follows:

PART 74—ADMINISTRATION OF GRANTS

1. The authority citation for part 74 is revised to read as follows:

Authority: 20 U.S.C. 1221e-3(a)(1) and 3474, OMB Circular A-110, unless otherwise noted.

2. An authority citation is added following each section of part 74 that does not already have an authority citation, or the existing authority citation is revised, to read as follows:

(Authority: 20 U.S.C. 1221e-3(a)(1) and 3474, OMB Circular A-110)

3. Section 74.3 is amended by revising the definition of "grant" to read as follows:

§ 74.3 Definitions.

* * * * *

Grant means an award of financial assistance, including cooperative agreements, in the form of money, or property in lieu of money, by the Federal Government to an eligible grantee. The term does not include technical assistance which provides services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, interest subsidies, insurance, or direct appropriations. Also, the term does not include assistance, such as a fellowship or other lump sum award, which the grantee is not required to account for.

* * * * *

(Authority: 20 U.S.C. 1221e-3(a)(1) and 3474, OMB Circular A-110)

4. Section 74.47 is revised to read as follows:

§ 74.47 Interest earned on advances of grant funds.

(a) Unless exempted by Federal statute (see paragraph (b) of this section for the principal exemption)—

(1) Recipients shall maintain advances of Federal funds in interest-bearing accounts pending disbursement;

(2) Interest earned on Federal advances deposited in those accounts must be remitted promptly, but at least quarterly, to the Department; and

(3) A recipient may retain interest income up to $100 per year to assist in the recoupment of administrative expenses.

(b) In accordance with 31 U.S.C. 6503, States are not accountable to the Federal Government for interest earned by the State itself, or by its subgrantees, if this income is earned on an advance of funds made under a Department grant.

(c) Recipients are subject to the provisions in § 74.61(e) for minimizing the time between the transfer of advances their disbursement. Those provisions apply even if there is no accountability to the Federal Government for interest or other investment income earned on the advances.

(d) The following definitions apply to this section:

(1) *Interest* includes any interest or investment income earned by grantees, subgrantees, and cost-type contractors on advances of Department grant funds to the grantee.

(2) *State* includes any agency or instrumentality of a State but does not include any local government in a State.

(3) Notwithstanding the definition of "grant" in § 74.3, the word "grant", as used in this section, has the meaning given in 31 U.S.C. 6501(4)(A).

(Authority: 20 U.S.C. 1221e-3(a)(1) and 3474, 31 U.S.C. Chapter 65, OMB Circular A-110)

5. In § 74.73, the section heading and paragraphs (a) and (b) are revised to read as follows:

§ 74.73 Accounting basis for reports; the financial status report.

(a) Each grantee shall report program outlays and program income on the same accounting basis, either cash or accrued expenditure (accrual), that it uses in its accounting system.

(b) The Secretary may require a grantee to use Standard Form 269, Financial Status Report, to report the Status of funds for nonconstruction grants.

* * * * *

6. In § 74.74, paragraphs (a), (c), and (d) are revised to read as follows:

§ 74.74 Federal cash transactions report.

(a) *Reporting payments.* (1) The Secretary may require a grantee to submit Standard Form 272 to report payments under a grant.

(2) This report is used by the Secretary to monitor cash advanced to the grantee and to obtain disbursement or outlay information for each grant. The Secretary may also use this form to determine the status of funds for a nonconstruction grant.

* * * * *

(c) *Cash in hands of secondary recipients.* If the submission of a report is considered necessary and feasible by the Secretary, the Secretary may require a grantee to report the amount of cash subadvances in excess of three days' need in the hands of its subgrantees or contractors and to provide short narrative explanations of actions taken by the grantee to reduce the excess balances.

(d) *Frequency and due date.* A grantee shall submit the report on a quarterly

basis. If a Department grant authorizes advances at an annualized rate of one million dollars or more, the Secretary may require submission of the report on a monthly basis.

* * * * *

7. Section 74.75 is amended by revising paragraph (a), redesignating paragraph (b) as paragraph (c), and adding a new paragraph (b), to read as follows:

§ 74.75 Request for advance or reimbursement.

(a) The Secretary includes in the terms and conditions of a grant—

(1) A statement about whether the grantee will be paid by advance or reimbursement; and

(2) Instructions regarding how the grantee must request advances or reimbursements under the grant.

(b) Pursuant to any applicable regulations, the Secretary may change, at any time, the method of making payments to a grantee.

* * * * *

8. Section 74.76(c) is amended by removing "by 74.73(b)" and adding in its place "by 74.73(a)".

9. Section 74.91 is amended by removing the definition of "Advance by Treasury check" and by adding, in its place, a definition of "Advance" to read as follows:

§ 74.91 Definitions.

* * * * *

Advance is a payment made by the Department to a grantee, upon its periodic request or through the use of predetermined payment schedules, before outstanding obligations are liquidated by the grantee.

* * * * *

10. Section 74.93 is revised to read as follows:

§ 74.93 Payment methods under Department grants.

The Department makes payments to a grantee using the most efficient and cost-effective method available in accordance with Treasury Circular 1075 (31 CFR part 205) and any supplementary instructions prescribed by the Department of the Treasury.

(Authority: 20 U.S.C. 1221e-3(a)(1) and 3474, OMB Circular A-110)

11. Section 74.94 is removed.

12. Section 74.96 is revised to read as follows:

§ 74.96 Establishing frequency of payments.

The Secretary determines the frequency with which a grantee may make requests for payment in accordance with Treasury Circular 1075 (31 CFR part 205) and any supplementary instructions prescribed by the Department of the Treasury.

(Authority: 20 U.S.C. 1221e-3(a)(1) and 3474, OMB Circular A-110)

§ 74.144 [Amended]

13. Section 74.144 is amended by removing "Parts 6 and 8" and by adding, in its place, "Part 6".

14. A new Section 74.171 is added, to read as follows:

§ 74.171 Allowable costs.

(a) *Limitation on use of funds.* Grant funds may be used only for:

(1) The allowable costs of the grantees, subgrantees and cost-type contractors, including allowable costs in the form of payments to fixed-price contractors; and

(2) Reasonable fees or profit to cost-type contractors but not any fee or profit (or other increment above allowable costs) to a grantee or subgrantee.

(b) *Applicable cost principles.* For each kind of organization, there is a set of Federal principles for determining allowable costs. Allowable costs will be determined in accordance with the cost principles applicable to the organization incurring the costs. The following chart lists the kinds of organizations and the applicable cost principles.

For the costs of a—	Use the principles in—
Private nonprofit organization other than: (1) An institution of higher education, (2) a hospital, or (3) an organization named in OMB Circular A-122 as not subject to that circular.	OMB Circular A-122.
Educational institution	OMB Circular A-21.
Hospital	Appendix E to 45 CFR Part 74.
Commercial (for-profit) organization other than a hospital and an educational institution.	48 CFR Part 31 Contract Cost Principles and Procedures, or uniform cost accounting standards that comply with cost principles acceptable to the Education Department.

(Authority: 20 U.S.C. 1221e-3(a)(1) and 3474, OMB Circular A-110)

§ 74.172 and Appendix D to Part 74 [Removed]

15. Section 74.172 and Appendix D to part 74 are removed.

§ 74.173 and Appendix E to Part 74 [Removed]

16. Section 74.173 and Appendix E to part 74 are removed.

§ 74.174 [Removed]

17. Section 74.174 is removed.

18. Section 74.175 is revised to read as follows:

§ 74.175 Cost principles applicable to subgrants and cost-type contracts under grants.

The cost principles applicable to a subgrantee or cost-type contractor under a grant are not necessarily the same as those applicable to the grantee. For example, if a State government awards a subgrant or cost-type contract to an institution of higher education, OMB Circular A-21, as specified in § 74.171, applies to the costs incurred by the institution of higher education, even though OMB Circular A-87 applies to the costs incurred by the State.

(Authority: 20 U.S.C. 1221e-3(a)(1) and 3474, OMB Circular A-110)

PART 75—DIRECT GRANT PROGRAMS

19. The authority citation for Part 75 is revised to read as follows:

(Authority: 20 U.S.C. 1221e-3(a)(1) and 3474, unless otherwise noted.

20. The authority citation following each section in part 75 that is not amended by this document, is revised to read as follows:

(Authority: 20 U.S.C. 1221e-3(a)(1) and 3474)

21. Section 75.1 is amended by adding a third sentence to paragraph (b) to read as follows:

§ 75.1 Programs to which Part 75 applies.

* * * * *

(b) * * * With respect to Public Law 81-874 (the Impact Aid Program), the term "direct grant program" includes only the entitlement increase for children with disabilities under section 3(d)(2)(C) of Public Law 81-874 (20 U.S.C. 238(d)(2)(C) and disaster assistance under section 7 of that law (20 U.S.C. 241-1).

* * * * *

§ 75.3 [Removed]

22. Section 75.3 is removed.

23. Section 75.4 is amended by revising the introductory language in paragraph (a) and paragraph (a)(1) to read as follows:

§ 75.4 Department contracts.

(a) A Federal contract made by the Department is governed by—

(1) Chapters 1 and 34 of Title 48 of the Code of Federal Regulations (Federal

Acquisition Regulation and Education Department Acquisition Regulation).

* * * * *

24. New §§ 75.60–75.62 are added and a new center heading is added preceding these sections, to read as follows:

Ineligibility of Certain Individuals To Receive Assistance

§ 75.60 Individuals ineligible to receive assistance.

(a) An individual is ineligible to receive a fellowship, scholarship, or discretionary grant funded by the Department if the individual—

(1) Is not current in repaying a debt or is in default, as that term is used in 34 CFR part 668, on a debt—

(i) Under a program listed in paragraph (b) of this section; or

(ii) To the Federal Government under a nonprocurement transaction; and

(2) Has not made satisfactory arrangements to repay the debt.

(b) An individual who is not current in repaying a debt, or is in default, as that term is used in 34 CFR part 668, on a debt under a fellowship, scholarship, discretionary grant, or loan program, as included in the following list, and who has not made satisfactory arrangements to repay the debt, is ineligible under paragraph (a) of this section:

(1) A grant awarded under the Pell Grant (20 U.S.C. 1070a, *et seq.*), Supplemental Educational Opportunity Grant (SEOG) (20 U.S.C. 1070b, *et seq.*), or State Student Incentive Grant (SSIG) (20 U.S.C. 1070c, *et seq.*) program, or a scholarship awarded under the Robert C. Byrd Honors Scholarship Program (20 U.S.C. 1070d–31, *et seq.*), a fellowship awarded under the Jacob K. Javits Fellows Program (20 U.S.C. 1134h–1134k), or a fellowship awarded under the Patricia Roberts Harris Fellowship Program (20 U.S.C. 1134d–1134f).

(2) A fellowship awarded under the Christa McAuliffe Fellowship Program (20 U.S.C. 1113–1113e), the Bilingual Education Fellowship Program (20 U.S.C. 3221–3262), or the Rehabilitation Long-Term Training Program (29 U.S.C. 774(b)).

(3) A loan made under the Perkins Loan Program (20 U.S.C. 1087aa, *et seq.*), the Income Contingent Direct Loan Demonstration Project (20 U.S.C. 1087a, *et seq.*), the Stafford Loan Program, Supplemental Loans for Students (SLS), PLUS, or Consolidation Loan Program (20 U.S.C. 1071, *et seq.*), or the Cuban Student Loan Program (22 U.S.C. 2601, *et seq.*).

(4) A scholarship or repayment obligation incurred under the Paul Douglas Teacher Scholarship Program (20 U.S.C. 1111, *et seq.*).

(5) A grant, or a loan, made under the Law Enforcement Education Program (42 U.S.C. 3775).

(6) A stipend awarded under the Indian Fellowship Program (29 U.S.C. 774(b)).

(Authority: 20 U.S.C. 1221e–3(a)(1) and 3474)

§ 75.61 Certification of eligibility; effect of ineligibility.

(a) An individual who applies for a fellowship, scholarship, or discretionary grant from the Department shall provide with his or her application a certification under the penalty of perjury—

(1) That the individual is eligible under § 75.60; and

(2) That the individual has not been debarred or suspended by a judge under section 5301 of the Anti-Drug Abuse Act of 1988 (21 U.S.C. 853a).

(b) The Secretary specifies the form of the certification required under paragraph (a) of this section.

(c) The Secretary does not award a fellowship, scholarship, or discretionary grant to an individual who—

(1) Fails to provide the certification required under paragraph (a) of this section; or

(2) Is ineligible, based on information available to the Secretary at the time the award is made.

(d) If a fellowship, scholarship, or discretionary grant is made to an individual who provided a false certification under paragraph (a) of this section, the individual is liable for recovery of the funds made available under the certification, for civil damages or penalties imposed for false representation, and for criminal prosecution under 18 U.S.C. 1001.

(Authority: 20 U.S.C. 1221e–3(a)(1) and 3474)

§ 75.62 Requirements applicable to entities making certain awards.

(a) An entity that provides a fellowship, scholarship, or discretionary grant to an individual under a grant from, or an agreement with, the Secretary shall require the individual who applies for such an award to provide with his or her application a certification under the penalty of perjury—

(1) That the individual is eligible under § 75.60; and

(2) That the individual has not been debarred or suspended by a judge under section 5301 of the Anti-Drug Abuse Act of 1988 (21 U.S.C. 853a).

(b) An entity subject to this section may not award a fellowship, scholarship, or discretionary grant to an individual if—

(1) The individual fails to provide the certification required under paragraph (a) of this section; or

(2) The Secretary informs the entity that the individual is ineligible under § 75.60.

(c) If a fellowship, scholarship, or discretionary grant is made to an individual who provided a false certification under paragraph (a) of this section, the individual is liable for recovery of the funds made available under the certification, for civil damages or penalties imposed for false representation, and for criminal prosecution under 18 U.S.C. 1001.

(d) The Secretary may require an entity subject to this section to provide a list of the individuals to whom fellowship, scholarship, or discretionary grant awards have been made or are proposed to be made by the entity.

(Authority: 20 U.S.C. 1221e–3(a)(1) and 3474)

25. Section 75.105(c)(2)(i) and (3) are revised to read as follows:

§ 75.105 Annual priorities.

* * * * *

(c) * * *

(2) * * *

(i) If a program uses weighted selection criteria, the Secretary may award bonus points to an application that meets the priority. These points are in addition to any points the applicant earns under the selection criteria (see § 75.200(b)). The notice states the maximum number of additional points that the Secretary may award to an application depending upon how well the application meets the priority.

* * * * *

(3) *Absolute preference.* The Secretary may give an absolute preference to applications that meet a priority. The Secretary establishes a separate competition for applications that meet the priority and reserves all or part of a program's funds solely for that competition. The Secretary may adjust the amount reserved for the priority after determining the number of high quality applications received.

* * * * *

§§ 75.107, 75.108, 75.110, 75.111, 75.113, 75.114, 75.115, and 75.116 [Removed]

26. Sections 75.107, 75.108, 75.110, 75.111, 75.113, 75.114, 75.115, and 75.116 are removed.

§ 75.118 [Amended]

27. The note following § 75.118 is removed.

§§ 75.130 through 75.134 [Removed]

28. Sections 75.130 through 75.134, and the center heading "Preapplications", are removed.

§§ 75.150 through 75.154 [Removed]

29. Sections 75.150 through 75.154, and the center heading "State Approval Procedures", are removed.

30. Section 75.155 is revised and a cross-reference is added following the section to read as follows:

§ 75.155 Review procedures if State may comment on applications: purpose of §§ 75.156–75.158.

If the authorizing statute for a program requires that a specific State agency be given an opportunity to comment on each application, the State and the applicant shall use the procedures in §§ 75.156–75.158 for that purpose.

(Authority: 20 U.S.C. 1221e–3(a)(1) and 3474)

Cross-Reference: See 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities) for the regulations implementing the application review procedures that States may use under E.O. 12372.

§ 75.160 [Removed]

31. Section 75.160 is removed.

32. Section 75.200 is amended by revising the section heading and adding paragraphs (b)(4) and (5) to read as follows:

§ 75.200 How applications for new grants and cooperative agreements are selected for funding; standards for use of cooperative agreements.

* * * * *

(b) * * *

(4) The Secretary may award a cooperative agreement instead of a grant if the Secretary determines that substantial involvement between the Department and the recipient is necessary to carry out a collaborative project.

(5) The Secretary uses the selection procedures in this subpart to select recipients of cooperative agreements.

* * * * *

33. Section 75.216 is revised to read as follows:

§ 75.216 Applications not evaluated for funding.

The Secretary does not evaluate an application if—

(a) The applicant is not eligible;

(b) The applicant does not comply with all of the procedural rules that govern the submission of the application;

(c) The application does not contain the information required under the program; or

(d) The proposed project cannot be funded under the authorizing statute or implementing regulations for the program.

(Authority: 20 U.S.C. 1221e–3(a)(1) and 3474)

34. Section 75.218 is revised to read as follows:

§ 75.218 Applications not evaluated or selected for funding.

(a) The Secretary informs an applicant if its application—

(1) Is not evaluated; or

(2) Is not selected for funding.

(b) If an applicant requests an explanation of the reason its application was not evaluated or selected, the Secretary provides that explanation.

(Authority: 20 U.S.C. 1221e–3(a)(1) and 3474)

35. Section 75.233 is revised to read as follows:

§ 75.233 Setting the amount of the grant.

(a) Subject to any applicable matching or cost-sharing requirements, the Secretary may fund up to 100 percent of the allowable costs in the applicant's budget.

(b) In deciding what percentage of the allowable costs to fund, the Secretary may consider any other financial resources available to the applicant.

(Authority: 20 U.S.C. 1221e–3(a)(1) and 3474)

36. Section 75.234 is revised to read as follows:

§ 75.234 The conditions of the grant.

(a) The Secretary makes a grant to an applicant only after determining—

(1) The approved costs; and

(2) Any special conditions.

(b) In awarding a cooperative agreement, the Secretary includes conditions that state the explicit character and extent of anticipated collaboration between the Department and the recipient.

(Authority: 20 U.S.C. 1221e–3(a)(1) and 3474)

37. Section 75.235 is amended by revising paragraph (b) to read as follows:

§ 75.235 The notification of grant award.

* * * * *

(b) The notification of grant award sets the amount of the grant award and establishes other specific conditions, if any.

38. Section 75.253 is amended by revising paragraph (a)(2), redesignating paragraph (d) as paragraph (e), and adding a new paragraph (d) to read as follows:

§ 75.253 Continuation of a multi-year project after the first budget period.

(a) * * *

(2) The grantee has either—

(i) Made substantial progress toward meeting the objectives in its approved application; or

(ii) Obtained the Secretary's approval of changes in the project that—

(A) Do not increase the cost of the grant; and

(B) Enable the grantee to meet those objectives in succeeding budget periods;

* * * * *

(d) (1) If the Secretary decides, under this section, not to make a continuation award, the Secretary may authorize a no-cost extension of the last budget period of the grant in order to provide for the orderly closeout of the grant.

(2) If the Secretary makes a continuation award under this section—

(i) The Secretary makes the award under §§ 75.231–75.236; and

(ii) The new budget period begins on the day after the previous budget period ends.

* * * * *

39. Section 75.261 is revised to read as follows:

§ 75.261 Extension of a project period.

(a) The Secretary may extend a project period if—

(1) The extension does not violate any statute or regulations;

(2) The extension does not involve the obligation of additional Federal funds;

(3) The extension is to carry out the activities in the approved application; and

(4)(i) The Secretary determines that, due to special or unusual circumstances applicable to a class of grantees, the project periods for the grantees should be extended; or

(ii)(A) The Secretary determines that special or unusual circumstances would delay completion of the project beyond the end of the project period;

(B) The grantee requests an extension of the project at least 45 calendar days before the end of the project period; and

(C) The grantee provides a written statement before the end of the project period giving the reasons why the extension is appropriate under paragraph (a)(4)(ii)(A) of this section and the period for which the project needs extension.

(b) The Secretary may waive the requirement in paragraph (a)(4)(ii)(B) of this section if—

(1) The grantee could not reasonably have known of the need for the extension on or before the start of the 45-day time period; or

(2) The failure to give notice on or before the start of the 45-day time period was unavoidable.

(Authority: 20 U.S.C. 1221e-3(a)(1) and 3474)

40. A new § 75.262 is added to read as follows:

§ 75.262 Conversion of a grant or a cooperative agreement.

(a)(1) The Secretary may convert a grant to a cooperative agreement or a cooperative agreement to a grant at the time a continuation award is made under § 75.253.

(2) In deciding whether to convert a grant to a cooperative agreement or a cooperative agreement to a grant, the Secretary considers the factors included in § 75.200(b) (4) and (5).

(b) The Secretary and a recipient may agree at any time to convert a grant to a cooperative agreement or a cooperative agreement to a grant, subject to the factors included in § 75.200(b) (4) and (5).

(Authority: 20 U.S.C. 1221e-3(a)(1) and 3474)

§ 75.510 [Removed]

41. Section 75.510 is removed.

§ 75.518 [Removed]

42. Section 75.518 is removed.

43. In § 75.534, the introductory text and paragraph (a) are revised to read as follows:

§ 75.534 Automatic increases for additional dependents.

The Secretary may increase a grant to cover the cost of additional dependents not specified in the notice of award under § 75.235 if—

(a) Allowances for dependents are authorized by the program statute and are allowable under the grant; and

* * * * *

44. Section 75.560(a) is revised to read as follows:

§ 75.560 General indirect cost rates; exceptions.

(a) The differences between direct and indirect costs and the principles for determining the general indirect cost rate that a grantee may use for grants under most programs are specified in the cost principles for—

(1) Institutions of higher education, at 34 CFR 74.171;

(2) Hospitals, at 34 CFR 74.171;

(3) Other nonprofit organizations, at 34 CFR 74.171;

(4) Commercial (for-profit) organizations, at 34 CFR 74.171; and

(5) State and local governments and federally-recognized Indian tribal organizations, at 34 CFR 80.22.

* * * * *

45. Section 75.563 is revised to read as follows:

§ 75.563 Restricted indirect cost rate—programs covered.

Sections 75.564–75.568 apply to each program that has a statutory requirement not to use Federal funds to supplant non-Federal funds.

(Authority: 20 U.S.C. 1221e-3(a)(1) and 3474)

§ 75.580 [Amended]

46. The center heading "**Coordination**", before § 75.580 is removed; § 75.580 is amended by removing paragraphs (b)-(d), and removing the paragraph designation from paragraph (a).

§ 75.581 [Removed]

46a. Section 75.581 is removed.

47. Section 75.590 is amended by revising paragraph (c) to read as follows:

§ 75.590 Evaluation by the grantee.

* * * * *

(c) The effect of the project on participants being served by the project.

* * * * *

48. Section 75.608 is revised to read as follows:

§ 75.608 Areas in the facilities for cultural activities.

A grantee may make reasonable provision, consistent with the other uses to be made of the facilities, for areas in the facilities that are adaptable for artistic and other cultural activities.

(Authority: 20 U.S.C. 1221e-3(a)(1) and 3474)

49. Section 75.616 is revised to read as follows:

§ 75.616 Energy conservation.

(a) To the extent feasible, a grantee shall design and construct facilities to maximize the efficient use of energy.

(b) The following standards of the American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE) are incorporated by reference in this section:

(1) ASHRAE-90 A-1980 (Sections 1-9).

(2) ASHRAE-90 B-1975 (Sections 10-11).

(3) ASHRAE-90 C-1977 (Section 12).

Incorporation by reference of these provisions has been approved by the Director of the Office of the Federal Register pursuant to the Director's authority under 5 U.S.C. 552 (a) and 1 CFR part 51. The incorporated document is on file at the Department of Education, Grants and Contracts Service, rm. 3636 ROB-3, 400 Maryland Avenue, SW., Washington, DC 20202-4700 or at the Office of the Federal Register, rm. 8401, 1100 L Street, NW., Washington, DC 20005. These standards may be obtained from the publication sales department at the American Society of Heating, Refrigerating, and Air Conditioning Engineers, Inc., 1791 Tullie Circle, NE., Atlanta, Georgia 30329.

(c) A grantee shall comply with ASHRAE standards listed in paragraph (b) of this section in designing and constructing facilities built with project funds.

(Authority: 20 U.S.C. 1221e-3(a)(1) and 3474, 42 U.S.C. 6373 (b); E.O. 12185)

50. A new § 75.617 is added to read as follows:

§ 75.617 Compliance with the Coastal Barrier Resources Act.

A recipient may not use, within the Coastal Barrier Resources System, funds made available under a program administered by the Secretary for any purpose prohibited by 31 U.S.C. chapter 55 (§§ 3501-3510).

(Authority: 20 U.S.C. 1221e-3(a)(1) and 3474, 31 U.S.C. 3504, 3505)

51. Section 75.621 is amended by removing "Part 74." and adding, in its place, "Parts 74 or 80, as appropriate." and by revising the authority citation and the cross-reference following that section to read as follows:

§ 75.621 Copyright policy for grantees.

* * * * *

Cross-Reference: See 34 CFR part 74, subpart F; 34 CFR 74.145 Copyrights; and 34 CFR 80.25 and 80.34.

52. Section 75.622 is revised to read as follows:

§ 75.622 Definition of "project materials."

As used in §§ 75.620-75.621, "project materials" means a copyrightable work developed with funds from a grant of the Department.

(Authority: 20 U.S.C. 1221e-3(a)(1) and 3474)

53. Section 75.625 is removed and the cross-reference preceding this section is revised to read as follows:

Cross-Reference: See 34 CFR 74.45, Program income—royalties or equivalent income earned from patents or from inventions; 34 CFR 80.25, Program income; and 34 CFR Part 6, Inventions and Patents (General).

§ 75.626 [Amended]

54. Section 75.626 is amended by removing paragraph (b) and the paragraph designation "(a)".

55. The cross reference following § 75.681 is amended by removing "45 CFR Part 46—Protection of Human Research Subjects" and adding, in its place, "34 CFR Part 97—Protection of Human Subjects."

§ 75.684 [Removed]

56. Section 75.684 is removed.

§ 75.690 [Removed]

57. Section 75.690 is removed.

58. In § 75.707, column I, paragraph (h) in the table is revised to read as follows:

§ 75.707 When obligations are made.

* * * * *

(h) A preagreement cost that was properly approved by the Secretary under the cost principles identified in 34 CFR 74.171 or 80.22.

* * * * *

59. Section 75.720 is revised to read as follows:

§ 75.720 Financial and performance reports.

(a) This section applies to the reports required under—

(1) 34 CFR 74.73 (Financial Status Report) and 34 CFR part 74, subpart J (Monitoring and Reporting of Program Performance); and

(2) 34 CFR 80.40 (Monitoring and reporting program performance) and 34 CFR 80.41 (Financial reporting).

(b) A grantee shall submit these reports annually, unless the Secretary allows less frequent reporting. However, the Secretary may require a grantee of a grant made under 34 CFR part 700, 706, 707, or 708 (certain programs of the Office of Educational Research and Improvement) to submit performance reports more often than annually.

(c) The Secretary may, under 34 CFR 74.7 (Special grant or subgrant conditions) or 34 CFR 74.72(e) (regarding grantee accounting systems), or 34 CFR 80.12 (Special grant or subgrant conditions for "high-risk" grantees) require a grantee to report more frequently than annually.

(Authority: 20 U.S.C. 1221e-3(a)(1) and 3474)

60. Section 75.740 is amended by revising the section heading, designating the existing text as paragraph (a), adding a new paragraph (b), and revising the authority citation to read as follows:

§ 75.740 Protection of and access to student records; student rights in research, experimental programs, and testing.

(a) * * *

(b) Under most programs administered by the Secretary, research, experimentation, and testing are subject to the requirements of section 439 of GEPA and its implementing regulations at 34 CFR part 98.

(Authority: 20 U.S.C. 1221e-3(a)(1), 1232g, 1232h, and 3474)

§ 75.750 through 75.755 [Removed]

61. Sections 75.750 through 75.755, the center heading "Data Collection by a Grantee", and the cross-reference following § 75.750 are removed.

PART 76—STATE-ADMINISTERED PROGRAMS

62. The authority citation for Part 76 is revised to read as follows:

Authority: 20 U.S.C. 1221e-3(a)(1), 2831(a), 2974(b), and 3474, unless otherwise noted.

§ 76.3 [Removed]

63. Section 76.3 is removed.

64. Section 76.102 is revised to read as follows:

§ 76.102 Definition of "State plan" for part 76.

As used in this part, "State plan" means any of the following documents:

Document	Program	Authorizing statute	Principal Office
State plan	Assistance to States for Education of Handicapped Children.	Part B (except section 619), Individuals with Disabilities Education Act (20 U.S.C. 1411-1420).	OSERS
Application	Preschool Grants	Section 619, Individuals with Disabilities Education Act (20 U.S.C. 1419).	OSERS
Application	Handicapped Infants and Toddlers	Part H, Individuals with Disabilities Education Act (20 U.S.C. 1471-1485).	OSERS
Application or written request for assistance	Client Assistance Program	Section 112, Rehabilitation Act of 1973 (29 U.S.C. 732).	OSERS
Application	Removal of Architectural Barriers to the Handicapped Program.	Section 607, Individuals with Disabilities Education Act (20 U.S.C. 1406).	OSERS
State plan	State Vocational Rehabilitation Services Program.	Title I, Parts A-C, Rehabilitation Act of 1973 (29 U.S.C. 720-741).	OSERS
State plan supplement	State Supported Employment Services Program.	Title VI, Part C, Rehabilitation Act of 1973 (29 U.S.C. 795j-795r).	OSERS
State plan	State Independent Living Services Program	Title VII, Part A, Rehabilitation Act of 1973 (29 U.S.C. 796-796d).	OSERS
State plan	State Vocational Education Program	Title I, Part B, Carl D. Perkins Vocational Education Act (20 U.S.C. 2321-2325).	OVAE
State plan and application	State-Administered Adult Education Program	Section 341, Adult Education Act (20 U.S.C. 1206).	OVAE
State plan	Even Start Family Literacy Program	Title I, Chapter 1, Part B of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2741-2749).	OESE
State application	State Grants for Strengthening Instruction in Mathematics and Science.	Title II, Part A, Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 2981-2993).	OESE
State application	Federal, State and Local Partnership for Educational Improvement.	Title I, Chapter 2, Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 2911-2952 and 2971-2976).	OESE
State plan or application	Migrant Education Program	Sections 1201, 1202, Chapter 1, Title I, Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 2781 and 2782).	OESE
Application	State Student Incentive Grant Program	Section 415C, Higher Education Act of 1965 (20 U.S.C. 1070c-2).	OPE
Application	Paul Douglas Teacher Scholarship Program	Section 553, Higher Education Act of 1965 (20 U.S.C. 1111b).	OPE
Basic State plan, long-range program, and annual program.	The Library Services and Construction Act State-Administered Program.	Library Services and Construction Act (20 U.S.C. 351-355e-3).	OERI
Application	Emergency Immigrant Education Program	Emergency Immigrant Education Act (20 U.S.C. 3121-3130).	OBEMLA

Document	Program	Authorizing statute	Principal Office
Application	Transition Program for Refugee Children	Section 412(d) Immigration and Naturalization Act (8 U.S.C. 1522 (d)).	ORR/LA
Any document that the authorizing statute for a State-administered program requires a State to submit to receive funds.	Any State-administered program without implementing regulations.	Section 408(a)(1), General Education Provisions Act and Section 414, Department of Education Organization Act (20 U.S.C. 1221e-3(a)(1) and 3474).	Dept-wide

(Authority: 20 U.S.C. 1221e-3(a)(1) and 3474)

65. Section 76.125 is amended in paragraph (a) by removing "listed" and adding, in its place, "described", removing the chart following paragraph (c), by revising paragraph (c) and by revising the authority citation to read as follows:

§ 76.125 What is the purpose of these regulations?

* * * * *

(c) The Secretary may make an annual consolidated grant to assist an Insular Area in carrying out one or more State-administered formula grant programs of the Department.

(Authority: 20 U.S.C. 1221e-3(a)(1) and 3474)

§ 76.136 [Amended]

66. Section 76.136 is amended by removing "listed in § 76.125(c)(1)" and adding, in its place, "described in § 76.125(c)".

§ 76.305 [Amended]

67. Section 76.305 is removed.

68. Section 76.401(a) is revised to read as follows:

§ 76.401 Disapproval of an application—opportunity for a hearing.

(a) *State agency hearing before disapproval.* Under the programs listed in the chart below, the State agency that administers the program shall provide an applicant with notice and an opportunity for a hearing before it may disapprove the application.

Program	Authorizing statute	Implementing regulations Title 34 CFR Part
Chapter 1, Program in Local Educational Agencies	Title I, Chapter 1, Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 2701-2731, 2821-2899, 2951-2954, and 2991-2991).	200
Chapter 1, Program for Neglected and Delinquent Children	Title 1, Chapter 1, Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 2601-2604).	203
State Grants for Strengthening Instruction in Mathematics and Science	Title II, Part A, Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 2981-2993).	206
Federal, State, and Local Partnership for Educational Improvement	Title I, Chapter 2, Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 2911-2952 and 2971-2979).	298
Assistance to States for Education of Handicapped Children	Part B, Individuals with Disabilities Education Act (except Section 619) (20 U.S.C. 1411-1420).	300
Preschool Grants	Section 619, Individuals with Disabilities Education Act (20 U.S.C. 1419)	301
Chapter 1, State-Operated or Supported Programs for Handicapped Children.	Title 1, Chapter 1, Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 2791-2795).	302
Transition Program for Refugee Children	Section 412(d), Immigration and Naturalization Act (8 U.S.C. 1522(d))	538
Emergency Immigrant Education Program	Emergency Immigrant Education Act (20 U.S.C. 3121-3130)	581
Financial Assistance for Construction, Reconstruction, or Renovation of Higher Education Facilities.	Section 711, Higher Education Act of 1965 (20 U.S.C. 1132b)	617

* * * * *

69. Section 76.560 is revised to read as follows:

§ 76.560 General indirect cost rates; exceptions

(a) The differences between direct and indirect costs and the principles for determining the general indirect cost rate that a grantee may use for grants under most programs are specified in the cost principles for—

(1) Institutions of higher education, at 34 CFR 74.171;

(2) Hospitals, at 34 CFR 74.171;

(3) Other nonprofit organizations, at 34 CFR 74.171;

(4) Commercial (for-profit) organizations, at 34 CFR 74.171; and

(5) State and local governments and Federally-recognized Indian tribal organizations, at 34 CFR 80.22.

(b) Section 76.563 provides restrictions on indirect cost rates under certain programs.

(Authority: 20 U.S.C. 1221e-3(a)(1), 2381(a), and 3474)

§ 76.580 [Amended]

70. The center heading "Coordination", before § 76.560 is removed; § 76.580 is amended by removing paragraphs (b)-(d), and removing the paragraph designation from paragraph (a).

§ 76.581 [Removed]

70a. § 76.581 is removed.

§ 76.591 [Amended]

71. In § 76.591, the section number "75.591" is corrected to read "76.591".

§ 76.600 [Amended]

72. In § 76.600, "75.615" is revised to read "75.617".

73. Section 76.681 is amended by revising the section heading and adding a cross-reference following that section, to read as follows:

§ 76.681 Protection of human subjects.

* * * * *

Cross-Reference. See 34 CFR part 97—Protection of human subjects.

§ 76.684 [Removed]

74. Section 76.684 is removed.

§ 76.690 [Removed]

75. Section 76.690 is removed.

76. In § 76.707, Column I, paragraph (h) in the Table is revised to read as follows:

§ 76.707 When obligations are made.

* * * * *

(h) A preagreement cost that was properly approved by the State under the cost principals identified in 34 CFR 74.171 and 80.22.

* * * * *

77. Section 76.720 is revised to read as follows:

§ 76.720 Financial and performance reports by a State.

(a) This section applies to a State's reports required under 34 CFR 80.41 (Financial reporting) and 34 CFR 80.40 (Monitoring and reporting of program performance).

(b) A State shall submit these reports annually, unless the Secretary allows less frequent reporting.

(c) However, the Secretary may, under 34 CFR 80.12 (Special grant or subgrant conditions for "high-risk" grantees) or 34 CFR 80.20 (Standards for financial management systems) require a State to report more frequently than annually.

(Authority: 20 U.S.C. 122e-3(a)(1), 2831(a), and 3474)

78. Section 76.740 is amended by revising the section heading, designating the existing paragraph as paragraph (a), adding a new paragraph (b), and revising the authority citation to read as follows:

§ 76.740 Protection of and access to student records; student rights in research, experimental programs, and testing.

* * * * *

(b) Under most programs administered by the Secretary, research, experimentation, and testing are subject to the requirements of section 439 of GEPA and its implementing regulations at 34 CFR part 98.

(Authority: 20 U.S.C. 122e-3(a)(1), 1232g, 1232h, 2831(a), 2974(b), and 3474)

79. Section 76.770 is revised to read as follows:

§ 76.770 A State shall have procedures to ensure compliance.

Each State shall have procedures for reviewing and approving applications for subgrants and amendments to those applications, for providing technical assistance, for evaluating projects, and for performing other administrative responsibilities the State has determined are necessary to ensure compliance with applicable statutes and regulations.

(Authority: 20 U.S.C. 1221e-3(a)(1) and 3474)

§ 76.771 [Removed]

80. Section 76.771 is removed.

§ 76.772 [Removed]

81. Section 76.772 is removed.

§ 76.780 through 76.782 [Removed]

82. The center heading preceding § 76.780 is removed and §§ 76.780–782 are removed.

§ 76.783 [Amended]

83. Section 76.783(b) is amended by removing "(c)" and adding, in its place, "(d)".

84. Section 76.901 is revised to read as follows:

§ 76.901 Office of Administrative Law Judges.

(a) The Office of Administrative Law Judges, established under Part E of GEPA, has the following functions:

(1) Recovery of funds hearings under section 452 of GEPA.

(2) Withholding hearings under section 455 of GEPA.

(3) Cease and desist hearings under section 456 of GEPA.

(4) Any other proceeding designated by the Secretary under section 451 of GEPA.

(b) The regulations of the Office of Administrative Law Judges are at 34 CFR part 81.

(Authority: 20 U.S.C. 1234)

PART 77—DEFINITIONS THAT APPLY TO DEPARTMENT REGULATIONS

85. The authority citation for part 77 continues to read as follows:

Authority: 20 U.S.C. 1221e-3(a)(1), 2831(a), 2974(b), and 3474, unless otherwise noted.

86. Paragraph (c) of § 77.1 is amended by revising the definitions of "award" and "EDGAR" to read as follows:

§ 77.1 Definitions that apply to all Department programs.

* * * * *

(c) * * *

Award means an amount of funds that the Department provides under a contract, grant, or cooperative agreement.

* * * * *

EDGAR means the Education Department General Administrative Regulations (34 CFR parts 74, 75, 76, 77, 79, 80, 81, 82, 85, and 86.)

* * * * *

PART 237—CHRISTA MCAULIFFE FELLOWSHIP PROGRAM

87. The authority citation for part 237 continues to read as follows:

Authority: 20 U.S.C. 1113–1113e, unless otherwise noted.

88. Section 237.2 is amended by removing "and" at the end of paragraph (a)(4), by adding "; and" in place of the period at the end of paragraph (b), and adding a new paragraph (c) to read as follows:

§ 237.2 Who is eligible to apply under the Christa McAuliffe Fellowship Program?

* * * * *

(c) Is eligible for a fellowship under 34 CFR 75.60.

* * * * *

89. Section 237.7 is amended by revising paragraph (a), to read as follows:

§ 237.7 What regulations apply?

* * * * *

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR 75.60 and 75.61 (regarding the ineligibility of certain individuals to receive assistance) and part 77 (Definitions that Apply to Department Regulations.

* * * * *

PART 263—INDIAN FELLOWSHIP PROGRAM

90. The authority citation for part 263 is revised to read as follows:

Authority: 20 U.S.C. 3385b, unless otherwise noted.

91. Section 263.2 is amended by adding a new paragraph (c), to read as follows:

§ 263.2 Who is eligible to apply under the Indian Fellowship Program?

* * * * *

(c) An applicant must be eligible under 34 CFR 75.60.

* * * * *

92. A new section 263.9 is added, to read as follows:

§ 263.9 Application contents: Evidence of eligibility under 34 CFR 75.60.

An applicant shall submit the certification required under 34 CFR 75.61.

(Authority: 20 U.S.C. 3385b)

PART 300—ASSISTANCE TO STATES FOR EDUCATION OF HANDICAPPED CHILDREN

93. The authority citation for part 300 continues to read as follows:

Authority: 20 U.S.C. 1411–1420, unless otherwise noted.

94. Part 300 is amended by adding a center heading after section 300.653 and by adding new §§ 300.670–300.672, to read as follows:

Complaint Procedures of the State

§ 300.670 A State shall adopt complaint procedures.

A State shall adopt written complaint procedures for—

(a) Receiving and resolving any complaint that any public agency is violating a requirement in the Act or in this part;

(b) Reviewing an appeal from a decision of a public agency with respect to a complaint; and

(c) Conducting an independent on-site investigation of a complaint if the State determines that an on-site investigation is necessary.

(Authority: 20 U.S.C. 1412(b))

§ 300.671 Minimum complaint procedures.

A State shall include the following in its complaint procedures—

A time limit of 60 calendar days after the State receives a complaint—

(1) If necessary, to carry out an independent on-site investigation; and

(2) To resolve the complaint.

(b) An extension of the time limit under (a) of this section only if exceptional circumstances exist with respect to a particular complaint.

(c) The right to request the Secretary to review the final decision of the State.

(Authority: 20 U.S.C. 1412(b))

§ 300.672 An organization or individual may file a complaint.

An organization or individual may file a written signed complaint with a State. The complaint must include—

(a) A statement that a public agency has violated a requirement in the Act or in this part; and

(b) The facts on which the statement is based.

(Authority: 20 U.S.C. 1412(b))

PART 356—HANDICAPPED RESEARCH: RESEARCH FELLOWSHIPS

95. The authority citation for part 356 is revised to read as follows:

Authority: 29 U.S.C. 760–762, unless otherwise noted.

96. Section 356.2 is amended by adding a new paragraph (d) to read as follows:

§ 356.2 Who is eligible for assistance under this program?

* * * * *

(d) An applicant for a fellowship under this program must be eligible under 34 CFR 75.60.

* * * * *

97. Section 356.3 is amended by removing "and" at the end of paragraph (b), removing the period at the end of paragraph (c)(2), adding "; and" in its place, and adding a new paragraph (d), to read as follows:

§ 356.3 What regulations apply to this program?

* * * * *

(d) The regulations in 34 CFR 75.60–75.61 (regarding the ineligibility of certain individuals to receive assistance).

* * * * *

PART 562—BILINGUAL EDUCATION: FELLOWSHIP PROGRAM

98. The authority citation for Part 562 is revised to read as follows:

Authority: 20 U.S.C. 3221–3262, unless otherwise noted.

99. Section 562.2 is amended by removing "and" after the semicolon in paragraph (b)(1)(iii), by adding "; and" for the period at the end of paragraph (b)(2), and adding a new paragraph (b)(3) to read as follows:

§ 562.2 Who is eligible to apply for assistance under the fellowship Program?

* * * * *

(3) Is eligible for a fellowship under 34 CFR 75.60.

* * * * *

100. Section 562.3 is amended by adding a new paragraph (c), to read as follows:

§ 562.3 What regulations apply to the Fellowship Program?

* * * * *

(c) The regulations in 34 CFR 75.60–75.62 (regarding the ineligibility of certain individuals to receive assistance).

* * * * *

PART 630—FUND FOR THE IMPROVEMENT OF POSTSECONDARY EDUCATION

101. The authority citation for part 630 is revised to read as follows:

Authority: 20 U.S.C. 1135 *et seq.*, unless otherwise noted.

102. Section 630.11 is amended by revising the parenthetical phrase in the introductory text to read "(See § 630.22)."

103. New §§ 630.22 and 630.23 are added to read as follows:

§ 630.22 Preapplications.

The Secretary considers a preapplication under the procedures in §§ 630.21 and 603.23.

(Authority: 20 U.S.C. 1135)

§ 630.23 Consideration of a preapplication.

(a) The Secretary considers a preapplication if—

(1) The applicant complies with the procedural rules that govern submission of the preapplication; and

(2) The preapplication is submitted in response to an application notice that requires preapplications.

Cross-Reference. See subpart N of 34 CFR part 74.

(b) If the Secretary requires preapplications and an applicant does not preapply, the applicant may not apply for a grant.

(c) If an applicant submits a preapplication, the Secretary—

(1) Informs the applicant that it is eligible and encourages it to apply for a grant;

(2) Informs the applicant that it is eligible but does not encourage it to apply for a grant; or

(3) Informs the applicant that it is ineligible for assistance, and explains why the applicant is ineligible.

(d) An applicant may apply for a grant if the Secretary does not encourage it to apply.

(Authority: 20 U.S.C. 1135)

PART 653—PAUL DOUGLAS TEACHER SCHOLARSHIP PROGRAM

104. The authority citation for part 653 continues to read as follows:

Authority: 20 U.S.C. 1111–1111h, unless otherwise noted.

105. Section 653.3 is amended by adding a new paragraph (c), to read as follows:

§ 653.2 Who is eligible to participate in this program?

* * * * *

(c) A high school graduate who applies for a scholarship under this program must be eligible under 34 CFR 75.60.

§ 653.3 [Amended]

106. Section 563.3 is amended by adding "§§ 75.60–76.62 (regarding the ineligibility of certain individuals to receive assistance in part 75 (Direct Grant Programs)," after "(Administration of Grants)," in paragraph (b).

PART 654—ROBERT C. BYRD HONORS SCHOLARSHIP PROGRAM

107. The authority citation for part 654 continues to read as follows:

Authority: 20 U.S.C. 1070d–31 to 1070d–41, unless otherwise noted.

108. Section 654.2 is amended by adding a new paragraph (c), to read as follows:

§ 654.2 Who is eligible to apply for an award?

* * * * *

(c) A high school graduate who applies for a scholarship under this program must be eligible under 34 CFR 75.60.

* * * * *

§ 654.4 [Amended]

109. Section 654.4 is amended by adding "75.60–75.62 (regarding the ineligibility of certain individuals to receive assistance)," after "in 34 CFR" in paragraph (a).

PART 762—OFFICE OF EDUCATIONAL RESEARCH AND IMPROVEMENT FELLOWS PROGRAM

110. The authority citation for part 762 continues to read as follows:

Authority: 20 U.S.C. 1221e, unless otherwise noted.

111. Section 762.2 is amended by adding a new paragraph (d) to read as follows:

§ 762.2 Who is eligible for a fellowship?

* * * * *

(d) An individual who applies for a fellowship under the program must be eligible under 34 CFR 75.60.

* * * * *

112. Section 762.4 is amended by designating the existing text as paragraph (a) and adding a new paragraph (b), to read as follows:

§ 762.4 What regulations apply?

* * * * *

(b) The regulations in 34 CFR 75.60–75.61 (regarding the ineligibility of certain individuals to receive assistance) also apply to this program.

* * * * *

[FR Doc. 92–15166 Filed 7–7–92; 8:45 am]
BILLING CODE 4000–01–M

federal register

Wednesday
July 8, 1992

Part IV

National Indian Gaming Commission

25 CFR Parts 515, 519, 522, 523, 524, 556, and 558

Service; Approval of Class II and Class III Gaming Ordinances Under the Indian Gaming Regulatory Act and the Privacy Act Procedures; Proposed Rules and Notice

NATIONAL INDIAN GAMING COMMISSION

25 CFR Parts 519, 522, 523, 524, 556, 558

Service; Approval of Class II and Class III Gaming Ordinances Under the Indian Gaming Regulatory Act

AGENCY: National Indian Gaming Commission.

ACTION: Proposed rule.

SUMMARY: The National Indian Gaming Commission is proposing to establish this rule in chapter III in title 25 of the Code of Federal Regulations (parts 500–599). This rule provides procedures for service of Commission determinations, requirements for submitting new and existing gaming ordinances to the Chairman for approval, requirements for background investigations on primary management officials and key employees, and requirements for licensing employees of an Indian gaming operation. Elsewhere in today's **Federal Register**, the Commission is proposing procedures under the Privacy Act, is notifying the public that the Commission plans to build a system of records as tribes submit information from key employees and primary management officials, and is establishing the Indian Gaming Individuals Record System.

DATES: Comments must be received by August 24, 1992.

FOR FURTHER INFORMATION CONTACT: Mary Jane Markley, National Indian Gaming Commission, suite 250, 1850 M Street, NW, Washington, D.C. 20036–5083; telephone: 202–632–7003, extension 18.

ADDRESSES: Commenters may submit their comments by mail, facsimile, or delivery to: Ordinance Comments, National Indian Gaming Commission, suite 250, 1850 M Street, NW., Washington, D.C. 20036–5083. Fax number: 202–632–7066. Public comments may be delivered or inspected from 9 a.m. until noon and from 2 p.m. to 5 p.m. Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background.

The Indian Gaming Regulatory Act (IGRA, or the Act), 25 U.S.C. 2701 *et seq.*, was signed into law on October 17, 1988. The IGRA established the National Indian Gaming Commission (Commission). Under the IGRA, the Commission is charged with regulating class II gaming, and certain aspects of class III gaming.

On August 15, 1991, the Commission published final rules (56 FR 40702) requiring class II gaming operations to compute and pay to the Commission the annual fees required by section 2717 of the Act. On April 9, 1992 (57 FR 12362), the Commission published a final rule that defines key statutory terms, notably clarifying the distinctions between class II gaming (regulated by tribes and the Commission) and class III gaming (regulated under negotiated tribal-state compacts). The Commission is proposing rules separately regarding compliance and enforcement under sections 2705, 2706, and 2713 of the Act and review of management contracts under sections 2711 and 2712 of the Act. The regulations proposed here implement the Commission's authority to review and approve tribal gaming ordinances.

Statutory Authority.

Section 2710(b) of the IGRA contains requirements for submitting new gaming ordinances to the Chairman. Section 2712 contains procedures for the Chairman's review of existing ordinances. Additionally, section 2706(b)(10) authorizes the Commission to promulgate such regulations as it deems appropriate to implement the provisions of the IGRA.

Service

Part 519, Service under the IGRA, is included because the Commission will serve official determinations as part of its review of tribal ordinances. Part 519 requires that a tribe and a management contractor, or a tribal operator, designate an agent for service and so notify the Commission. Under § 519.4, the Commission proposes to send a copy of any official determination to the tribal chairman, the designated tribal agent, and to any tribal gaming authority whenever practicable. The Commission looked to rule 5 of the Federal Rules of Civil Procedure concerning service for guidance in drafting its rule.

Submission of a Gaming Ordinance or Resolution for Approval

Part 522, Submission of a gaming ordinance or resolution for approval, covers gaming ordinances, resolutions, and amendments adopted by a tribe after promulgation of this rule. (Part 523 applies to existing gaming ordinances or resolutions.) The requirements of part 522 implement section 2710 of the IGRA. That section requires that a class II gaming ordinance or resolution require a tribe to: (1) Have the sole proprietary interest in and responsibility for the conduct of any gaming operation unless it elects to allow individually owned gaming under section 2710(b)(4); (2) use net revenues for specified purposes, which may include, among other things: (i) Per capita distributions under a plan approved by the Secretary of the Interior under section 2710(b)(3), and (ii) donations to charitable organizations (generally understood to be those approved by the Internal Revenue Service under I.R.C. 501(c)(3)); (3) cause to be conducted independent audits of gaming operations and submit the results of those audits to the Commission under section 2710(b)(2)(C); (4) perform background investigations and issue licenses to certain individuals; (5) issue a separate license to each place, facility, or location at which gaming is conducted on Indian lands; and (6) construct, maintain, and operate gaming facilities in a manner that adequately protects the environment and the public health and safety. Generally, charitable organizations are understood to be those approved by the Internal Revenue Service under I.R.C. section 501(c)(3).

Section 522.6, Approval requirements for class III ordinances, implements section 2710(d)(1)(A)(ii) and (e). Those provisions of the IGRA require class III gaming ordinances to meet the same requirements as class II gaming ordinances. Because compacts may allocate responsibility to an entity other than a tribe for certain responsibilities, the proposed regulation requires the same provisions in a class III gaming ordinance as in class II unless a tribal-state compact under section 2710(d)(3) provides otherwise. There is no discretion, however, regarding the sole proprietary interest provision: A tribe must retain the sole proprietary interest in a gaming operation unless it elects to allow individually owned gaming under § 522.10, Individually owned class II and class III gaming operations other than those operating on September 1, 1986.

Section 522.8 implements section 2710(d)(2)(B), which requires publication in the **Federal Register** of a class III gaming ordinance and its approval by the Chairman.

Section 522.9, Substitute approval, implements section 2710(e) that provides that the Chairman's failure to act results in "approval," but only to the extent that the ordinance or resolution is consistent with the IGRA.

Sections 522.10 and 522.11 implement the IGRA's requirements for individually owned operations under section 2710(b)(4)(A) and (B). The IGRA and these regulations distinguish between new individually owned operations and those operating on September 1, 1986. Licensing provisions for both new and old individually owned oeprations require that licenses be issued under an e approved by the Chairman,

income to the tribes be used for purposes in § 522.4(b)(2), not less than 60 percent of net revenues be income to a tribe, and an assessment be paid to the Commission under part 514, Annual fees payable by class II gaming operations. For new individually owned oeprations, a tribe must employ licensing standards that are at least as restrictive as those established by State law and that require denial of a license for any person or entity that would not be eligible to receive a State license to conduct the same activity.

Section 522.12, Revocation of class III gaming, implements section 2710(d)(2)(D). That section provides that a tribe may adopt an ordinance or resolution revoking authorization of class III gaming. Such a revocation is, however, subject to a one-year delay during which any civil or criminal actions arising during that period are preserved.

Review and Approval of Existing Ordinances or Resolutions

Part 523 covers review and approval of ordinances or resolutions enacted by a tribe prior to final promulgation of today's proposed rule and that have not been approved by the Chairman.

Section 523.1, Scope of part 523, contains the same submission requirements as those for new ordinances or resolutions under part 522. In addition, § 523.2 proposes to require submission of the most recent annual financial statements for gaming operations, including the most recent audit reports and management letters. The Commission proposes requiring submission of those items to verify annual fees under part 514 and to allow verification of a tribe's gaming revenues.

Section 523.3, Review of an ordinance or resolution, provides that when a tribe submits an incomplete ordinance or resolution or one that fails to meet the statutory and regulatory requirements, the Chairman will notify the tribe of the specific areas of noncompliance in writing. A tribe has 120 days from receipt of such notice to bring its ordinance or resolution into compliance with the requirements of part 522. When a tribe fails to amend an ordinance or resolution within the prescribed time, the regulation provides that the Chairman will disapprove the ordinance or resolution. When a tribe and the Commission disagree about amending an ordinance, the Commission intends that a tribe and the Commission may jointly waive the 120-day period, in which case the Chairman would disapprove the ordinance or resolution, and the tribe could then proceed to appeal under part 524 (discussed below). That provision is not contained within the language of § 523.3, but in the view of the Commission this would be a logical way to expedite resolution of disagreements.

Section 523.4, Review of an amendment, applies the procedures of part 522 to amendments. Section 523.4(c) is analagous to § 522.9, Substitute approval.

Appeals

Part 524 provides for appeals from the Chairman's approval or disapproval of a gaming ordinance. The Commission notes that the IGRA imposes no specific hearing requirements for appeals of ordinance or resolution approvals. Therefore, the Commission intends to review appeals informally. After the Commission renders a decision, a tribe may appeal to the appropriate Federal district court under section 2714 of the IGRA.

Background Investigations for Primary Management Officials and Key Employees

Part 556 implements requirements of the IGRA in section 2710(b)(2)(F). As a prerequisite to approval of an ordinance by the Chairman, that section requires a tribe to have an adequate regulatory system that includes background investigations of primary management officials and key employees. The Commission defined those terms in its definitions rule promulgated in the **Federal Register** on April 9, 1992 (57 FR 12382).

Related to tribal background investigations under the IGRA are procedures under the Privacy Act. 5 U.S.C. 552a. Note that tribes are not subject to that Act in their recordkeeping, but the Commission is, due to its status as a Federal agency. Because tribes are required to provide the Commission with certain records, those records become subject to the Privacy Act. Therefore, tribes must follow certain procedures under that Act. (Hence, for example, the requirement in § 556.1 that a tribe include a privacy notice on its application forms for key employees and primary management officials.) Elsewhere in today's **Federal Register**, the Commission is proposing regulations under the Privacy Act and is establishing a system of records under that Act. The system of records will contain copies of applications of key employees and primary management officials and other information from background investigations.

Section 556.1 requires that a tribe place a privacy notice on its application forms for key employees and primary management officials. This notice lets individuals know that information about them may be used by the Commission when it reviews licenses issued by a tribe under section 2710(b)(2)(F)(ii)(III). In addition, the notice lets the individuals know that information contained in the application and subsequent background investigation may be disclosed not only to their employers but to the Commission and appropriate Federal, Tribal, State, local, or foreign agencies in connection with hiring, firing, issuance or revocation of an Indian gaming license, or investigations of Indian gaming under section 2716(b) of the IGRA. That section directs the Commission to provide information indicating a violation of Federal, State, or tribal statutes, ordinances or resolutions to appropriate law enforcement officials. Without such a notice, the Commission could not maintain information on individuals and therefore would be unable to perform its duties under the IGRA. With respect to existing key employees and primary management officials, § 556.1 requires either new applications containing the privacy notice or signed statements that contain the privacy notice and grant consent to the routine uses and disclosures mentioned above.

Section 556.2, Notice regarding false statements, warns key employees and primary management officials of their duty to be accurate in supplying the information requested by a tribe and the Commission. Federal law provides penalties for anyone making false statements to an entity regulated by the Federal Government. The federal statute states: "Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both." 18 U.S.C. 1001.

Section 556.3 requires that a tribe obtain certain background information from primary management officials and key employees involved in class II gaming. The information is to be used by a tribe in conducting a background investigation. The information required under § 556.3(a)(1) is necessary to ensure accurate identification, for example, when searching different data

bases that may include different individuals who have the same or very similar names. In addition, a tribe may request any other information it deems relevant. A tribe must make an express promise to keep confidential the identity of each person interviewed in the course of a background investigation.

When a tribe wishes to employ a person previously employed in Indian gaming as a key employee or primary management official, the tribe may request information from the Commission concerning that person (as noted in the privacy notice). Additionally, a tribe may request information from previous employers, including other tribes.

Section 556.4, Report to Commission for class II gaming, requires that when a tribe employs a primary management official or key employee, the tribe must forward to the Commission a completed application. In requiring a tribe to forward applications before completion of a background investigation and issuance of a license, the Commission is attempting to accommodate gaming operations that must replace employees, often quickly after little or no notice. At the same time, the Commission is implementing the intent of the IGRA in requiring that the Commission be informed of the identity of and certain background information concerning new key employees and primary management officials.

Section 556.4 requires a tribe, before issuing a license to a primary management official or key employee, to forward an investigative report on each background investigation to the Commission. The regulation spells out the requirements for such a report. An investigative report must include: (1) Steps taken in conducting a background investigation, (2) results obtained, (3) conclusions reached, and (4) the bases for those conclusions.

Section 556.4 also requires a tribe to forward to the Commission a copy of its eligibility determination under § 2710(b)(2)(F)(ii)(II) for each key employee and primary management official.

Section 556.5 requires background investigations for each primary management official and key employee involved in class III gaming using procedures as stringent as those provided under § 556.3. The Commission's requiring background investigations for class III gaming under its regulations implements section 2710(d)(1)(A) of the IGRA. Under that section a tribe's class III ordinances and resolutions must meet the requirements set out for class II ordinances under section 2710(b). Because the requirement for background investigations is part of the same section, it is the Commission's view that it applies to class III gaming also. The Commission notes that pursuant to a tribal-state compact, the responsibility for performing background investigations may fall to a state. The IGRA, however, requires class III ordinances meet the same requirements as class II ordinances. The Commission proposes that where a state performs background investigations, that they be at least as stringent as those required under these regulations. The Commission solicits comment on its interpretation of these requirements.

Section 556.6, Report to the Commission for class III gaming, requires only identifying information regarding class III key employees and primary management officials. The Commission proposes to keep this information in its records system so that it can inform a tribe of an individual's employment by a particular Indian gaming operation. Under section 2710(d)(1)(A), only the requirements of subsection (b) apply to class III gaming. The Commission solicits comments on its interpretation of the extent of the applicability of the background investigation requirements under the IGRA to class III gaming.

Gaming Licenses

Section 558.1, *Scope of part 558*, clarifies that the licensing authority for class II or class III gaming is a tribal authority, unless otherwise provided under a tribal-state compact for class III gaming. This section also implements section 2710(c)(4)(B)(ii). That section requires, as a condition of self-regulation, that a tribe has "adopted and is implementing adequate systems for * * * investigation, licensing, and monitoring of all employees of (a) gaming activity(.)" Only key employees and primary management officials, however, are regulated by the requirements of the ordinance regulations. For other employees, tribes may develop other systems, or adapt portions of these requirements.

Section 558.1 also requires a tribe to forward applications for employment and reports of background investigations for key employees and primary management officials to the Commission within 60 days after approval of an ordinance. A tribe keeps applications and any reports concerning other employees.

Employees whose licenses are suspended by a tribe have a right to a hearing as provided under section 2710(c)(2) only after a tribal ordinance or resolution is approved by the Chairman. Rights under other authorities are not affected by this provision.

Section 558.2, Eligibility determination for employment in a gaming operation, implements section 2710(b)(2)(F)(ii)(II). That section requires that a tribe have a standard for determining eligibility for employment in a gaming operation with respect to key employees and primary management officials. A tribal official, using the standards of a tribal ordinance, makes an eligibility determination that employment of an individual as a key employee or primary management official will not result in employing an individual who, as stated in the proposed regulation, "poses a threat to the public interest or to the effective regulation of gaming, or creates or enhances the dangers of unsuitable, unfair, or illegal practices and methods and activities in the conduct of gaming(.)" When a tribal official determines that employing an individual as a key employee or primary management official would be inconsistent with its eligibility criteria, a tribe may choose to employ that person in another position. Tribes may not, however, employ ineligible persons in positions where they in fact function as key employees or primary management officials. For guidance concerning those positions, please refer to the definitions of those terms in 25 CFR part 502, the definitions regulation promulgated in the Federal Register on April 9, 1992 at 12393.

Section 558.3 provides procedures for forwarding applications and reports to the Commission. Upon employing a key employee or primary management official, a tribe forwards a completed job application to the Commission and begins to conduct a background investigation. A tribe has 60 days to perform a background investigation and forward its report and eligibility determination to the Commission. If, after 90 days, a background investigation remains incomplete, a tribe may no longer employ that person as a key employee or primary management official.

Section 2710(c)(1) authorizes the Commission to "consult with appropriate law enforcement officials concerning gaming licenses issued by an Indian tribe( )". Under § 558.3 the Commission has 30 days to object to issuance of a license. During the 30-day period beginning when the Commission receives a report on a background investigation, the Chairman may request additional information concerning an employee. If, at the end of the 30-day period, the Commission has not notified

the tribe that it has any objections, the tribe may issue the licenee.

Under § 558.4, after the 30-day period, a tribe must either grant a gaming license to an employee who is eligible for continued employment in a gaming operation, terminate that employment, or place an employee in a position other than as a key employee or a primary management official.

Section 558.5, License suspension, implements section 2710(c)(2). That section requires a tribe to suspend a license upon receipt of Commission information indicating that a primary management official or key employee fails to meet the applicable eligibility criteria. An employee whose license is suspended has a right to notice and a hearing, after which a tribe must decide to revoke or reinstate the gaming license and notify the Commission of its decision.

Privacy

Elsewhere in today's Federal Register is a notice telling the public of the Commission's new system of records under the Privacy Act. As stated in the notice, the system of records will be implemented as tribes submit information from key employees and primary management officials who are employed in Indian gaming operations. Also, by its notice, the Commission is establishing the Indian Gaming Individuals Record System. The notice describes the information to be included in the system. The information is provided mostly by key employees and primary management officials on their applications for employment in Indian gaming.

The Commission will use information in the records system to verify the suitability of key employees and primary management officials for employment in those positions. In the course of verifying the suitability of individuals for employment in certain positions, the Commission intends to disclose information, as appropriate, to (1) federal, state, tribal, or local law enforcement or regulatory agencies; (2) tribes that employ or may wish to employ individuals; (3) agencies charged with responsibility for investigating and prosecuting criminal or civil violations; (4) congressional offices concerning records of an individual in response to an inquiry from the congressional office made at the request of that individual; and, (5) federal, state, local, or tribal agencies or their agents that are involved in civil enforcement action to protect the integrity of Indian gaming.

Persons wishing to inquire whether the records system contains information concerning themselves may submit inquiries to the Commission's Records Manager and may contest the accuracy of the information. Individuals may request the Commission to amend all or any part of a record.

The Commission's Privacy Act proposed regulations are published in today's Federal Register. The proposed regulations inform individuals how they may gain access to and amend records concerning themselves. The Privacy Act proposed regulation applies only to records disclosed or requested under the Privacy Act of 1974, and not to requests for information made pursuant to the Freedom of Information Act.

Regulatory Matters

The Commission has tentatively determined that this document is not a major rule under Executive Order 12291. The Commission believes that the rule will not have any significant effects on the economy or result in major increases in costs or prices for consumers, individual industries, federal, state, or local governments, agencies, or geographical regions. The Commission also believes that the rule will not have any adverse effects on competition, employment, investment, productivity, innovation, or the export/import market.

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the Commission has tentatively determined that this rule will not have a significant economic impact on a substantial number of small entities. The Commission solicits comment on these preliminary determinations under the Executive Order and the Regulatory Flexibility Act.

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for approval as required by 44 U.S.C. 3501 *et seq.* The collection of this information will not be required until it has been approved by OMB.

The Chairman of the National Indian Gaming Commission has certified to the Office of Management and Budget that this final rule meets the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order No. 12778, "Civil Justice Reform," 56 FR 55195, October 25, 1991.

Dated: July 1, 1992.

Anthony J. Hope,

Chairman, National Indian Gaming Commission.

List of Subjects in 25 CFR Parts 519, 522, 523, 524, and 556

Gaming, Indian lands.

Title 25 of the Code of Federal Regulations is proposed to be amended by adding parts 519, 522, 523, 524, and 556 to read as follows.

PART 519—SERVICE

Sec.

519.1 Designation of an agent by a tribe.

519.2 Designation of an agent by a management contractor or a tribal operator.

519.3 Methods of service.

519.4 Copy of any official determination, order, or notice of violation.

Authority: 25 U.S.C. 2706(b)(10).

§ 519.1 Designation of an agent by a tribe.

By written notification to the Commission, a tribe shall designate an agent for service of any official determination, order, or notice of violation.

§ 519.2 Designation of an agent by a management contractor or a tribal operator.

By written notification to the Commission, a management contractor or a tribal operator shall designate an agent for service of any official determination, order, or notice of violation.

§ 519.3 Methods of service.

(a) The Chairman shall serve any official determination, order, or notice of violation by:

(1) Delivering a copy to a designated agent;

(2) Delivering a copy to the person who is the subject of the official determination, order, or notice of violation;

(3) Delivering a copy to the individual who, after reasonable inquiry, appears to be in charge of the gaming operation that is the subject of the official determination, order, or notice of violation;

(4) Mailing to the person who is the subject of the official determination, order, or notice of violation or to his or her designated agent at the last known address. Service by mail is complete upon mailing; or

(5) Facsimile to the person who is the subject of the official determination, order, or notice of violation to his or her designated agent at the last known facsimile number. Service by facsimile is complete upon transmission.

(b) Delivery of a copy means: Handing it to the person or designated agent (or attorney for either); leaving a copy at the person's, agent's or attorney's office with a clerk or other person in charge thereof; if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at the person's dwelling house or usual place

of abode with some person of suitable age and discretion then residing therein.

(c) Service shall not be deemed incomplete because of refusal to accept.

§ 519.4 Copy of any official determination, order, or notice of violation.

When practicable the Commission shall send a copy of any official determination, order, or notice of violation to the tribal chairman, the designated tribal agent under § 519.1, and to the relevant tribal gaming authority.

PART 522—SUBMISSION OF GAMING ORDINANCE OR RESOLUTIONS

Sec.

522.1 Scope of this part 522.
522.2 Submission requirements.
522.3 Amendment.
522.4 Approval requirements for class II ordinances.
522.5 Disapproval of a class II ordinance.
522.6 Approval requirements for class III ordinances.
522.7 Disapproval of a class III ordinance.
522.8 Publication of class III ordinance and approval.
522.9 Substitute approval.
522.10 Individually owned class II and class III gaming operations other than those operating on September 1, 1986.
522.11 Individually owned class II gaming operations operating on September 1, 1986.
522.12 Revocation of class III gaming.

Authority: 25 U.S.C. 2706, 2710, 2712.

§ 522.1 Scope of this part 522.

This part applies to any gaming ordinance or resolution adopted by a tribe after [29 days after publication of the final rule]. Part 523 of this chapter applies to all existing gaming ordinances or resolutions.

§ 522.2 Submission requirements.

A tribe shall submit to the Chairman all of the following information with a request for approval of a class II or class III ordinance or resolution:

(a) One copy on 81½" × 11" paper of an ordinance or resolution certified as authentic by an authorized tribal official and that meets the approval requirements in §§ 522.4(b) or 522.6 of this part;

(b) A description of procedures to conduct or cause to be conducted background investigations on key employees and primary management officials and to ensure that key employees and primary management officials are notified of their rights under the Privacy Act as specified in § 556.1 of this chapter;

(c) A description of procedures to issue tribal licenses to primary management officials and key employees;

(d) Copies of all tribal gaming regulations;

(e) When an ordinance or resolution concerns class III gaming, a copy of the tribal-state compact;

(f) A description of procedures for resolving disputes between the gaming public and the tribe or the management contractor; and

(g) Designation of an agent for service under part 519 of this chapter.

§ 522.3 Amendment.

(a) Within 15 days after adoption, a tribe shall submit for the Chairman's approval any amendment to an ordinance or resolution.

(b) A tribe shall submit for the Chairman's approval any amendment to the submissions made under § 522.2(b) through (g) of this part within 15 days of such amendment.

§ 522.4 Approval requirements for class II ordinances.

No later than 90 days after the submission to the Chairman under § 522.2 of this part, the Chairman shall approve the class II ordinance or resolution if the Chairman finds that—

(a) A tribe meets the submission requirements contained in § 522.2 of this part; and

(b) The class II ordinance or resolution provides that—

(1) The tribe shall have the sole proprietary interest in and responsibility for the conduct of any gaming operation unless it elects to allow individually owned gaming under either § 522.9 or § 522.10 of this part;

(2) A tribe shall use net revenues from any tribal gaming or from any individually owned games only for one or more of the following purposes:

(i) To fund tribal government operations or programs;

(ii) To provide for the general welfare of the tribe and its members (if a tribe elects to make per capita distributions, the plan must be approved by the Secretary of the Interior under 25 U.S.C. 2710(b)(3));

(iii) To promote tribal economic development;

(iv) To donate to charitable organizations; or

(v) To help fund operations of local government agencies;

(3) A tribe shall cause to be conducted independent audits of gaming operations annually and shall submit the results of those audits to the Commission;

(4) All gaming related contracts that result in purchases of supplies, services, or concessions for more than $25,000 in any year (except contracts for professional legal or accounting services) shall be specifically included within the scope of the audit conducted under § 522.2(b)(3) of this part;

(5) A tribe shall perform background investigations and issue licenses according to requirements that are at least as stringent as those in parts 556 and 558 of this chapter;

(6) A tribe shall issue a separate license to each place, facility, or location on Indian lands where a tribe elects to allow class II gaming; and

(7) A tribe shall construct, maintain and operate a gaming facility in a manner that adequately protects the environment and the public health and safety.

§ 522.5 Disapproval of a class II ordinance.

No later than 90 days after a tribe submits an ordinance for approval under § 522.2 of this part, the Chairman may disapprove an ordinance if he or she determines that a tribe failed to comply with the requirements of § 522.2 of this part.

§ 522.6 Approval requirements for class III ordinances.

No later than 90 days after the submission to the Chairman under § 522.2 of this part, the Chairman shall approve the class III ordinance or resolution if—

(a) A tribe follows the submission requirements contained in § 522.2 of this part;

(b) The ordinance r resolution meets the requirements contained in § 522.4(b)(2), (3), (4), (5), (6), and (7) of this part except when a tribal-state compact allocates responsibility to an entity other than a tribe for such responsibilities; and

(c) The tribe shall have the sole proprietary interest in and responsibility for the conduct of any gaming operation unless it elects to allow individually owned gaming under § 522.10 of this part.

§ 522.7 Disapproval of a class III ordinance.

Notwithstanding compliance with the requirements of § 522.6 of this part and no later than 90 days after a submission under § 522.2 of this part, the Chairman shall disapprove an ordinance or resolution if the Chairman determines that—

(a) A tribal governing body did not adopt the ordinance or resolution in compliance with the governing documents of a tribe; or

(b) A tribal governing body was significantly and unduly influenced in the adoption of the ordinance or resolution by a person having a direct or indirect financial interest in a

management contract, a person having management responsibility for a management contract, or their agents.

§ 522.8 Publication of class III ordinance and approval.

The Commission shall publish a class III tribal gaming ordinance or resolution in the Federal Register along with its approval thereof.

§ 522.9 Substitute approval.

If the Chairman fails to approve or disapprove an ordinance or resolution submitted under § 522.2 of this part within 90 days after the date of submission to the Chairman, a tribal ordinance or resolution shall be considered to have been approved by the Chairman but only to the extent that such ordinance or resolution is consistent with the provisions of the Act and this chapter.

§ 522.10 Individually owned class II and class III gaming operations other than those operating on September 1, 1986.

For licensing of individually owned gaming operations other than those operating on September 1, 1986 (addressed under § 522.11 of this part), a tribal ordinance shall require:

(a) That the gaming operation be licensed and regulated under an ordinance or resolution approved by the Chairman;

(b) That income to the tribe from an individually owned gaming operation be used only for the purposes listed in § 522.4(b)(2) of this part;

(c) That not less than 60 percent of the net revenues be income to the Tribe;

(d) That the owner pay an assessment to the Commission under § 514.1 of this chapter;

(e) Licensing standards that are at least as restrictive as those established by State law governing similar gaming within the jurisdiction of the surrounding State; and

(f) Denial of a license for any person or entity that would not be eligible to receive a State license to conduct the same activity within the jurisdiction of the surrounding State.

§ 522.11 Individually owned class II gaming operations operating on September 1, 1986.

For licensing of individually owned gaming operations operating on September 1, 1986, under § 502.3(e)(5) of this chapter, a tribal ordinance shall contain the same requirements as those in § 522.10 (a)–(d) of this part.

§ 522.12 Revocation of class III gaming.

A governing body of a tribe, in its sole discretion and without the approval of the Chairman, may adopt an ordinance or resolution revoking any prior ordinance or resolution that authorizes class III gaming.

(a) A tribe shall submit to the Chairman on 8½" x 11" paper one copy of any revocation ordinance or resolution certified as authentic by an authorized tribal official.

(b) The Chairman shall publish such ordinance or resolution in the Federal Register and the revocation provided by such ordinance or resolution shall take effect on the date of such publication.

(c) Notwithstanding any other provision of this section, any person or entity operating a class III gaming operation on the date of publication in the Federal Register under paragraph (b) of this section may, during a one-year period beginning on the date of publication, continue to operate such operation in conformance with a tribal-state compact.

(d) A revocation shall not affect—

(1) Any civil action that arises during the one-year period following publication of the revocation; and

(2) Any crime that is committed during the one-year period following publication of the revocation.

PART 523—REVIEW AND APPROVAL OF EXISTING ORDINANCES FOR RESOLUTIONS

Sec.
523.1 Scope of this part 523.
523.2 Submission requirements.
523.3 Review of an ordinance or resolution.
523.4 Review of an amendment.

Authority: 25 U.S.C. 2706, 2710, 2712

§ 523.1 Scope of this Part 523.

This part applies to a class II or a class III gaming ordinance or resolution enacted by a tribe prior to [30 days after promulgation of the final rule] and that is not approved by the Chairman.

§ 523.2 Submission requirements.

Within 60 days after a request by the Chairman, a tribe shall:

(a) Submit for review and approval all items required under § 522.2 of this chapter; and

(b) Submit the most recent annual financial statements for the gaming operations, including the most recent audit reports and management letters.

§ 523.3 Review of an ordinance or resolution.

Within 90 days after receipt of a submission under § 523.2 of this part, the Chairman shall subject the ordinance or resolution to the standards in part 522 of this chapter.

(a) For class II and class III gaming, if the Chairman determines that an ordinance or resolution submitted under this part meets the approval and submission requirements of part 522 of this chapter and the Chairman finds the annual financial statements are included in the submission, the Chairman shall approve the ordinance or resolution.

(b) If an ordinance or resolution fails to meet the requirements for review under part 522 of this chapter or if a tribe fails to submit the annual financial statement, the Chairman shall notify a tribe in writing of the specific areas of noncompliance.

(c) The Chairman shall allow a tribe 120 days from receipt of such notice to bring the ordinance or resolution into compliance with the requirements of part 522 of this chapter or to submit an annual financial statement, or both.

(d) At the end of the 120-day period provided under paragraph (c) of this section, the Chairman shall disapprove any ordinance or resolution if a tribe fails to amend according to the notification made under paragraph (b) of this section.

§ 523.4 Review of an amendment.

Within 90 days after receipt of an amendment, the Chairman shall subject the amendment to the standards in part 522 of this chapter.

(a) If the Chairman determines that an amendment meets the approval and submission requirements of part 522 of this chapter, the Chairman shall approve the amendment.

(b) If an amendment fails to meet the requirements for review under part 522 of this chapter, the Chairman shall notify the tribe in writing of the specific areas of noncompliance.

(c) If the Chairman fails to disapprove a submission under paragraph (a) or (b) of this section within 90 days after the date of submission to the Chairman, a tribal amendment shall be considered to have been approved by the Chairman but only to the extent that such amendment is consistent with the provisions of the Act and this chapter.

PART 524—APPEALS

Authority: 25 U.S.C. 2706, 2710, 2712.

§ 524.1 Appeals

Any person with an interest that is or may be adversely affected by the Chairman's approval or disapproval of a gaming ordinance or resolution under part 522 or 523 of this chapter may appeal the Chairman's determination to the Commission. Such an appeal shall be filed with the Commission within 30 days after the person received the Chairman's determination, or within 45 days after the date of the Chairman's determination, whichever is earlier.

Failure to file an appeal within the time provided by this section shall result in a waiver of the opportunity for an appeal. Such an appeal shall state succinctly why the person believes the Chairman's determination to be erroneous, and shall include supporting documentation, if any. Within 45 days after it receives the appeal, the Commission shall render its decision on the appeal, unless the Commission notifies the person requesting the appeal that the Commission requires additional time to render a decision.

PART 556—BACKGROUND INVESTIGATIONS FOR PRIMARY MANAGEMENT OFFICIALS AND KEY EMPLOYEES

Sec.
556.1 Privacy notice.
556.2 Notice regarding false statements.
556.3 Background investigations for class II gaming.
556.4 Report to Commission for class II gaming.
556.5 Background investigations for class III gaming.
556.6 Report to Commission for class III gaming.

Authority: 25 U.S.C. 2706, 2710, 2712.

§ 556.1 Privacy notice.

(a) A tribe shall place the following notice on the application form for a key employee or a primary management official before that form is filled out by an applicant:

In compliance with the Privacy Act of 1974, the following information is provided: Solicitation of the information on this form is authorized by 25 U.S.C. 2701 *et seq.* The purpose of the requested information is to determine the eligibility of individuals to be employed in a gaming operation. The information will be used by National Indian Gaming Commission members and staff who have need for the information in the performance of their official duties. The information may be disclosed to appropriate Federal, Tribal, State, local, or foreign law enforcement and regulatory agencies when relevant to civil, criminal or regulatory investigations or prosecutions or when pursuant to a requirement by a tribe or the National Indian Gaming Commission in connection with the hiring or firing of an employee, the issuance or revocation of a gaming license, or investigations of activities while associated with a tribe or a gaming operation. Failure to consent to the disclosures indicated in this notice will result in a tribe's being unable to hire you in a primary management official or key employee position.

The disclosure of your Social Security Number (SSN) is voluntary. However, failure to supply a SSN may result in errors in processing your application.

(b) A tribe shall notify in writing existing key employees and primary management officials that they shall either:

(1) Complete a new appliation form that contains a Privacy Act notice; or

(2) Sign a statement that contains the Privacy Act notice and consent to the routine uses described in that notice.

§ 556.2 Notice regarding false statements.

(a) A tribe shall place the following notice on the application form for a key employee or a primary management official before that form is filled out by an applicant:

A false statement on any part of your application may be grounds for not hiring you, or for firing you after you begin work. Also, you may be punished by fine or imprisonment (U.S. Code, title 18, section 1001).

(b) A tribe shall notify in writing existing key employees and primary management officials that they shall either:

(1) Complete a new application form that contains a notice regarding false statements; or

(2) Sign a statement that contains the notice regarding false statements.

§ 556.3. Background investigations for class II gaming.

A tribe shall perform a background investigation for each primary management official and for each key employee of a class II gaming operation.

(a) A tribe shall request from each primary management official and from each key employee all of the following information:

(1) Full name, other names used (oral or written), social security number(s), birth date, place of birth, citizenship, gender, all languages (spoken or written);

(2) For the previous 5 years: Business and employment positions held, ownership interests in those businesses, business and residence addresses, and drivers license numbers;

(3) The names and current addresses of at least three personal references, including one personal reference who was acquainted with the applicant during each period of residence listed under paragraph (a)(2) of this section;

(4) Current business and residence telephone numbers;

(5) A description of any previous business relationships with Indian tribes, including ownership interests in those businesses;

(6) A description of any previous business relationships with the gaming industry generally, including ownership interests in those businesses;

(7) The name and address of any licensing or regulatory agency with which the person has filed an application for a license or permit related to gaming, whether or not such license or permit was granted;

(8) For each felony for which there is an ongoing prosecution or a conviction, the charge, the name and address of the court involved, and the date and disposition;

(9) For each misdemeanor conviction or ongoing misdemeanor prosecution (excluding minor traffic violations) within 10 years of the date of the application, the name and address of the court involved and the date and disposition;

(10) The name and address of any licensing or regulatory agency with which the person has filed an application for an occupational license or permit, whether or not such license or permit was granted;

(11) A photograph; and

(12) Any other information a tribe deems relevant.

(b) A tribe shall conduct an investigation sufficient to make a determination under § 558.2 of this chapter. In conducting a background investigation, a tribe or its agents shall promise to keep confidential the identity of each person interviewed in the course of the investigation.

(c) If the Commission and a tribe possess an investigative report for an employee, the tribe may update that report instead of performing an entirely new investigation.

§ 556.4 Report to Commission for class II gaming.

(a) When a tribe employs a primary management official or a key employee, the tribe shall forward to the Commission a completed application containing the information listed under § 556.3(a) of this part.

(b) Before issuing a license to a primary management official or to a key employee, a tribe shall forward to the Commission an investigative report on each background investigation. An investigative report shall include all of the following:

(1) Steps taken in conducting a background investigation;

(2) Results obtained;

(3) Conclusions reached; and

(4) The bases for those conclusions.

(c) When a tribe forwards its report to the Commission, it shall include a copy of the eligibility determination made under § 558.2 of this chapter.

§ 556.5 Background investigations for class III gaming.

A tribe or a state shall conduct a background investigation for each primary management official and for

each key employee using procedures as stringent as those provided in § 556.3.

§ 556.6 Report to Commission for class III gaming.

Before a tribe or other licensing authority licenses a key employee or primary management official, the tribe shall forward to the Commission the information required under § 556.3(a)(1).

PART 558—GAMING LICENSES

Sec.
558.1 Scope of this part 558.
558.2 Eligibility determination for employment in a gaming operation.
558.3 Procedures for forwarding applications and reports to the Commission.
558.4 Granting a gaming license.
558.5 License suspension.

Authority: 25 U.S.C. 2706, 2710, 2712.

§ 558.1 Scope of this part 558.

(a) The licensing authority for class II or class III gaming is a tribal authority, unless otherwise provided under a tribal-state compact for class III gaming.

(b) A tribe shall develop licensing procedures for all employees of a gaming operation. The procedures and standards of § 556 of this part and the procedures and standards of this section apply only to primary management officials and key employees.

(c)(1) Within 60 days after approval of an ordinance under part 522 of this chapter, a tribe shall forward to the Commission applications for employment and reports of background investigations for primary management officials and key employees.

(2) For employees of a gaming operation other than primary management officials or key employees, a tribe shall retain applications for employment and reports (if any) of background investigations for inspection by the Chairman or his or her designee for at least the term of employment but in no event less than three (3) years from the date of employment.

(d) A right to a hearing under § 558.5 of this part shall vest only upon receipt of a license under an ordinance approved by the Chairman.

§ 558.2 Eligibility determination for employment in a gaming operation.

An authorized tribal official shall make a finding concerning the eligibility of a key employee or a primary management official for employment in a gaming operation. If an authorized tribal official, in applying the standards adopted in a tribal ordinance, determines that employment of a person under investigation poses a threat to the public interest or to the effective regulation of gaming, or creates or enhances the dangers of unsuitable, unfair, or illegal practices and methods and activities in the conduct of gaming, a management contractor or a tribal gaming operation shall not employ that person in a key employee or primary management official position.

§ 558.3 Procedures for forwarding applications and reports to the Commission.

(a) When an employee begins work at a gaming operation, a tribe shall:

(1) Forward to the Commission a completed application for employment that contains the information listed in § 556.2 of this chapter; and

(2) Conduct a background investigation under part 556 of this chapter to determine the eligibility of the employee for continued employment in a gaming operation.

(b) Upon completion of a background investigation and a determination of eligibility for employment in a gaming operation under paragraph (a)(2) of this section, a tribe shall forward a report under § 556.5 of this part to the Commission within 60 days after an employee begins work. A gaming operation shall not employ a person who does not have a license after 90 days as a key employee or primary management official.

(c) During a 30-day period beginning when the Commission receives a report submitted under paragraph (b) of this section, the Chairman may request additional information from a tribe concerning an employee who is the subject of a report. Such a request shall suspend the 30-day period until the Chairman receives the additional information.

(d) If, at the conclusion of the 30-day period described under paragraph (c) of this section, the Commission has not notified the tribe that it has any objections, the tribe may issue the license.

§ 558.4 Granting a gaming license.

At the end of the 30-day period described under § 558.3(c) of this part or upon receipt of the Commission's report described under § 558.3(d) of this part, a tribe shall—

(a) Grant a gaming license to an employee who is eligible for continued employment in a gaming operation; or

(b) Terminate the employment of an employee as a key employee or a primary management official.

§ 558.5 License suspension.

(a) If, after the issuance of a gaming license, the Commission receives reliable information indicating that an employee is not eligible for employment under § 558.2 of this part, the Commission shall notify the tribe that issued a gaming license.

(b) Upon receipt of such notification under paragraph (a) of this section, a tribe shall suspend such license and shall notify in writing the licensee of the suspension and the proposed revocation.

(c) A tribe shall notify the licensee of a time and a place for a hearing on the proposed revocation of a license.

(d) After a revocation hearing, a tribe shall decide to revoke or to reinstate a gaming license. A tribe shall notify the Commission of its decision.

[FR Doc. 92-15879 Filed 7-7-92; 8:45 am]
BILLING CODE 7565-01

NATIONAL INDIAN GAMING COMMISSION

25 CFR Part 515

Privacy Act Procedures

AGENCY: National Indian Gaming Commission.

ACTION: Proposed rule.

SUMMARY: The National Indian Gaming Commission (NIGC, or the Commission) is proposing to establish this rule in chapter III of title 25 of the Code of Federal Regulations (part 515). The purpose of these regulations is to describe the procedures and policies adopted by the Commission pursuant to the Privacy Act of 1974, 5 U.S.C. 552a. Under the Act, federal agencies must publish, in the **Federal Register**, notice of any systems of records that they intend to establish. Agencies must also publish procedures regarding the collection, maintenance, use, and dissemination of certain records within those systems. The Commission is publishing notice of the creation of the Indian Gaming Individuals Records System elsewhere in today's **Federal Register**. The regulations proposed here provide procedures regarding the maintenance, use, and dissemination of records compiled in that system and in any other records systems created by the Commission.

DATES: Comments must be received by August 24, 1992.

ADDRESSES: Comments may be mailed to: Privacy Act Comments, NIGC, Suite 250, 1850 M. St., NW, Washington, DC 20036-5803. Comments may be delivered to the Commission between the hours of 8:30 a.m. and 5:30 p.m., Monday through Friday, or faxed to 202/632-7066 (not a toll free number). Comments may be inspected by the public between the

hours of 9 a.m. and noon, and between 2 p.m. and 5 p.m., at the above address, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mary Jane Markley, (202) 632-7003 (not a toll free number).

SUPPLEMENTARY INFORMATION: Congress enacted the Privacy of 1974 as a means of regulating the collection, maintenance, use and dissemination of personal information gathered by federal government agencies. The purpose of the Act is to balance the need of agencies to maintain information about individuals for various purposes, against the individual right to be protected against unwarranted invasions of privacy. The Act restricts the disclosure of certain personal information, while allowing individuals, on whom records have been compiled, greater access to and the right to amend those records. In effect, the Act establishes a code of fair information practices with which agencies must comply.

Privacy Act Procedures

The Commission, elsewhere in today's Federal Register, published notice of the creation of the Indian Gaming Individuals Records System to maintain information on key employees and management officials of Indian gaming operations. The purpose of these regulations is to inform the public of the procedures and policies the Commission is proposing pursuant to the Privacy Act of 1974, regarding information compiled in that and any other records system created by the Commission. The regulations provide procedures for requests by individuals for access to records compiled by the Commission on those individuals. The regulations also provide procedures for requests for amendments to existing records and for appeals to the Commission from the denial of such requests. Finally, the regulations exempt the Indian Gaming Individuals Records System from specific provisions of the Act.

Any individual, agent, parent or guardian may request the Commission to determine whether a record exists pertaining to such individual. Requests may be made in writing or in person at the address listed above under "Addresses." The Commission, within 10 days after its receipt of such a request, must notify the requester whether or not that person is the subject of a record. If a record exists on that individual, the Commission must then decide whether it will allow the requester access to that record. If the Commission denies access to a record, the requester will be advised of the denial, the reasons for denial, and rights of appeal (discussed below).

Any individual may also request an amendment to all or part of a record pertaining to that individual. The Records Manager, a Commission employee, will review all requests for amendments and will notify the requester, within 10 days after receipt of a request for amendment, whether or not it will amend the record. If the Commission denies the request for amendment, it will promptly notify the requester of the denial along with its reasons for denial. Due to the nature of the information contained in the Indian Gaming Individuals Records System, the Commission proposes to exempt the system from the amendment requirements of the Act if compliance would create an unreasonable administrative and investigative burden forcing the Commission to resolve questions of accuracy, relevance, timeliness or completeness.

Any indivdual may appeal the Commission's adverse decision on a request to access or amend a record. Such appeal must be made within 180 days after the adverse decision is rendered. The Commission will then have 30 days, unless it extends that period for good cause, to review the appeal and make a final determination regarding amendment. The Commission will promptly notify the requester of its final determination and, if denial is upheld on appeal, the reasons for that denial. The requester may file with the Commission a statement setting forth the reasons for disagreement with the Commission's adverse decision on access or amendment. The final determination is subject to judicial review in the appropriate federal district court.

Under the Privacy Act, an agency may promulgate rules exempting any system of records within an agency from compliance with various sections of the Act. 5 U.S.C. 552a. The Act allows such exemptions if the system of records contains investigatory material compiled for law enforcement purposes. 5 U.S.C. 552a(k)(2). Due to the nature of the information contained in the Indian Gaming Individuals Record System, the Commission proposes to exempt that system from the access requirements if such access would compromise information related to national security, interfere with a pending investigation or internal inquiry, constitute an unwarranted invasion of privacy, reveal a sensitive investigative technique, or pose a threat to the Commission, its employees or law enforcement officials.

The Commission also proposes to exempt the Indian Gaming Individuals Records System from the accounting of disclosures requirement. Under that provision, the agency is required to disclose, to the individual named in the record, all disclosures of the subject's record to other persons or agencies. The Commission believes that such disclosures could reveal an investigative interest in the individual who is the subject of the record. The Commission also proposes to exempt the records system from the requirement that each agency maintain only relevant and necessary information in its records. The Commission believes that, due to the investigatory nature of the materials contained in the Indian Gaming Records System, it is not always possible to determine the relevance or necessity of specific information in the early stages of an investigation. For these reasons, the Commission proposes to exempt the system from these requirements.

There will be no fee for the cost of searching for a record or any costs related thereto, except that the Commission may charge a fee sufficient to cover duplication costs. Also, penalties may be imposed, pursuant to 18 U.S.C. 494 and 495, for false statements made in connection with requests for records or amendments.

Regulatory Matters

Executive Order 12291 and the Regulatory Flexibility Act

The Commission has determined that this document is not a major rule under Executive Order 12291. The rule will not have any significant effects on the economy or result in major increases in costs or prices for consumers, individual industries, federal, state, or local governments, agencies or geographical regions. The rule will not have any adverse effects on competition, employment, investment, productivity, innovation, or the export/import market.

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., the Commission has determined that this rule will not have a significant economic impact on a substantial number of small entities. Because this rule is procedural in nature, it will not impose substantive requirements that could be deemed impacts within the scope of the Act.

Paperwork Reduction Act

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for approval as required by 44 U.S.C. 3501 et seq. The collection of this information

will not be required until it has been approved by OMB.

National Environmental Policy Act

The Commission has determined that this proposed rulemaking does not constitute a major federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

Executive Order 12778

The Chairman of the NIGC has certified to OMB that this rule meets the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778, "Civil Justice Reform," 56 FR 55195, October 25, 1991.

Dated: July 1, 1992.

Anthony J. Hope,

Chairman, National Indian Gaming Commission.

List of Subjects in 25 CFR Part 515:

Gaming, Indian lands, privacy.

For the reasons set forth in the preamble, title 25 of the Code of Federal Regulations is proposed to be amended by adding a new part 515.

PART 515—PRIVACY ACT PROCEDURES

Sec.

515.1 Purpose and scope.
515.2 Definitions.
515.3 Identification of individuals making requests.
515.4 Procedures for requests and disclosures.
515.5 Request for amendment to record.
515.6 Review of request for amendment of record by the Records Manager.
515.7 Appeal to the Commission of initial adverse agency determination on access or amendment to records.
515.8 Disclosure of record to a person other than the individual to whom it pertains.
515.9 Fees.
515.10 Penalties.
515.11 General exemptions. [Reserved]
515.12 Specific exemptions.

Authority: 5 U.S.C. 552a.

§ 515.1 Purpose and scope.

(a) The purpose of this part is to inform the public of records maintained by the Commission about identifiable individuals and to inform those individuals how they may gain access to and amend records concerning themselves.

(b) This part carries out the requirements of the Privacy Act of 1974 (Pub. L. 93–579) codified at 5 U.S.C. 552a.

(c) The regulation applies only to records disclosed or requested under the Privacy Act of 1974, and not to requests for information made pursuant to 5 U.S.C. 552, the Freedom of Information Act.

§ 515.2 Definitions.

As defined in the Privacy Act of 1974 and for the purposes of this part, unless otherwise required by the context, the following terms shall have these meanings:

(a) *Individual* means a citizen of the United States or an alien lawfully admitted for permanent residence.

(b) *Maintain* means maintain, collect, use, or disseminate.

(c) *Record* means any item, collection, or grouping of information about an individual that is maintained by the Commission, including education, financial transactions, medical history, and criminal or employment history, and that contains the individual's name, or the identifying number, symbol, or other identifier assigned to the individual, such as social security number, finger or voice print, or a photograph.

(d) *System of records* means a group of any records under the control of the Commission from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifier assigned to the individual.

(e) *Routine use* means, with respect to the disclosure of a record, the use of such record for a purpose that is compatible with the purpose for which it was collected.

§ 515.3 Identification of individuals making requests.

(a) Any individual may request that the Commission inform him or her whether a particular record system named by the individual contains a record pertaining to him or her and the contents of such record. Such requests shall conform to the requirements of § 515.4 of this part. The request may be made in person or in writing at the NIGC, Suite 250, 1850 M Street, NW., Washington, DC 20036–5803 during the hours of 9 a.m. to 12 noon and 2 p.m. to 5 p.m. Monday through Friday.

(b)(1) Requests made in writing shall include a statement, signed by the individual and either notarized or witnessed by two persons (including witnesses' addresses). If the individual appears before a notary, the individual shall submit adequate proof of identity in the form of a driver's license, birth certificate, passport, or other identification acceptable to the notary. If the statement is witnessed, it shall include a statement above the witnesses' signatures that they personally know the individual or that the individual has submitted proof of his or her identity to their satisfaction. In any case in which, because of the extreme sensitivity of the record sought to be seen or copied, the Commission determines that the identification is not adequate, it may request the individual to submit additional proof of identity.

(2) If the request is made in person, the requester shall submit proof of identity similar to that described in paragraph (b)(1) of this section, and that is acceptable to the Commission. The individual may have a person of his or her own choosing accompany him or her when the record is disclosed.

(c) Requests made by an agent, parent, or guardian shall be in accordance with the procedures described in paragraph (b) of this section.

§ 515.4 Procedures for requests and disclosures.

(a) Requests for a determination under § 515.3(a) of this part shall be acknowledged by the Commission within ten (10) days (excluding Saturdays, Sundays, and Federal holidays) after the date on which the Commission receives the request. If the Commission is unable to locate the information requested, it shall so notify the individual within ten (10) days (excluding Saturdays, Sundays and Federal holidays) after receipt of the request. Such acknowledgement may request additional information to assist the Commission in locating the record, or it may advise the individual that no record exists about that individual.

(b)(1) Upon submission of proof of identity as required by § 515.3(b) (1) or (2) of this part, the Commission shall respond within ten (10) days (excluding Saturdays, Sundays and Federal holidays). The Commission shall decide whether to make a record available to the record subject and shall immediately convey its determination to the requester. If the individual asks to see the record, the Commission may make the record available at the location where the record is maintained.

(2) The Commission shall furnish each record requested by an individual under this section in a form intelligible to that individual.

(3) If the Commission denies access to a record to an individual, that person shall be advised of the reason for the denial and of the appeal procedures provided in § 515.7 of this part.

(4) Upon request, an individual shall be provided access to the accounting of disclosures from his or her record under the same procedures as provided above and in § 515.3 of this part.

§ 515.5 Request for amendment to record.

(a) Any individual who has reviewed a record pertaining to him or her that was furnished under this part, may request that the Commission amend all or any part of that record.

(b) Each individual requesting an amendment shall send the request to the Records Manager.

(c) Each request for an amendment of a record shall contain the following information:

(1) The name of the individual requesting the amendment;

(2) The name of the system of records in which the record sought to be amended is maintained;

(3) The location of the system of records from which the individual record was obtained;

(4) A copy of the record sought to be amended or a sufficiently detailed description of that record;

(5) A statement of the material in the record that the individual desires to amend;

(6) A statement of the basis for the requested amendment, including any material that the individual can furnish to substantiate the reasons for the amendment sought.

§ 515.6 Review of request for amendment of record by the Records Manager.

(a) The Records Manager shall, not later than ten (10) days (excluding Saturdays, Sundays and Federal holidays) after the receipt of a request for an amendment of a record under § 515.5 of this part, acknowledge receipt of the request and inform the individual whether more information is required before the amendment can be considered.

(b) If more information is not required, within ten (10) days after receipt of the request (excluding Saturdays, Sundays and Federal holidays), the Records Manager shall either make the requested amendment or notify the individual of the Commission's refusal to do so, including in the notification the reasons for the refusal, and the appeal procedures provided in § 515.7 of this part.

(c) The Records Manager shall make each requested amendment to a record if such amendment will tend to negate inaccurate, irrelevant, untimely, or incomplete material in the record.

(d) The Records Manager shall inform prior recipients of any amendment or notation of dispute of such individual's record. The individual may request a list of prior recipients if there exists an accounting of the disclosures.

§ 515.7 Appeal to the Commission of initial adverse agency determination on access or amendment to records.

(a) Any individual whose request for access or an amendment has been denied in whole or in part, may appeal the decision to the Commission no later than one hundred eighty (180) days after the adverse decision is rendered.

(b) The appeal shall be in writing and shall contain all of the following information:

(1) The name of the individual making the appeal;

(2) Identification of the record sought to be amended;

(3) The record system in which such record is contained;

(4) A short statement describing the amendment sought; and

(5) The name and location of the agency official who initially denied the amendment.

(c) Not later than thirty (30) days (excluding Saturdays, Sundays and Federal holidays) after the date on which the Commission receives the appeal, the Commission shall complete its review of the appeal and make a final decision thereon. For good cause shown, however, the Commission may extend such thirty (30) day period. If the Commission extends the period, the individual requesting the review shall be promptly notified of the extension and the anticipated date of a decision.

(d) After review of an appeal, the Commission shall send a written notice to the requester containing the following information:

(1) The decision and, if the denial is upheld, the reasons for the decision;

(2) The right of the requester to file with the Commission a concise statement setting forth the reasons for his or her disagreement with the Commission's denial of access or amendment. The Commission shall make this statement available to any person to whom the record is later disclosed, together with a brief statement, if appropriate, of the Commission's reasons for denying requested access or amendment. The Commission shall also send a copy of the statement to prior recipients of the individual's record; and

(3) The right of the requester to institute a civil action in a Federal district court for judicial review of the decision.

§ 515.8 Disclosure of record to a person other than the individual to whom it pertains.

(a) Any individual who desires to have a record covered by this part disclosed to or mailed to another person may designate such person and authorize such person to act as his or her agent for that specific purpose. The authorization shall be in writing, signed by the individual, and notarized or witnessed as provided in § 515.3 of this part.

(b) The parent of any minor individual or the legal guardian of any individual who has been declared by a court of competent jurisdiction to be incompetent, due to physical or mental incapacity or age, may act on behalf of that individual in any matter covered by this section. A parent or guardian who desires to act on behalf of such an individual shall present suitable evidence of parentage or guardianship, by birth certificate, certified copy of court order, or similar documents, and proof of the individual's identity in a form that complies with § 515.3(b) of this part.

(c) An individual to whom a record is to be disclosed in person, pursuant to this section, may have a person of his or her own choosing accompany him or her when the record is disclosed.

§ 515.9 Fees.

The Commission shall not charge an individual for the costs of making a search for a record or the costs of reviewing the record. When the Commission makes a copy of a record as a necessary part of reviewing the record, the Commission shall not charge the individual for the cost of making that copy. Otherwise, the Commission may charge a fee sufficient to cover the cost of duplication.

§ 515.10 Penalties.

Any person who makes a false statement in connection with any request for a record, or an amendment thereto, under this part, is subject to the penalties prescribed in 18 U.S.C. 494 and 495.

§ 515.11 General exemptions. [Reserved]

§ 515.12 Specific exemptions.

(a) The following system of records is exempt from 5 U.S.C. § 552a(c)(3), (d), (e)(1) and (f):

Indian Gaming Individuals Records System

(b) The exceptions under paragraph (a) of this section apply only to the extent that information in this system is subject to exemption under 5 U.S.C. 552a(k)(2). When compliance would not appear to interfere with or adversely affect the overall responsibilities of the Commission with respect to licensing of key employees and primary management officials for employment in an Indian gaming operation, the

applicable exemption may be waived by the Commission.

(c) Exceptions from the particular subsections are justified for the following reasons:

(1) From subsection 5 U.S.C. 552a(c)(3), because making available the accounting of disclosures to an individual who is the subject of a record could reveal investigative interest. This would permit the individual to take measures to destroy evidence, intimidate potential witnesses, or flee the area to avoid the investigation.

(2) From subsections 5 U.S.C. 552a(d), (e)(1), and (f) concerning individual access to records, when such access could compromise classified information related to national security, interfere with a pending investigation or internal inquiry, constitute an unwarranted invasion of privacy, reveal a sensitive investigative technique, or pose a potential threat to the Commission or its employees or to law enforcement personnel. Additionally, access could reveal the identity of a source who provided information under an express promise of confidentiality.

(3) From subsection 5 U.S.C. 552a(d)(2), because to require the Commission to amend information thought to be incorrect, irrelevant, or untimely, because of the nature of the information collected and the length of time it is maintained, would create an impossible administrative and investigative burden by continually forcing the Commission to resolve questions of accuracy, relevance, timeliness, and completeness.

(4) From subsection 5 U.S.C. 552a(e)(1) because:

(i) It is not always possible to determine relevance or necessity of specific information in the early stages of an investigation.

(ii) Relevance and necessity are matters of judgment and timing in that what happens relevant and necessary when collected may be deemed unnecessary later. Only after information is assessed can its relevance and necessity be established.

(iii) In any investigation the Commission may receive information concerning violations of law under the jurisdiction of another agency. In the interest of effective law enforcement and under 25 U.S.C. 2716(b), the information could be relevant to an investigation by the Commission.

(iv) In the interviewing of individuals or obtaining evidence in other ways during an investigation, the Commission could obtain information that may or may not appear relevant at any given time; however, the information could be relevant to another investigation by the Commission.

[FR Doc. 92-15880 Filed 7-7-92; 8:45 am]

BILLING CODE 7565-01

NATIONAL INDIAN GAMING COMMISSION

Privacy Act of 1974; Publication of System of Records

AGENCY: National Indian Gaming Commission.

ACTION: Notice of a new system of records.

SUMMARY: The purpose of this document is to publish, as required by 5 U.S.C. 552a(e) and OMB Circular A-130, notification of a system of records. The need for such a system arises as a result of law regulating certain types of gaming on Indian lands (25 U.S.C. 2701 *et seq.*). Privacy Act proposed regulations are being published elsewhere in this issue of the **Federal Register.**

DATES: The system of records described in this notice will be implemented as tribes submit information from key employees and primary management officials who are employed in a gaming operation, but only after the Chairman of the National Indian Gaming Commission approves a tribal ordinance under 25 U.S.C. 2710. The Commission will consider comments on the system of records during the same period it considers comments on the rulemaking for tribal ordinances and background investigations. Comments on both the system of records notice and the rulemaking must be received by August 24, 1992.

ADDRESSES: Comments may be mailed to: Privacy/Ordinance/Investigations Comments, National Indian Gaming Commission, Suite 250, 1850 M Street, NW, Washington, DC 20036-5803, delivered to that address between 8:30 a.m. and 5:30 p.m., Monday through Friday, or faxed to 202/632-7066 (not a toll-free number). Comments received may be inspected by the public between 9 a.m. and noon, and between 2 p.m. and 5 p.m. at the above address Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mary Jane Markley, (202) 632-7003 (not a toll free number).

SUPPLEMENTARY INFORMATION: Congress established the National Indian Gaming Commission (NIGC, or the Commission) under The Indian Gaming Regulatory Act of 1988 (25 U.S.C. 2701 *et seq.*) (IGRA) to regulate gaming on Indian lands. The scope of this notice covers information necessary to ensure proper oversight of tribal licensing of certain employees and management officials in gaming operations on Indian lands. The IGRA requires a tribe to notify the Commission of the issuance of a license and the results of background checks for primary management officials and key employees of Indian gaming operations (25 U.S.C. 2710(b)(2)(F)(I) and (III)). Further, under the IGRA, the Commission has 30 days to object to issuance of a license by a tribe (25 U.S.C. 2710(c)(1)). Through rulemaking, the Commission intends to implement those legislative provisions by (1) requiring tribes to obtain certain information from applicants for key employee and primary management official positions in gaming operations; (2) requiring tribes to forward to the Commission the required information for each key employee and primary management official; (3) reviewing and verifying the submitted information; and (4) conducting supplementary background investigations to the extent the Commission deems necessary. The Commission plans to store all such information in a system of records. Hence, the need arises for a system of records notice.

NIGC-1

SYSTEM NAME:

Indian Gaming Individuals Record System.

SYSTEM LOCATION:

National Indian Gaming Commission, Suite 250, 1850 M St., NW, Washington, D.C. 20036-5803.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Key employees and primary management officials as defined under 25 CFR part 502.

CATEGORIES OF RECORDS IN THE SYSTEM:

Copies of applications for employment in gaming operations on Indian lands; information collected by the staff and members of the Commission; copies of reports of background investigations. Such information includes: (1) Full name, other names used, social security number(s) and birth date; (2) business and employment positions held, business and residence addresses, driver's license numbers; (3) the names and current addresses of personal references; (4) current business and residence telephone numbers; (5) a description of any previous business relationships with Indian tribes; (6) a description of any previous business relationships with the gaming industry generally; (7) the name and address of any licensing or regulatory agency with which the person has filed an application for a license or permit relating to gaming; (8) for any felony for which there is an ongoing prosecution or a conviction, the charge, the name and address of the court involved, and the date and disposition; (9) for any misdemeanor conviction or ongoing misdemeanor prosecution, the name and address of the court involved and the date and disposition; and (10) whatever other information a tribe deems relevant.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

25 U.S.C. 2710.

PURPOSE:

Used by Commission members and staff to verify suitability of key employees and primary management officials in Indian gaming operations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. To disclose relevant information to Federal, State, tribal, or local law enforcement of regulatory agencies to verify information supplied by applicant key employees and primary management officials in connection with determining suitability for employment in an Indian gaming operation.

2. To disclose relevant information to tribes that employ or may wish to employ individuals in Indian gaming operations.

3. In the event that records in this system indicate a violation or potential violation of law, criminal, civil, or regulatory in nature, the relevant records may be referred to the agency charged with responsibility for investigating or prosecuting such violation.

4. To disclose relevant information to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

5. To disclose relevant information to a Federal, State, local, or tribal agency (or their agents) that is involved in a civil regulatory or enforcement action to protect the integrity of Indian gaming.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS BY THE SYSTEM:

STORAGE:

Paper files, machine-processable storage media, and other computer storage devices.

RETRIEVABILITY:

Employee name, gaming operation where employed, social security number, and birth date.

SAFEGUARDS:

Folders are maintained in locked cabinets to which only authorized personnel have access; automated

records are protected by computer passwords and tape or disc library physical security.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with National Archives and Records Administration requirements. A records retention and disposal plan is under development. At present, the Commission contemplates disposal of the records after 10 years.

SYSTEM MANAGER(S) AND ADDRESS:

Records Manager, NIGC, Suite 250, 1850 M Street, NW., Washington, DC 20036–5803.

NOTIFICATION PROCEDURE:

Persons wishing to inquire whether the System contains information concerning themselves may submit inquiries to the Records Manager, NIGC, at the address above. Such persons must provide proof of their identity by including a statement, signed by the individual and either notarized or witnessed by two persons (include addresses of witnesses). The statement must be that the person is who he or she claims to be. If an individual makes an inquiry in person, such person must present the Commission with a statement signed by the individual and either notarized or witnessed by two persons (include addresses of witnesses).

RECORD ACCESS PROCEDURE:

Persons wishing access to their records should contact the Records Manager, NIGC, at the address above. Such persons must provide proof of their identity by including a statement, signed by the individual and either notarized or witnessed by two persons (include addresses of witnesses). The statement must be that the person is who he or she claims to be. If an individual makes an inquiry in person, such person must present the Commission with a statement signed by the individual and either notarized or witnessed by two persons (include addresses of witnesses). Such persons must comply with the Privacy Act regulations.

CONTESTING RECORD PROCEDURES:

Any individual who has reviewed a record pertaining to him or her may request that the Commission amend all or any part of that record by sending a request to the Records Manager. A request must contain the name of the individual requesting the amendment, the name of the system of records where the record is maintained, a copy of the record sought to be amended or a description of that record, a statement of the material requested to be amended, and the basis for amendment, including material that substantiates the reason for the amendment.

RECORD SOURCE CATEGORIES:

Individual applications for employment in Indian gaming operations; background investigation reports compiled by tribes or by contractors; persons interviewed as part of a background investigation; Federal, state, foreign, tribal, and local law enforcement and regulatory agencies; Commission staff and members; credit bureaus.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE PRIVACY ACT:

Under 5 U.S.C. 552a(k)(2) the Commission is claiming exemptions from certain provisions of the Act for portions of its records. The exemptions and the reasons for them are described in the regulations.

Dated: July 1, 1992.

Anthony J. Hope,

Chairman, National Indian Gaming Commission.

[FR Doc. 92–15881 Filed 7–7–92; 8:45 am]

BILLING CODE 7565–01–M

federal register

Wednesday
July 8, 1992

Part V

Department of Health and Human Services

Public Health Service

List for Categorization of Laboratory Test Systems, Assays and Examinations by Complexity; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Specific List for Categorization of Laboratory Test Systems, Assays and Examinations by Complexity

AGENCY: Public Health Service, HHS.

ACTION: Notice with comment period.

SUMMARY: The Clinical Laboratory Improvement Amendments of 1988, Public Law 100-578, requires that the Secretary provide for the categorization of specific laboratory test systems, assays and examinations by level of complexity. 42 CFR 493.17, published in the **Federal Register** on February 28, 1992 established criteria for such categorization.

It is the Department's intention to complete the categorization of all currently available clinical laboratory test systems, assays and examinations prior to the effective date of 42 CFR 493 (September 1, 1992). This notice announces the second of a series of lists containing specific clinical laboratory test systems, assays and examinations, categorized by complexity. This notice also includes deletions and corrections to the list of test systems, assays and examinations published on February 28, 1992. Additional lists of test systems, assays and examinations as well as deletions and corrections will be published periodically. On or before September 1, 1992, a complete list of all laboratory test systems, assays and examinations, categorized by complexity, will be published in the form of a compilation of these Notices. Any clinical laboratory test system, assay or examination that is not on that final list will be considered high complexity, until categorized otherwise as provided under 42 CFR 493.17. After publication of the compilation, applications will be taken to categorize (or recategorize) other laboratory test systems, assays and examinations following the procedures delineated in 42 CFR 493.17(d). After September 1, 1992, notices will be published periodically in the **Federal Register** to announce any additional test system, assay or examination that has been categorized (or re-categorized) during the preceding interval.

DATES: *Effective date:* This list is effective September 1, 1992.

Comment date: Written comments on this list of tests will be considered if they are received at the address indicated below, no later than 5 p.m. on August 7, 1992.

ADDRESSES: Comments on the content of this Notice—only—should be addressed to Public Health Service, Attention: CLIA **Federal Register** Notice, 1600 Clifton Rd. NE, (Mail Stop MLR5), Atlanta GA 30333.

Due to staffing and resource limitations, we cannot accept facsimile (FAX) copies of comments. Nor can we accept comments by telephone.

FOR FURTHER INFORMATION CONTACT: Miley A. Robinson, (404) 639-1701.

SUPPLEMENTARY INFORMATION: As described in 42 CFR 493.17, seven criteria were used to classify laboratory test systems, assays or examinations as moderate or high complexity using a grading scheme for level of complexity that assigned scores of 1, 2 or 3 for each of the seven criteria. Test systems, assays or examinations receiving total scores of 12 or less were categorized as moderate complexity, while those receiving total scores of 13 through 21 were categorized as high complexity. As provided under 42 CFR 493.17, the following laboratory test systems, assays and examinations have been categorized as moderate or high complexity as noted.

Dated: June 29, 1992.

James O. Mason,

Assistant Secretary for Health.

Additions to the Specific List for Categorization of Laboratory Test Systems, Assays and Examinations by Complexity Published as a Notice in the Federal Register on February 28, 1992

Complexity: Moderate
Speciality Subspeciality: General Chemistry
Analyte: Acid Phosphatase
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
- Bio-Chem Laboratory Systems ATAC 2100
- BioAutoMed ASCA
- Coulter Dacos
- Coulter Dacos XL
- Coulter Optichem 100
- Kodak Ektachem 700
- Olympus Reply

Analyte: Alanine Aminotransferase (ALT) (SGPT)
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
- Beckman Astra 8e
- Beckman Synchron AS-Xe
- Beckman Synchron AS-Xi
- Beckman Synchron CX 4 CE
- Bio-Chem Laboratory Systems ATAC 2100
- Bio-Chem Laboratory Systems ATAC 6000
- BioAutoMed ASCA
- Boehringer Mannheim Reflotron I System
- Coulter Dacos
- Coulter Dacos XL
- Coulter Optichem 100
- Olympus AU 5021
- Olympus AU 5031
- Olympus AU 5061
- Olympus Reply

Analyte: Albumin
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
- Beckman Array
- Beckman Astra 8
- Beckman Astra 8e
- Beckman Synchron AS-Xe
- Beckman Synchron AS-Xi
- Beckman Synchron CX 4 CE
- Bio-Chem Laboratory Systems ATAC 2100
- Bio-Chem Laboratory Systems ATAC 6000
- BioAutoMed ASCA
- Coulter Dacos
- Coulter Dacos XL
- Coulter Optichem 100
- Kodak Ektachem DT SC Module
- Olympus AU 5021
- Olympus AU 5031
- Olympus AU 5061
- Olympus AU 5121
- Olympus Reply

Analyte: Alkaline Phosphatase (ALP)
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
- Beckman Astra 8e
- Beckman Synchron AS-Xe
- Beckman Synchron AS-Xi
- Beckman Synchron CX 4 CE
- Bio-Chem Laboratory Systems ATAC 2100
- Bio-Chem Laboratory Systems ATAC 6000
- BioAutoMed ASCA
- Coulter Dacos
- Coulter Dacos XL
- Coulter Optichem 100
- Kodak Ektachem 700
- Olympus AU 5021
- Olympus AU 5031
- Olympus AU 5061
- Olympus AU 5121
- Olympus Reply

Analyte: Alpha-Hydroxybutyrate Dehydrogenase (HBDH)
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
- Beckman Synchron CX 4
- Beckman Synchron CX 4 CE
- Beckman Synchron CX 5

Beckman Synchron CX 7
BioAutoMed ASCA
Boehringer Mannheim Hitachi 717
Dupont ACA
Olympus Reply

Analyte: Ammonia
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Bio-Chem Laboratory Systems ATAC 2100
Bio-Chem Laboratory Systems ATAC 6000
BioAutoMed ASCA
Dupont Dimension AR
Kodak Ektachem 400
Kodak Ektachem 700

Analyte: Amylase
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Beckman Astra 8e
Beckman Synchron AS-Xe
Beckman Synchron AS-Xi
Beckman Synchron CX 4 CE
Bio-Chem Laboratory Systems ATAC 2100
Bio-Chem Laboratory Systems ATAC 6000
BioAutoMed ASCA
Boehringer Mannheim Reflotron I System
Coulter Dacos
Coulter Dacos XL
Coulter Optichem 100
Coulter Optichem 180
Olympus AU 5021
Olympus AU 5031
Olympus AU 5061
Olympus AU 5121
Olympus Reply

Analyte: Apolipoprotein Al
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Beckman Array
Beckman Array 360
Bio-Chem Laboratory Systems ATAC 6000
Olympus AU 5021
Olympus AU 5031
Olympus AU 5061

Analyte: Apolipoprotein B
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Beckman Array
Beckman Array 360
Bio-Chem Laboratory Systems ATAC 6000
Olympus AU 5021
Olympus AU 5031
Olympus AU 5061

Analyte: Asparate Aminotransferase (AST) (SGOT)
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Beckman Astra 8e
Beckman Synchron AS-Xe
Beckman Synchron AS-Xi
Beckman Synchron CX 4 CE
Bio-Chem Laboratory Systems ATAC 2100
Bio-Chem Laboratory Systems ATAC 6000
BioAutoMed ASCA
Boehringer Mannheim Reflotron I System
Coulter Dacos
Coulter Dacos XL
Coulter Optichem 100
Olympus AU 5021
Olympus AU 5031
Olympus AU 5061
Olympus AU 5121
Olympus Reply

Analyte: Bilirubin, Direct
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Beckman Astra 8e
Beckman Astra Ideal
Beckman Synchron AS-Xe
Beckman Synchron CX 3
Beckman Synchron CX 5
Bio-Chem Laboratory Systems ATAC 2100
Bio-Chem Laboratory Systems ATAC 6000
BioAutoMed ASCA
Coulter Dacos
Coulter Dacos XL
Coulter Optichem 100
Kodak Ektachem 400
Kodak Ektachem 500
Kodak Ektachem 700
Kodak Ektachem 700 XR
Olympus AU 5021
Olympus AU 5031
Olympus AU 5061
Olympus AU 5121
Olympus Reply

Analyte: Bilirubin, Neonatal
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Abbott Spectrum
Abbott Spectrum EPX
Abbott Spectrum Series II
Abbott Spectrum Series II CCX
Abbott Vp
Abbott Vision
Kodak Ektachem 400
Kodak Ektachem 500
Kodak Ektachem 700
Kodak Ektachem 700 XR
Kodak Ektachem DT 60

Analyte: Bilirubin, Total
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Beckman Astra 8e
Beckman Astra Ideal
Beckman Synchron AS-Xe
Beckman Synchron CX 3
Beckman Synchron CX 5
Bio-Chem Laboratory Systems ATAC 2100
Bio-Chem Laboratory Systems ATAC 6000
BioAutoMed ASCA
Boehringer Mannheim Reflotron I System
Coulter Dacos
Coulter Dacos XL
Coulter Optichem 100
Kodak Ektachem 400
Kodak Ektachem 700
Kodak Ektachem 700 XR
Olympus AU 5021
Olympus AU 5031
Olympus AU 5061
Olympus AU 5121
Olympus Reply
Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
Becton Dickinson QBC Plus
Becton Dickinson QCA Analyzer

Analyte: Blood Gases with pH
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Nova STAT Profile 5
Nova STAT Profile 7
Nova Stat Profile 1
Nova Stat Profile 2
Nova Stat Profile 3
Nova Stat Profile 4
PPG Industries StatPal Blood Gas Analysis System
Radiometer ABL 1
Radiometer ABL 2 RA
Radiometer ABL 3 M
Radiometer ABL 500
Radiometer ABL 505
Radiometer ABL 510
Radiometer ABL 520

Analyte: Calcium, ionized
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Nova 2
Nova 6
Nova 7
Nova 8
Nova Nucleus
Nova STAT Profile 5
Nova Stat Profile 1
Nova Stat Profile 4
Nova Stat Profile 6
Nova Stat Profile 8
Radiometer ABL 505

Analyte: Calcium, total

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Beckman Astra Ideal
Beckman E2A
Beckman Synchron AS-Xe
Beckman Synchron AS-Xi
Beckman Synchron CX 3
Beckman Synchron CX 5
Bio-Chem Laboratory Systems ATAC 2100
Bio-Chem Laboratory Systems ATAC 6000
BioAutoMed ASCA
Coulter Dacos
Coulter Dacos XL
Coulter Optichem 100
Nova 10
Nova 7
Nova 9
Nova Nucleus
Olympus AU 5021
Olympus AU 5031
Olympus AU 5061
Olympus AU 5121
Olympus Reply

Analyte: Carbon Dioxide, total (CO_2)
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Abbott Spectrum
Abbott Spectrum EPX
Abbott Spectrum Series II
Abbott Spectrum Series II CCX
Beckman Astra 8e
Beckman Choloride/CO_2 Analyzer
Beckman Synchron AS-Xe
Beckman Synchron AS-Xi
Bio-Chem Laboratory Systems ATAC 2100
Bio-Chem Laboratory Systems ATAC 6000
Coulter Dacos
Coulter Dacos XL
Coulter Optichem 100
Nova 12
Nova 3
Nova 4
Nova Nucleus
Olympus AU 5021
Olympus AU 5031
Olympus AU 5061
Olympus Reply

Analyte: Carboxyhemoglobin
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Radiometer ABL 520
Radiometer OSM 2
Radiometer OSM 3

Analyte: Carcinoembruonic Antigen (CEA)
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Abbott IMX
Bio-Chem Laboratory Systems ATAC 6000

Analyte: Cerebrospinal Fluid Protein (CSF)
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Dupont ACA
Kodak Ektachem 500
Kodak Ektachem 700
Kodak Ektachem 700 XR

Analyte: Chloride
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
AVL 9130
Baxter CLiNaK ISE Module
Baxter Paramax 720
Beckman Astra 8e
Beckman Choloride/CO_2 Analyzer
Beckman Synchron AS-Xe
Beckman Synchron AS-Xi
Bio-Chem Laboratory Systems ATAC 2100
Bio-Chem Laboratory Systems ATAC 6000
Bio-Chem Laboratory Systems ATAC ISE
Bio-Chem Laboratory Systems ATAC ISE Plus
BioAutoMed ASCA
Coulter Dacos
Coulter Dacos XL
Coulter Optichem 100
Nova 10
Nova 12
Nova 13
Nova 14
Nova 3
Nova 4
Nova 5
Nova Nucleus
Nova Stat Profile 5
Nova Stat Profile 4
Nova Stat Profile 6
Olympus AU 5021
Olympus AU 5031
Olympus AU 5061
Olympus AU 5121
Olympus Reply
Radiometer ABL 505

Analyte: Cholesterol
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Beckman Astra 8
Beckman Astra 8e
Beckman Synchron AS-Xe
Beckman Synchron AS-Xi
Beckman Synchron CX 4 CE
Bio-Chem Laboratory Systems ATAC 2100
Bio-Chem Laboratory Systems ATAC 6000
BioAutoMed ASCA
Boehringer Mannheim ProAct System
Coulter Dacos
Coulter Dacos XL
Coulter Optichem 100
Olympus AU 5021
Olympus AU 5031
Olympus AU 5061
Olympus AU 5121
Olympus Reply
Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
Becton Dickinson QBC Plus
Becton Dickinson QCA Analyzer

Analyte: Cholinesterase
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Beckman Synchron CX 4
Beckman Synchron CX 4 CE
Beckman Synchron CX 5
Beckman Synchron CX 7
Bio-Chem Laboratory Systems ATAC 2100
Bio-Chem Laboratory Systems ATAC 6000
Kodak Ektachem 500
Kodak Ektachem 700
Kodak Ektachem 700 XR
Kodak Ektachem DT SC Module

Analyte: Cortisol
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Serono Baker SR 1

Analyte: Creatine Kinase (CK)
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Ames Seralyzer
Beckman Astra Ideal
Beckman Synchron AS-Xe
Beckman Synchron CX 3
Beckman Synchron CX 5
Bio-Chem Laboratory Systems ATAC 2100
Bio-Chem Laboratory Systems ATAC 6000
BioAutoMed ASCA
Boehringer Mannheim Reflotron I System
Coulter Dacos
Coulter Dacos XL
Coulter Optichem 100
Olympus AU 5021
Olympus AU 5031
Olympus AU 5061
Olympus Reply

Analyte: Creatine Kinase MB Fraction (CKMB)
Category: Automated procedures that do not require operator intervention during the analytic process

Test System, Assay or Examination:
Abbott VP
Beckman Synchron CX 4
Beckman Synchron CX 4 CE
Beckman Synchron CX 5
Bio-Chem Laboratory Systems ATAC 2100
Bio-Chem Laboratory Systems ATAC 6000
BioAutoMed ASCA
Coulter Dacos
Coulter Dacos XL
Coulter Optichem 100
Coulter Optichem 120
Coulter Optichem 180
Dupont ACA
Dupont Dimension AR
Kodak Ektachem 500
Kodak Ektachem 700
Kodak Ektachem 700 XR

Analyte: Creatinine
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Beckman Astra 8e
Beckman Synchron AS-Xe
Beckman Synchron AS-Xi
Beckman Synchron CX 4 CE
Bio-Chem Laboratory Systems ATAC 2100
Bio-Chem Laboratory Systems ATAC 6000
BioAutoMed ASCA
Coulter Dacos
Coulter Dacos XL
Coulter Optichem 100
Kodak Ektachem DT SC Module
Nova Nucleus
Olympus AU 5021
Olympus AU 5031
Olympus AU 5061
Olympus Reply
Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
Becton Dickinson QBC Plus
Becton Dickinson QCA Analyzer

Analyte: Estradiol
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Boehringer Mannheim ES 300
Serono Baker SR 1

Analyte: Ferritin
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Bio-Chem Laboratory Systems ATAC 6000
BioAutoMed ASCA
Serono Baker SR 1

Analyte: Follicle Stimulating Hormone (FSH)
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Abbott IMX Select
Serono Baker SR 1

Analyte: Fructosamine
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Bio-Chem Laboratory Systems ATAC 6000

Analyte: Gamma Glutamyl Transferase (GGT)
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Beckman Astra 8e
Beckman Synchron AS-Xe
Beckman Synchron AS-Xi
Beckman Synchron CX 4 CE
Bio-Chem Laboratory Systems ATAC 2100
Bio-Chem Laboratory Systems ATAC 6000
BioAutoMed ASCA
Boehringer Mannheim Reflotron I System
Coulter Dacos
Coulter Dacos XL
Coulter Optichem 100
Kodak Ektachem DT SC Module
Olympus AU 5021
Olympus AU 5031
Olympus AU 5061
Olympus AU 5121
Olympus Reply

Analyte: Glucose
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Beckman Astra 8e
Beckman Synchron AS-Xe
Beckman Synchron AS-Xi
Beckman Synchron CX 4 CE
Beckman Synchron CX 7
Bio-Chem Laboratory Systems ATAC 2100
Bio-Chem Laboratory Systems ATAC 6000
BioAutoMed ASCA
Coulter Dacos
Coulter Dacos XL
Coulter Optichem 100
Dupont Dimension AR
Kodak Ektachem 400
Nova 12
Nova 14
Nova Nucleus
Nova STAT Profile 5
Nova Stat Profile 6
Olympus AU 5021
Olympus AU 5031
Olympus AU 5061
Olympus Reply
Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
Becton Dickinson QBC Plus
Becton Dickinson QCA Analyzer

Analyte: Glycosylated Hemoglobin
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Abbott IMX
Abbott Vision

Analyte: HCG, Serum, Qualitative
Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
Ampcor Quik-Dip Pregnancy

Analyte: HCG, Serum, Quantitative
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Becton Dickinson Affinity
BioAutoMed ASCA
Serono Baker SR 1

Analyte: HCG, Urine, Qualitative (non-waived Procedures)
Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
Biomerica Nimbus
Roche Pregnosis

Analyte: HDL Cholesterol (no manual precipitation VLDL/LDL)
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Abbott Vision, Whole Blood Procedure
Boehringer Mannheim Reflotron I System

Analyte: Iron
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Abbott Spectrum
Abbott Spectrum EPX
Abbott Spectrum Series II
Abbott Spectrum Series II CCX
Beckman Synchron CX 4 CE
Bio-Chem Laboratory Systems ATAC 2100
Bio-Chem Laboratory Systems ATAC 6000
BioAutoMed ASCA
Coulter Dacos
Coulter Dacos XL
Coulter Optichem 100
Kodak Ektachem 400
Olympus AU 5021
Olympus AU 5031
Olympus AU 5061

Olympus AU 5121
Olympus Reply

Analyte: Lactate Dehydrogenase (LDH)
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Beckman Astra 8e
Beckman Synchron AS-Xe
Beckman Synchron AS-Xi
Beckman Synchron CX 4 CE
Bio-Chem Laboratory Systems ATAC 2100
Bio-Chem Laboratory Systems ATAC 6000
BioAutomed ASCA
Coulter Dacos
Coulter Dacos XL
Coulter Optichem 100
Kodak Ektachem 400
Olympus AU 5021
Olympus AU 5031
Olympus AU 5061
Olympus Reply

Analyte: Lactate Dehydrogenase Heart Fraction (LDH-1)
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Abbott Spectrum
Abbott Spectrum EPX
Abbott Spectrum Series II
Abbott Spectrum Series II CCX
Bio-Chem Laboratory Systems ATAC 6000
Dupont ACA
Dupont ACA IV
Dupont ACA V

Analyte: Lactate Dehydrogenase Liver Fraction (LLDH)
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Dupont ACA

Analyte: Lactic Acid (Lactate)
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Beckman Synchron CX 4
Beckman Synchron CX 4 CE
Beckman Synchron CX 5
Beckman Synchron CX 7
Dupont Dimension AR
Kodak Ektachem 500
Kodak Ektachem 700
Kodak Ektachem DT 60
Nova STAT Profile 7

Analyte: Leucine Aminopeptidase (LAP)
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Beckman Synchron CX 4
Beckman Synchron CX 4 CE
Beckman Synchron CX 5
Beckman Synchron CX 7

Analyte: Lipase
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Bio-Chem Laboratory Systems ATAC 2100
Bio-Chem Laboratory Systems ATAC 6000
BioAutoMed ASCA
Dupont Dimension AR
Kodak Ektachem 400
Kodak Ektachem 700

Analyte: Lithium
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Baxter CLiNaK ISE Module
Baxter Paramax 720
Nova 11
Nova 13
Nova 4
Nova Nucleus

Analyte: Luteinizing Hormone (LH)
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Abbott IMX Select
Serono Baker SR 1

Analyte: Magnesium
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Beckman Synchron CX 4 CE
Bio-Chem Laboratory Systems ATAC 2100
Bio-Chem Laboratory Systems ATAC 6000
BioAutoMed ASCA
Coulter Dacos
Coulter Dacos XL
Coulter Optichem 100
Nova 6
Nova Nucleus
Olympus AU 5021
Olympus AU 5031
Olympus AU 5061
Olympus Reply

Analyte: Magnesium, Ionized
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Nova Stat Profile 8

Analyte: Oxyhemoglobin/Oxygen Saturation
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
AVL 912
AVL 995 Hb
Radiometer ABL 520
Radiometer OSM 2
Radiometer OSM 3
Waters Instruments Oxicom 3000

Analyte: Phosphorus
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Beckman Astra 8
Beckman Astra 8e
Beckman Synchron AS-Xe
Beckman Synchron AS-Xi
Beckman Synchron CX 4 CE
Bio-Chem Laboratory Systems ATAC 2100
Bio-Chem Laboratory Systems ATAC 6000
BioAutoMed ASCA
Coulter Dacos
Coulter Dacos XL
Coulter Optichem 100
Olympus AU 5021
Olympus AU 5031
Olympus AU 5061
Olympus Reply

Analyte: Potassium
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
AVL 9120
AVL 9130
Abbott Vision
Baxter CLiNaK ISE Module
Baxter Paramax 720
Beckman Astra 4
Beckman Astra 8e
Beckman Synchron AS-Xe
Beckman Synchron AS-Xi
Bio-Chem Laboratory Systems ATAC 2100
Bio-Chem Laboratory Systems ATAC ISE
Bio-Chem Laboratory Systems ATAC ISE Plus
Boehringer Mannheim Reflotron I System
Coulter Dacos
Coulter Dacos XL
Coulter Optichem 100
Nova 1
Nova 10
Nova 11
Nova 12
Nova 13
Nova 14
Nova 4
Nova 5
Nova 6
Nova 9
Nova Nucleus
Nova STAT Profile 5
Nova Stat Profile 1
Nova Stat Profile 2
Nova Stat Profile 4
Nova Stat Profile 6
Nova Stat Profile 8
Olympus AU 5021
Olympus AU 5031
Olympus AU 5061
Olympus AU 5121

Olympus Reply
Radiometer ABL 4
Radiometer ABL 505
Radiometer KNA 1
Radiometer KNA 2
Analyte: Progesterone
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Becton Dickinson Affinity
Serono Baker SR 1
Analyte: Prolactin
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Abbott IMX Select
Serono Baker SR 1
Analyte: Prostatic Acid Phosphatase
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Bio-Chem Laboratory Systems ATAC 6000
BioAutoMed ASCA
Analyte: Protein, Total
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Beckman Astra 8e
Beckman Astra Ideal
Beckman Synchron AS-X
Beckman Synchron AS-Xe
Beckman Synchron CX 3
Bio-Chem Laboratory Systems ATAC 2100
Bio-Chem Laboratory Systems ATAC 6000
BioAutoMed ASCA
Coulter Dacos
Coulter Dacos XL
Coulter Optichem 100
Nova Nucleus
Olympus AU 5021
Olympus AU 5031
Olympus AU 5061
Olympus Reply
Analyte: Pseudocholinesterase
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Dupont Dimension AR
Analyte: Sodium
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
AVL 9120
AVL 9130
Baxter CLiNaK ISE Module
Baxter Paramax 720
Beckman Astra 4
Beckman Astra 8e
Beckman Synchron AS-Xe
Beckman Synchron AS-Xi
Bio-Chem Laboratory Systems ATAC ISE
Bio-Chem Laboratory Systems ATAC ISE Plus
Coulter Dacos
Coulter Dacos XL
Coulter Optichem 100
Nova 1
Nova 10
Nova 11
Nova 12
Nova 13
Nova 14
Nova 4
Nova 5
Nova 6
Nova 9
Nova Nucleus
Nova STAT Profile 5
Nova Stat Profile 1
Nova Stat Profile 2
Nova Stat Profile 4
Nova Stat Profile 6
Nova Stat Profile 8
Olympus AU 5021
Olympus AU 5031
Olympus AU 5061
Olympus AU 5121
Olympus Reply
Radiometer ABL 505
Radiometer KNA 1
Radiometer KNA 2
Analyte: Testosterone
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Serono Baker SR 1
Analyte: Thyroid Stimulating Hormone (TSH)
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Bio-Chem Laboratory Systems ATAC 6000
BioAutoMed ASCA
Serono Baker SR 1
Analyte: Thyroid Stimulating Hormone—high sens. (TSH-HS)
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Baxter Stratus II
Analyte: Thyroxine (T4)
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Abbott Vision
Beckman Synchron CX 4
Beckman Synchron CX 4 CE
Beckman Synchron CX 5
Beckman Synchron CX 7
Bio-Chem Laboratory Systems ATAC 6000
BioAutoMed ASCA
Dupont Dimension AR
Olympus AU 5000
Olympus AU 5021
Olympus AU 5031
Olympus AU 5061
Olympus Reply
Serono Baker SR 1
Technicon RA 1000
Technicon RA 2000
Technicon RA 500
Technicon RA XT
Analyte: Thyroxine, Free (FT4)
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Becton Dickinson Affinity
Analyte: Transferrin
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Beckman Array
Beckman Synchron CX 4
Beckman Synchron CX 4 CE
Beckman Synchron CX 5
Beckman Synchron CX 7
Technicon RA 1000
Technicon RA 2000
Technicon RA 500
Technicon RA XT
Analyte: Triglyceride
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Beckman Astra 8
Beckman Astra 8e
Beckman Synchron AS-Xe
Beckman Synchron AS-Xi
Bio-Chem Laboratory Systems ATAC 2100
Bio-Chem Laboratory Systems ATAC 6000
BioAutoMed ASCA
Boehringer Mannheim Reflotron I System
Coulter Dacos
Coulter Dacos XL
Coulter Optichem 100
Olympus AU 5021
Olympus AU 5031
Olympus AU 5061
Olympus Reply
Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
Becton Dickinson QBC Plus
Becton Dickinson QCA Analyzer
Analyte: Triiodothyronine (T3)
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Bio-Chem Laboratory Systems ATAC 6000
Serono Baker SR 1

Analyte: Triiodothyronine Uptake (T3U)
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Beckman Synchron CX 4
Beckman Synchron CX 4 CE
Beckman Synchron CX 5
Beckman Synchron CX 7
Bio-Chem Laboratory Systems ATAC 6000
BioAutoMed ASCA
Dupont ACA
Dupont Dimension AR
Olympus AU 5000
Olympus AU 5021
Olympus AU 5031
Olympus AU 5061
Olympus Reply
Serono Baker SR 1
Analyte: Triiodothyronine, Free (FT3)
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Abbott IMX
Analyte: Urea (BUN)
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Beckman Astra 8e
Beckman Synchron AS-Xe
Beckman Synchron AS-Xi
Bio-Chem Laboratory Systems ATAC 2100
Bio-Chem Laboratory Systems ATAC 6000
BioAutoMed ASCA
Coulter Dacos
Coulter Dacos XL
Coulter Optichem 100
Nova 12
Nova 14
Nova Nucleus
Olympus AU 5021
Olympus AU 5031
Olympus AU 5061
Olympus Reply
Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
Becton Dickinson QBC Plus
Becton Dickinson QCA Analyzer
Analyte: Uric Acid
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Beckman Astra 8
Beckman Astra 8e
Beckman Synchron AS-Xe
Beckman Synchron AS-Xi
Bio-Chem Laboratory Systems ATAC 2100
Bio-Chem Laboratory Systems ATAC 6000
BioAutoMed ASCA
Coulter Dacos
Coulter Dacos XL
Coulter Optichem 100
Olympus AU 5021
Olympus AU 5031
Olympus AU 5061
Olympus AU 5121
Olympus Reply
Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
Becton Dickinson QBC Plus
Becton Dickinson QCA Analyzer
Analyte: Vitamin B12
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Becton Dickinson Affinity
Speciality/Subspeciality: General Immunology
Analyte: Alpha-1-Acid Glycoprotein (orosomucoid)
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Beckman Array
Analyte: Alpha-1-Antitrypsin
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Beckman Array
Analyte: Alpha-2-Macroglobulin
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Beckman Array
Beckman Synchron CX 4
Analyte: Alpha-Fetoprotein—Tumor Marker
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
BioAutoMed ASCA
Boehringer Mannheim ES 300
Analyte: Anti-Streptolysin O (ASO)
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Beckman Array
Beckman Array 360
Beckman Synchron CX 4
Beckman Synchron CX 4 CE
Beckman Synchron CX 5
Beckman Synchron CX 7
Analyte: C-Reactive Protein (CRP)
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Beckman Array
Beckman Synchron CX 4
Beckman Synchron CX 4 CE
Beckman Synchron CX 5
Dupont Dimension AR
Technicon RA 1000
Technicon RA 2000
Technicon RA 500
Technicon RA XT
Analyte: Ceruloplasmin
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Beckman Array
Analyte: Complement C3
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Beckman Array
Technicon RA 1000
Technicon RA 2000
Technicon RA 500
Technicon RA XT
Analyte: Complement C4
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Beckman Array
Technicon RA 1000
Technicon RA 2000
Technicon RA 500
Technicon RA XT
Analyte: Haptoglobin
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Beckman Array
Beckman Synchron CX 4
Analyte: Hepatitis A Antibody—IgM
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Abbott IMX
Analyte: Hepatitis B Core Antibody—IgM
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Abbott IMX
Analyte: Immunoglobulins IgA
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Beckman Array
Beckman Synchron CX 4
Beckman Synchron CX 4 CE
Beckman Synchron CX 5
Beckman Synchron CX 7
Technicon RA 1000
Technicon RA 2000
Technicon RA 500
Technicon RA XT

Analyte: Immunoglobulins IgE
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Bio-Chem Laboratory Systems ATAC 6000
Analyte: Immunoglobulins IgG
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Beckman Array
Beckman Synchron CX 4
Beckman Synchron CX 4 CE
Beckman Synchron CX 5
Beckman Synchron CX 7
Technicon RA 1000
Technicon RA 2000
Technicon RA 500
Technicon RA XT
Analyte: Immunoglobulins IgM
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Beckman Array
Beckman Synchron CX 4
Beckman Synchron CX 4 CE
Beckman Synchron CX 5
Beckman Synchron CX 7
Technicon RA 1000
Technicon RA 2000
Technicon RA 500
Technicon RA XT
Analyte: Infectious Mononucleosis Antibodies (Mono)
Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
Pacific Biotech Cards O.S. Mono
Analyte: Kappa Light Chains
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Beckman Array
Analyte: Lambda Light Chains
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Beckman Array
Analyte: Microalbumin
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Beckman Array
Beckman Array 360
Analyte: Prealbumin
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Beckman Array
Analyte: Properdin Factor B
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Beckman Array
Analyte: Prostatic Specific Antigen (PSA)
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Bio-Chem Laboratory Systems ATAC 6000
Analyte: Rheumatoid Factor (RA)
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Beckman Array
Analyte: Rubella Antibodies—IgG/IgM
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Serono Baker SR 1
Analyte: Toxoplasma gondii Antibodies—IgG/IgM
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Serono Baker SR 1
Speciality/Subspeciality: Hematology
Analyte: Activated Clotting Time (ACT)
Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
International Technidyne Factor VI
International Technidyne Hemochron 400
International Technidyne Hemochron 401
International Technidyne Hemochron 800
International Technidyne Hemochron 801
Analyte: Activated Partial Thromboplastin Time (APTT)
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Ciba Corning Biotrack 512
Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
International Technidyne Factor VI
International Technidyne Hemochron 400
International Technidyne Hemochron 401
International Technidyne Hemochron 800
International Technidyne Hemochron 801
Analyte: Antithrombin III (ATIII)
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Beckman Array
Beckman Array 360
Analyte: Fibrin Split Products (Fibrin Degradation)
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Dupont ACA
Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
International Technidyne Bed Red D-dimer
Organon Teknika Fibrinosticon
Analyte: Fibrinogen
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Dupont ACA
Analyte: Hematocrit
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Abbott Cell-Dyn 1400
Abbott Cell-Dyn 1500
Abbott Cell-Dyn 1600
Abbott Cell-Dyn 1600 CS
Abbott Cell-Dyn 2000 CS
Abbott Cell-Dyn 2000 SL
Abbott Cell-Dyn 300
Abbott Cell-Dyn 3000 CS
Abbott Cell-Dyn 3000 SL
Abbott Cell-Dyn 400
Abbott Ce11-Dyn 500
Abbott Cell-Dyn 610
Abbott Cell-Dyn 700
Abbott Cell-Dyn 800
Abbott Cell-Dyn 900
Baker 9000 Ax
Baker 9000 Plus
Baker 9000 Rx
Clay Adams HA-5
Coulter S
Coulter S SR
Coulter S560
Coulter S7120
Coulter S770
Coulter S790
Coulter ST
Coulter ZB16
Coulter ZF5
Danam Datacell-18
Danam Datacell-18/AS-30
Danam HC-1020
Danam HC-510
Danam HC-510/HD11
Danam HC-720
Danam HC-820

Danam HC-820/HD11
Danam SA-1000
Danam Vector 5
Danam Vector 6
Danam Vector 6 Plus
Danam Vector 8
Danam Vector 8 Plus
Infolab I-1100
Infolab I-1800
Infolab I-500
Infolab I-900
Nova 1
Nova 11
Nova 13
Nova 14
Nova 5
Nova Celltrak 11
Nova Celltrak 12
Nova Celltrak 2
Nova Celltrak 2/6
Nova STAT Profile 5
Nova Stat Profile 1
Nova Stat Profile 2
Nova Stat Profile 4
Nova Stat Profile 6
Nova Stat Profile 8
Roche Cobas Minos ST
Roche Cobas Minos STEL
Roche Cobas Minos STX
Seradyn Seragen Quick Count
Technicon H 6000
Technicon H1

Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation

Test System, Assay or Examination:
Becton Dickinson QBC
Becton Dickinson QBC II
Becton Dickinson QBC II Plus
Becton Dickinson QBC Plus
Becton Dickinson QBC Reference

Analyte: Hemoglobin

Category: Automated procedures that do not require operator intervention during the analytic process

Test System, Assay or Examination:
Abbott Cell-Dyn 1400
Abbott Cell-Dyn 1500
Abbott Cell-Dyn 1600
Abbott Cell-Dyn 1600 CS
Abbott Cell-Dyn 2000 CS
Abbott Cell-Dyn 2000 SL
Abbott Cell-Dyn 300
Abbott Cell-Dyn 3000 CS
Abbott Cell-Dyn 3000 SL
Abbott Cell-Dyn 400
Abbott Cell-Dyn 500
Abbott Cell-Dyn 610
Abbott Cell-Dyn 700
Abbott Cell-Dyn 800
Abbott Cell-Dyn 900
Ames Seralyzer
Baker 9000 Ax
Baker 9000 Plus
Baker 9000 Rx
Bio-Chem Laboratory Systems ATAC 2100
BioAutoMed ASCA
Boehringer Mannheim Reflotron I System
Clay Adams HA-3
Clay Adams HA-5
Coulter Hemo-W
Coulter M2
Coulter S
Coulter S SR
Coulter S560
Coulter S7120
Coulter S770
Coulter S790
Coulter ST
Coulter ZBI6
Coulter ZF5
Danam Datacell-18
Danam Datacell-18/AS-30
Danam HC-1020
Danam HC-310
Danam HC-510
Danam HC-510/HD11
Danam HC-720
Danam HC-820
Danam HC-820/HD11
Danam SA-1000
Danam Vector 5
Danam Vector 6
Danam Vector 6 Plus
Danam Vector 8
Danam Vector 8 Plus
Infolab I-1100
Infolab I-1800
Infolab I-500
Infolab I-900
Nova Celltrak 11
Nova Celltrak 12
Nova Celltrak 2
Nova Celltrak 2/6
Roche Cobas Minos ST
Roche Cobas Minos STEL
Roche Cobas Minos STX
Seradyn Seragen Quick Count
Technicon H 6000
Technicon H1

Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation

Test System, Assay or Examination:
Becton Dickinson QBC II
Becton Dickinson QBC II Plus
Becton Dickinson QBC Reference

Analyte: Hemoglobin S

Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation

Test System, Assay or Examination:
Ampcor Quik-Dot

Analyte: Heparin

Category: Automated procedures that do not require operator intervention during the analytic process

Test System, Assay or Examination:
Dupont ACA

Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation

Test System, Assay or Examination:
International Technidyne Factor VI
International Technidyne Hemochron 400
International Technidyne Hemochron 401
International Technidyne Hemochron 800
International Technidyne Hemochron 801

Analyte: Plasminogen

Category: Automated procedures that do not require operator intervention during the analytic process

Test System, Assay or Examination:
Dupont ACA

Analyte: Platelet Count

Category: Automated procedures that do not require operator intervention during the analytic process

Test System, Assay or Examination:
Abbott Cell-Dyn 1400
Abbott Cell-Dyn 1500
Abbott Cell-Dyn 1600
Abbott Cell-Dyn 1600 CS
Abbott Cell-Dyn 2000 CS
Abbott Cell-Dyn 2000 SL
Abbott Cell-Dyn 300
Abbott Cell-Dyn 3000 CS
Abbott Cell-Dyn 3000 SL
Abbott Cell-Dyn 400
Abbott Cell-Dyn 500
Abbott Cell-Dyn 610
Abbott Cell-Dyn 700
Abbott Cell-Dyn 800
Abbott Cell-Dyn 900
Baker 9000 Ax
Baker 9000 Plus
Baker 9000 Rx
Coulter ST
Coulter ZBI
Coulter ZBI6
Coulter ZF
Coulter ZF5
Coulter ZM
Danam Datacell-18
Danam Datacell-18/AS-30
Danam HC-1020
Danam HC-820
Danam HC-820/HD11
Danam SA-1000
Danam Vector 6
Danam Vector 6 Plus
Danam Vector 8
Danam Vector 8 Plus
Infolab I-1100
Infolab I-1800
Infolab I-900
Nova Celltrak 11
Nova Celltrak 12
Roche Cobas Minos ST
Roche Cobas Minos STEL
Sequoia Turner 900
Technicon H 6000
Technicon H1

Category: Manual or semi-automated procedures with limited steps and

with limited sample or reagent preparation
Test System, Assay or Examination:
Becton Dickinson QBC
Becton Dickinson QBC II
Becton Dickinson QBC II Plus
Becton Dickinson QBC Plus
Becton Dickinson QBC Reference
Analyte: Prothrombin Time (PT)
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Ciba Corning Biotrack 512
Category: Manual procedures with limited steps and limited sample or reagent preparation
Test System, Assay or Examination:
International Technidyne Factor VI
International Technidyne Hemochron 400
International Technidyne Hemochron 401
International Technidyne Hemochron 800
International Technidyne Hemochron 801
Analyte: Red Blood Cell Count (Erythrocyte Count)
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Abbott Cell-Dyn 1400
Abbott Cell-Dyn 1500
Abbott Cell-Dyn 1600
Abbott Cell-Dyn 1600 CS
Abbott Cell-Dyn 2000 CS
Abbott Cell-Dyn 2000 SL
Abbott Cell-Dyn 300
Abbott Cell-Dyn 3000 CS
Abbott Cell-Dyn 3000 SL
Abbott Cell-Dyn 400
Abbott Cell-Dyn 500
Abbott Cell-Dyn 610
Abbott Cell-Dyn 700
Abbott Cell-Dyn 800
Abbott Cell-Dyn 900
Baker 9000 Ax
Baker 9000 Plus
Baker 9000 Rx
Clay Adams HA-3
Clay Adams HA-5
Coulter S
Coulter S SR
Coulter S560
Coulter S7120
Coulter S770
Coulter S790
Coulter ST
Coulter ZBI
Coulter ZB16
Coulter ZF
Coulter ZF5
Coulter ZM
Danam Datacell-18
Danam Datacell-18/AS-30
Danam HC-1020
Danam HC-310
Danam HC-510
Danam HC-510/HD11
Danam HC-720
Danam HC-820
Danam HC-820/HD11
Danam SA-1000
Danam Vector 5
Danam Vector 6
Danam Vector 6 Plus
Danam Vector 8
Danam Vector 8 Plus
Infolab I-1100
Infolab I-1800
Infolab I-500
Infolab I-900
Nova Celltrak 11
Nova Celltrak 12
Nova Celltrak 2
Nova Celltrak 2/6
Roche Cobas Minos ST
Roche Cobas Minos STEL
Roche Cobas Minos STX
Seradyn Seragen Quick Count
Technicon H 6000
Technicon H1
Analyte: Thrombin Time
Category: Manual procedures with limited steps and limited sample or reagent preparation
Test System, Assay or Examination:
International Technidyne Factor VI
International Technidyne Hemochron 400
International Technidyne Hemochron 401
International Technidyne Hemochron 800
International Technidyne Hemochron 801
Analyte: White Blood Cell (WBC) Differential
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Abbott Cell-Dyn 1400
Abbott Cell-Dyn 1500
Abbott Cell-Dyn 1600
Abbott Cell-Dyn 1600 CS
Abbott Cell-Dyn 2000 CS
Abbott Cell-Dyn 2000 SL
Abbott Cell-Dyn 3000 CS
Abbott Cell-Dyn 3000 SL
Abbott Cell-Dyn 610
Baker 9000 Ax
Baker 9000 Plus
Baker 9000 Rx
Coulter ST
Coulter VCS
Danam Datacell-18
Danam Datacell-18/AS-30
Danam HC-1020
Danam Vector 8 Plus
Infolab I-1100
Infolab I-1800
Nova Celltrak 12
Roche Cobas Minos STEL
Roche Cobas Minos STX
Technicon H 6000
Technicon H1
Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
Becton Dickinson QBC
Becton Dickinson QBC AutoRead
Becton Dickinson QBC II
Becton Dickinson QBC II Plus
Becton Dickinson QBC Plus
Becton Dickinson QBC Reference
Analyte: White Blood Cell Count (Leukocyte Count)
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Abbott Cell-Dyn 1400
Abbott Cell-Dyn 1500
Abbott Cell-Dyn 1600
Abbott Cell-Dyn 1600 CS
Abbott Cell-Dyn 2000 CS
Abbott Cell-Dyn 2000 SL
Abbott Cell-Dyn 300
Abbott Cell-Dyn 3000 CS
Abbott Cell-Dyn 3000 SL
Abbott Cell-Dyn 400
Abbott Cell-Dyn 500
Abbott Cell-Dyn 610
Abbott Cell-Dyn 700
Abbott Cell-Dyn 800
Abbott Cell-Dyn 900
Baker 9000 Ax
Baker 9000 Plus
Baker 9000 Rx
Clay Adams HA-3
Clay Adams HA-5
Coulter Hemo-W
Coulter S
Coulter S SR
Coulter S560
Coulter S7120
Coulter S770
Coulter S790
Coulter ST
Coulter ZBI
Coulter ZBI6
Coulter ZF
Coulter ZF5
Coulter ZM
Danam Datacell-18
Danam Datacell-18/AS-30
Danam HC-1020
Danam HC-310
Danam HC-510
Danam HC-510/HD11
Danam HC-720
Danam HC-820
Danam HC-820/HD11
Danam SA-1000
Danam Vector 5
Danam Vector 6
Danam Vector 6 Plus
Danam Vector 8
Danam Vector 8 Plus
Infolab I-1100
Infolab I-1800

Infolab I-500
Infolab I-900
Nova Celltrak 11
Nova Celltrak 12
Nova Celltrak 2
Nova Celltrak 2/6
Roche Cobas Minos ST
Roche Cobas Minos STEL
Roche Cobas Minos STX
Seradyn Seragen Quick Count
Technicon H 6000
Technicon H1
Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
Becton Dickinson QBC
Becton Dickinson QBC II
Becton Dickinson QBC Plus
Becton Dickinson QBC Reference
Speciality/Subspeciality: Immunohematology
Analyte: Unexpected RBC antibody—detection—serum
Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination: All Immunohematology Direct Antiglobulin Tube Tests
Speciality/Subspeciality: Toxicology/TDM
Analyte: Acetaminophen
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
BioAutoMed ASCA
Olympus Reply
Analyte: Amphetamines
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Dupont ACA
Olympus AU 5000
Olympus AU 5021
Olympus AU 5031
Olympus AU 5061
Olympus Reply
Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
Biosite Triage Panel for Drugs of Abuse
Analyte: Barbiturates
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
BioAutoMed ASCA
Dupont ACA
Olympus AU 5000
Olympus AU 5021
Olympus AU 5031
Olympus AU 5061
Olympus Reply
Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
Biosite Triage Panel for Drugs of Abuse
Analyte: Benzodiazepines
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Dupont ACA
Olympus AU 5000
Olympus AU 5021
Olympus AU 5031
Olympus AU 5061
Olympus Reply
Analyte: Benzodiazepines, Urine
Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
Biosite Triage Panel for Drugs of Abuse
Analyte: Cannabinoids
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
BioAutoMed ASCA
Dupont ACA
Olympus AU 5000
Olympus AU 5021
Olympus AU 5031
Olympus AU 5061
Olympus Reply
Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
Biosite Triage Panel for Drugs of Abuse
Analyte: Carbamazepine
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
BioAutoMed ASCA
Olympus Reply
Analyte: Cocaine Metabolites
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Dupont ACA
Olympus AU 5021
Olympus AU 5031
Olympus AU 5061
Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
Biosite Triage Panel for Drugs of Abuse
Analyte: Cotinine
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Abbott ADX
Abbott TDX
Abbott TDX FLx
Analyte: Digitoxin
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Dupont ACA
Analyte: Digoxin
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Bio-Chem Laboratory Systems ATAC 6000
BioAutoMed ASCA
Dupont Dimension AR
Olympus Reply
Serono Baker SR 1
Technicon RA 1000
Technicon RA 2000
Technicon RA 500
Technicon RA XT
Analyte: Ethanol (Alcohol)
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Beckman Synchron CX 4
Beckman Synchron CX 4 CE
Beckman Synchron CX 5
Beckman Synchron CX 7
Bio-Chem Laboratory Systems ATAC 2100
BioAutoMed ASCA
Dupont Dimension AR
Kodak Ektachem 500
Kodak Ektachem 700
Kodak Ektachem 700 XR
Olympus Reply
Analyte: Ethosuximide
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
BioAutoMed ASCA
Analyte: Gentamicin
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
BioAutoMed ASCA
Olympus Reply
Technicon RA 1000
Technicon RA 2000
Technicon RA 500
Technicon RA XT
Analyte: Lidocaine
Category: Automated procedures that do not require operator intervention during the analytic process

Test System, Assay or Examination:
BioAutoMed ASCA
Analyte: Methadone
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Abbott TDX
Olympus AU 5000
Olympus AU 5021
Olympus AU 5031
Olympus AU 5061
Olympus Reply
Analyte: Methaqualone
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Olympus AU 5000
Olympus AU 5021
Olympus AU 5031
Olympus AU 5061
Olympus Reply
Analyte: N-Acetylprocainamide (NAPA)
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
BioAutoMed ASCA
Analyte: Opiates
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
BioAutoMed ASCA
Dupont ACA
Olympus AU 5000
Olympus AU 5021
Olympus AU 5031
Olympus AU 5061
Olympus Reply
Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
Biosite Triage Panel for Drugs of Abuse
Analyte: Phencyclidine
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Dupont ACA
Olympus AU 5000
Olympus AU 5021
Olympus AU 5031
Olympus AU 5061
Olympus Reply
Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
Biosite Triage Panel for Drugs of Abuse
Analyte: Phenobarbital
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Bio-Chem Laboratory Systems ATAC 6000
BioAutoMed ASCA
Dupont Dimension AR
Olympus Reply
Technicon RA 1000
Technicon RA 2000
Technicon RA 500
Technicon RA XT
Analyte: Phenytoin
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Abbott Vision
Bio-Chem Laboratory Systems ATAC 6000
BioAutoMed ASCA
Dupont Dimension AR
Olympus Reply
Technicon RA 1000
Technicon RA 2000
Technicon RA 500
Technicon RA XT
Analyte: Primidone
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
BioAutoMed ASCA
Olympus Reply
Analyte: Procainamide
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
BioAutoMed ASCA
Analyte: Propoxyphene
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Abbott ADX
Abbott TDX
Abbott TDX FLx
Olympus AU 5000
Olympus AU 5021
Olympus AU 5031
Olympus AU 5061
Olympus Reply
Analyte: Quinidine
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
BioAutoMed ASCA
Olympus Reply
Analyte: Salicylates
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Beckman Synchron CX 4
Beckman Synchron CX 4 CE
Beckman Synchron CX 5
Beckman Synchron CX 7
Bio-Chem Laboratory Systems ATAC 6000
BioAutoMed ASCA
Dupont Dimension AR
Kodak Ektachem 700
Olympus Reply
Analyte: Theophylline
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Abbott IMX
Abbott Vision
Bio-Chem Laboratory Systems ATAC 6000
BioAutoMed ASCA
Boehringer Mannheim Hitachi 717
Dupont Dimension AR
Kodak Ektachem 700
Olympus Reply
Technicon RA 1000
Technicon RA 2000
Technicon RA 500
Technicon RA XT
Analyte: Tobramycin
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Beckman Synchron CX 4
Beckman Synchron CX 4 CE
Beckman Synchron CX 5
Beckman Synchron CX 7
BioAutoMed ASCA
Olympus Reply
Technicon RA 1000
Technicon RA 2000
Technicon RA 500
Technicon RA XT
Analyte: Tricyclic Antidepressants
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Dupont ACA
Analyte: Valproic Acid
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Beckman Array 360
BioAutoMed ASCA
Analyte: Vancomycin
Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Dupont ACA
Complexity: High
Speciality/Subspeciality: Bacteriology
Analyte: Neisseria gonorrhoeae
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Gen-Probe Pace2
Speciality/Subspeciality: General Chemistry
Analyte: 17 OH Progesterone

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Products Corp. Coat-A-Count
Analyte: 17 OH Progesterone, Neonatal
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Products Corp. Coat-A-Count
Analyte: Adrenocorticotropic Hormone (ACTH)
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Products Corp. Double Antibody
Analyte: Aldosterone
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Products Corp. Coat-A-Count
Analyte: Androstenedione
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Products Corp. Coat-A-Count
Analyte: C-Peptide
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Products Corp. Double Antibody
Analyte: Calcitonin
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Products Corp. Double Antibody
Diagnostic Products Corp. Solid Phase
Analyte: Cortisol
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Products Corp. Coat-A-Count
Analyte: Creatine Kinase MB Fraction (CKMB)
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Ciba Corning Magic Lite
Hybritech Tandem-E
Analyte: Cyclic AMP
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Products Corp. Liquid Phase
Analyte: Dehydroepiandrosterone (DHEA)
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Products Corp. Coat-A-Count
Analyte: Dehydroepiandrosterone Sulfate (DHEA-SO4)
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Products Corp. Coat-A-Count
Analyte: Estradiol
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Bio-Rad Quantimune
Diagnostic Products Corp. Coat-A-Count
Diagnostic Products Corp. Double Antibody
Serono Baker Serozyme
Analyte: Estriol-Total
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Bio-Rad Quantimune II
Analyte: Ferritin
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Ciba Corning Magic (MGC)
Ciba Corning Magic Lite
Diagnostic Products Corp. Double Antibody
Serono Baker Serozyme
Analyte: Folate (Folic acid)
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Ciba Corning Magic Lite
Analyte: Follicle Stimulating Hormone (FSH)
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Becton Dickinson Simultrac
Diagnostic Products Corp. Coat-A-Count IRMA
Diagnostic Products Corp. Double Antibody
Hybritech Tandem-E
Serono Baker Serozyme
Analyte: Gastrin
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Products Corp. Double Antibody
Analyte: Glucogon
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Products Corp. Double Antibody
Analyte: Growth Hormone (GH)
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Products Corp. Double Antibody
Hybritech Tandem-R
Analyte: HCG, Serum, Qualitative
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Products Corp. Double Antibody
Analyte: HCG, Serum, Quantitative
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Ciba Corning Magic Lite
Serono Baker Serozyme
Analyte: HCG, Urine, Qualitative (non-waived procedures)
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Products Corp. Double Antibody
Analyte: HDL Cholesterol (post-precipitation VLDL & LDL)
Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Beckman Synchron CX 4 CE
Bio-Chem Laboratory Systems ATAC 2100
Bio-Chem Laboratory Systems ATAC 6000
BioAutoMed ASCA
Coulter Optichem 100
Olympus AU 5021
Olympus AU 5031
Olympus AU 5061
Olympus Reply
Analyte: Human Placental Lactogen (hPL)
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Products Corp. Coat-A-Count
Analyte: Iron Binding Capacity (post saturation/separation)

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Abbott Spectrum
Abbott Spectrum EPX
Abbott Spectrum Series II
Abbott Spectrum Series II CCX
Beckman Synchron CX 4 CE
Bio-Chem Laboratory Systems ATAC 2100
Bio-Chem Laboratory Systems ATAC 6000
BioAutoMed ASCA
Coulter Optichem 100
Coulter Optichem 120
Coulter Optichem 180
Analyte: Luteinizing Hormone (LH)
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Becton Dickinson Simultrac
Ciba Corning Magic Lite
Diagnostic Products Corp. Coat-A-Count IRMA
Diagnostic Products Corp. Double Antibody
Hybritech Tandem-E
Serono Baker Serozyme
Analyte: Parathyroid Hormone—Intact
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Ciba Corning Magic Lite
Analyte: Parathyroid Hormone—Mid-molecule (PTH-M)
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Products Corp. Double Antibody
Analyte: Progesterone
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Bio-Rad Cotube
Diagnostic Products Corp. Coat-A-Count
Serono Baker Serozyme
Analyte: Prolactin
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Products Corp. Coat-A-Count
Diagnostic Products Corp. Coat-A-Count IRMA
Diagnostic Products Corp. Double Antibody
Hybritech Tandem-R
Serono Baker Serozyme
Analyte: Prostatic Acid Phosphatase
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Products Corp. Coat-A-Count IRMA
Analyte: Testosterone
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Products Corp. Coat-A-Count
Diagnostic Products Corp. Double Antibody
Analyte: Testosterone, Free
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Products Corp. Coat-A-Count
Analyte: Thyroglobulin
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Products Corp. Double Antibody
Analyte: Thyroid Stimulating Hormone (TSH)
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Becton Dickinson Simultrac
Becton Dickinson Solid Phase
Ciba Corning Magic (MGC)
Diagnostic Products Corp. Coat-A-Count IRMA
Diagnostic Products Corp. Double Antibody
Serono Baker Serozyme
Analyte: Thyroxine (T4)
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Bio-Rad Quantimune II
Ciba Corning Magic Lite
Serono Baker Serozyme
Analyte: Thyroxine (T4), Neonatal
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Products Corp. Coat-A-Count
Analyte: Thyroxine, Free (FT4)
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Bio-Rad Quantimune
Serono Baker Serozyme
Analyte: Triiodothyronine (T3)
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Products Corp. Coat-A-Count
Analyte: Triiodothyronine Uptake (T3U)
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Serono Baker Serozyme
Analyte: Triiodothyronine, Free (FT3)
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Bio-Rad Quantimune
Ciba Corning Magic (MGC)
Serono Baker Serozyme
Analyte: Vitamin B12
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Ciba Corning Magic Lite
Speciality/Subspeciality: General Immunology
Analyte: Alpha-Fetoprotein—Tumor Marker
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Abbott AFP (EIA)
Diagnostic Products Corp. Double Antibody
Analyte: Anti-DNA Antibodies
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Products Corp. Solid Phase
Analyte: Immunoglobulins IGE
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Products Corp. Coat-A-Count IRMA
Hybritech Tandem-E
Hybritech Tandem-R
Analyte: Intrinsic Factor Blocking Antibody (IFbAb)
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Products Corp. Solid Phase
Analyte: Microalbumin
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Products Corp. Double Antibody
Analyte: Prostatic Specific Antigen (PSA)
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process

Test System, Assay or Examination: Hybritech Tandem-R
Speciality/Subspeciality: Immunohematology
Analyte: ABO group—RBC
Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination: Dynatech MicroBank System
IBG Inverness Blood Grouping System
Analyte: ABO group confirmation—Serum, Plasma
Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination: Dynatech MicroBank System
IBG Inverness Blood Grouping System
Analyte: D(Rho) Type
Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination: Dynatech MicroBank System
IBG Inverness Blood Grouping System
Speciality/Subspeciality: Toxicology/TDM
Analyte: Amikacin
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination: Diagnostic Products Corp. Coat-A-Count
Analyte: Amphetamines
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination: Diagnostic Products Corp. Double Antibody
Analyte: Barbiturates
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination: Diagnostic Products Corp. Coat-A-Count
Analyte: Benzodiazepines
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination: Diagnostic Products Corp. Double Antibody
Analyte: Cannabinoids
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination: Diagnostic Products Corp. Double Antibody
Analyte: Cocaine Metabolites
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination: Diagnostic Products Corp. Coat-A-Count
Analyte: Digitoxin
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination: Diagnostic Products Corp. Coat-A-Count
Analyte: Digoxin
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination: Bio-Rad Quantimune
Analyte: Fentanyl
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination: Diagnostic Products Corp. Coat-A-Count
Analyte: Lysergic Acid Diethylamide (LSD)
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination: Diagnostic Products Corp. Coat-A-Count
Analyte: Methadone
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination: Diagnostic Products Corp. Coat-A-Count
Analyte: Methamphetamines
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination: Diagnostic Products Corp. Coat-A-Count
Analyte: Morphine
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination: Diagnostic Products Corp. Coat-A-Count
Analyte: Morphine, Urine
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination: Diagnostic Products Corp. Coat-A-Count
Analyte: Opiates
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination: Diagnostic Products Corp. Coat-A-Count
Analyte: Phencyclidine
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination: Diagnostic Products Corp. Coat-A-Count
Analyte: Theophylline
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination: Diagnostic Products Corp. Coat-A-Count
Analyte: Tobramycin
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination: Diagnostic Products Corp. Coat-A-Count

Corrections to the Specific List for Categorization of Laboratory Test Systems, Assays and Examinations by Complexity Published as a Notice in the Federal Register on February 28, 1992

The following corrections to the list of test systems, assays and examinations published in the **Federal Register** on February 28, 1992 were made based on supplemental information provided by the commenters during the comment period or as a result of corrections of data entry errors.

Deletions: Based on supplemental information supplied by manufacturers, the following analyte/test system entries have been deleted from the list. The original entries were in error as the analytes listed below are not available on the test systems indicated:
Instrument: Abbott TDX
Analyte: MHPG Urine
Instrument: Abbott TDX FLx
Analyte: Vitamin B12
MHPG Urine
Instrument: AVL 995Hb
Analyte: Carboxyhemoglobin
Instrument: Beckman Astra Ideal
Analyte: Magnesium
Instrument: Beckman Synchron CX4
Analytes: CO2
Acid Phosphatase
Chloride
Potassium
Sodium
Instrument: Beckman Synchron CX5
Analyte: Acid Phosphatase
Instrument: Beckman Synchron CX7
Analyte: Acid Phosphatase
Instrument: Beckman Synchron EL-ISE
Analyte: Calcium, Ionized
Instrument: Beckman E2A
Analytes: CO2
Chloride
Instrument: Becton Dickinson QBC AutoRead
Analyte: Red Blood Cell Count (Erythrocyte Count)
Instrument: Becton Dickinson Affinity
Analyte: HCG, Serum, Qualitative

Kit: Behring LC-Partigen Kit
Analyte: Albumin
Kit: Behring NOR-Partigen Kit
Analytes: Albumin
Alpha-1 Acid Glycoprotein
Alpha-2 Macroglobulin
Kit: Ciba Corning Magic (MGC)
Analyte: HCG, Serum, Quantitative
Instrument: DuPont Dimension
Analytes: Cerebrospinal Fluid Protein
Amphetamines
Barbiturates
Benzodiazepine
Cannabinoids
Carbamazepine
Cocaine Metabolites
Gentamicin
Opiates
Phencyclidine
Quinidine
Tobramycin
Vancomycin
Instrument: Kodak Ektachem 400
Analytes: ALT (SGPT)
AST (SGOT)
Acid Phosphatase
Creatine Kinase
Gamma Glutamyl Transferase (GGT)
Iron
Lactate Dehydrogenase (LDH)
Instrument: Olympus AU5000
Analyte: Acid-Phosphatase
Iron Binding Capacity
Instrument: Technicon Assist
Analytes: Iron Binding Capacity
CO_2
Iron
Sodium
Instrument: Technicon Chem 1
Analytes: C-Reactive Protein
Complement C3
Complement C4
Digoxin
Gentamicin
Immunoglobulin IgA
Immunoglobulin IgG
Immunoglobulin IgM
Phenobarbital
Phenytoin
Theophylline
Thyroxine (T4)
Tobramycin
Transferrin

Recategorizations: The following test system entries have been recategorized: The Technicon H1 and H6000 for hemoglobin, hematocrit, white blood cell count, red blood cell count, platelet count and white blood cell differential has been recategorized from high to moderate complexity. This change in complexity is a result of information supplied by the manufacturer of the Technicon H1 and H6000 indicating that, for normal operation, the analyst is not required to interpret a histogram to arrive at a final test result. The instruments have a direct read-out systems for all analytes.

The Gen-Probe Pace2 test system for *Neisseria gonorrhoea* in bacteriology has been recategorized from moderate to high complexity. Supplemental information on this test system was received from laboratory professionals with experience performing the procedure and was verified through product inserts submitted by the manufacturer. Based on this information, the procedure was determined to be technically complex with multiple steps that include extensive sample and reagent preparation, precise temperature control and exact timing requirements. Additionally, the complexity of the test requires a higher level of training and experience to perform the procedure than was originally indicated.

Direct Antiglobulin tube tests in immunohematology have been recategorized from high to moderate complexity. This recategorization is due to the correction of a data entry error and not due to a decision to recategorize based on supplemental information.

The following urine HCG color comparison waived procedures have been removed from the list:

Abbott TestPack HCG-combo
Abbott TestPack Plus
Ampcor Quik-Dot (Quik-Dip) Pregnancy Dipstick
Hybritech Concise HCG
Hybritech Tandem ICON II

The listing of these color comparison urine HCG tests as moderately complex were data entry errors.

Editorial changes: For clarification and to remove ambiguity, the following changes and deletions have been made in test categories:

The category, "Primary Culture Inoculation", has been deleted since it does not define a complete test procedure. However, it should be noted that reporting any culture result, including "no growth", would constitute testing.

The categories,

(a) "Automated blood gas analyses that do not require operator intervention during the analytic process, such as instruments that have an automated process for calibration, sample intake and flushing of sample lines",

(b) "Automated hematology procedures without differentials that do not require operator intervention during the analytic process",

(c) "Automated hematology procedures with differentials that do not require operator intervention during the analytic process and that do not require an analyst to interpret a histogram or scattergram" and

(d) "Automated mycology procedures that do not require operator intervention during the analytic process", have been deleted and replaced with "Automated procedures that do not require operator intervention during the analytic process."

The category, "Automated or Semi-automated blood gas analyses requiring operator intervention to calibrate instrument, equilibrate gas supplies, introduce sample into measuring chamber or flush sample line", has been deleted and replaced with "Automated or Semi-automated procedures that do require operator intervention during the analytic process."

The categories "Radioimmunoassays" and "Whole Blood Measurements Using Teststrip Meters" have been deleted. The test systems listed under these categories have not changed in complexity unless noted in this notice. These test systems will be listed under categories that more accurately describe the complexity of the procedure such as "Manual procedures with multiple steps" or "automated procedures with no operator intervention."

For clarification, the following changes were made to analyte descriptions:

The analyte, "HCG, urine" has been deleted and replaced with two analytes, "HCG, urine, quantitative" and "HCG, urine, qualitative (non-waived procedures)" to better distinguish between waived and non-waived test systems.

The analyte "Blood gas" has been changed to "Blood Gas with pH" This change does not affect entries. Specific components of blood gas analyses, such as pCO2 and pO2 will not be listed as separate analytes. Additionally, Carboxyhemoglobin and Oxyhemoglobin/Oxygen Saturation are listed as analytes but Methemoglobin and other hematologic analytes used to calculate these parameters are not listed as separate analytes.

The calculated hematologic parameters, MCV, MCHC and MCH, are not listed as separate analytes.

The following are corrections to manufacturer's names and products:

From: Becton Dickinson Miniteck
To: Becton Dickinson BBL Minitek

From: Instrumentation Laboratories
To: Instrumentation Laboratory

From: Medical Diagnostics Technologies
To: Medical Diagnostic Technologies

From: Abuscreen ONTRACK
To: Roche Abuscreen ONTRACK

These and other editorial and spelling corrections will be reflected on the final list of test systems, assays and examinations to be published as a notice in the **Federal Register** on or before September 1, 1992.

[FR Doc. 92-15808 Filed 7-7-92; 8:45 am]
BILLING CODE 4160-18-M

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202-523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202-512-2470).

S. 2905/P.L. 102-310

To provide a 4-month extension of the transition rule for separate capitalization of savings associations' subsidiaries. (July 1, 1992; 106 Stat. 276; 1 page) Price: $1.00

H.R. 4548/P.L. 102-311

International Peacekeeping Act of 1992. (July 2, 1992; 106 Stat. 277; 1 page) Price: $1.00

H.R. 3041/P.L. 102-312

To designate the Federal building located at 1520 Market Street, St. Louis, Missouri, as the "L. Douglas Abram Federal Building". (July 2, 1992; 106 Stat. 278; 1 page) Price: $1.00

H.R. 2818/P.L. 102-313

To designate the Federal building located at 78 Center Street in Pittsfield, Massachusetts, as the "Silvio O. Conte Federal Building", and for other purposes. (July 2, 1992; 106 Stat. 279; 1 page) Price: $1.00

H.R. 3711/P.L. 102-314

WIC Farmers' Market Nutrition Act of 1992. (July 2, 1992; 106 Stat. 280; 6 pages) Price: $1.00

H.J. Res. 499/P.L. 102-315

Designating July 2, 1992, as "National Literacy Day". (July 2, 1992; 106 Stat. 286; 2 pages) Price: $1.00

H.J. Res. 509/P.L. 102-316

To extend through September 30, 1992, the period in which there remains available for obligation certain amounts appropriated for the Bureau of Indian Affairs for the school operations costs of Bureau-funded schools. (July 2, 1992; 106 Stat. 288; 1 page) Price: $1.00

S. 2901/P.L. 102-317

To direct the Secretary of Health and Human Services to extend the waiver granted to the Tennessee Primary Care Network of the enrollment mix requirement under the medicaid program. (July 2, 1992; 106 Stat. 289; 1 page) Price: $1.00

H.R. 5260/P.L. 102-318

Unemployment Compensation Amendments of 1992. (July 3, 1992; 106 Stat. 290; 29 pages) Price: $1.00

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