3-14-90
Vol. 55 No. 50

federal register

Wednesday
March 14, 1990

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

SECOND CLASS NEWSPAPER

Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

3-14-90
Vol. 55 No. 50
Pages 9407-9708

federal register

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March 14, 1990

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WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

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

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

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WHEN: March 20, at 9:30 a.m.
WHERE: Duke University,
Von Cannon Hall, Bryan Center,
Durham, NC.
RESERVATIONS: 919–684–3030.

SALT LAKE CITY, UT

WHEN: March 29, at 9:00 a.m.
WHERE: State Office Building Auditorium,
Capitol Hill,
Salt Lake City, UT.
RESERVATIONS: Call the Utah Department of Administrative Services, 801–538–3010.

WASHINGTON, DC

WHEN: March 29, at 9:00 a.m.
WHERE: Office of the Federal Register,
First Floor Conference Room,
1100 L Street NW., Washington, DC.
RESERVATIONS: 202–523–5240.

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 302

RIN: 3206-AD73

Considering Candidates for Excepted Appointment

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is revising its regulations governing procedures used to refer and select candidates for appointments in the excepted service. The revised regulations clarify agencies' responsibility to afford priority consideration for reemployment to candidates who are legally entitled to it and agencies' authority to consider other candidates for reemployment ahead of candidates for new appointment. The regulations also authorize use of alternative plans for ranking and referring candidates for employment or reemployment in the excepted service.

EFFECTIVE DATE: April 13, 1990.

FOR FURTHER INFORMATION CONTACT: Tracy Spencer, (202) 632-6817.

SUPPLEMENTARY INFORMATION: OPM issued regulations proposing these changes on September 12, 1989 (54 FR 37685). Comments on the proposed regulations were received from two Federal agencies and one individual. All of the comments suggested that the regulations require all candidates on the priority reemployment list to be considered ahead of other candidates and that the regulations state more clearly that provision of reemployment consideration to any other candidates is optional. These changes have been adopted. We have also adopted suggestions that the regulations specify the minimum geographic area and timeframe in which priority reemployment consideration must be provided and permit exceptions to the requirement to select from the priority list on the same basis as is done in the competitive service. Candidates entitled to priority reemployment consideration must be afforded such consideration in the commuting area where they were separated (unless broader geographic consideration is needed to satisfy an employee's right following recovery from injury or disability) for a 2-year period. These requirements parallel those for career employees in the competitive service.

We did not adopt suggestions to eliminate requirements for ranking candidates or observing veterans preference on priority reemployment and reemployment lists. Since employees in the excepted service are hired under many different appointing authorities, with different requirements and procedures, reemployment frequently involves change in appointing authority which is subject to statutory veterans preference requirements. We have, however, permitted agencies to exclude reemployments from rating and ranking requirements when the appointees are returning to a position at the same or lower grade, in the same agency and commuting area, and under the same appointing authority as the position last held.

With these changes, we are adopting the proposed regulations as final. Specific sections affected by these changes are: § 302.101, to which a new paragraph (c)(11) is added; § 302.105, which is revised; § 302.203, in which paragraphs (a), (b), (c), (d), (e), (f), and (g) are redesignated as paragraphs (1), (2), (3), (4), (5), (6), and (7) respectively, the introductory text is designated as paragraph (a), and the undesignated paragraph is designated as paragraph (b); § 302.302, in which conforming amendments are made in paragraph (a); § 302.303, in which paragraphs (a), (b), and (c) are revised; § 302.304, which is retitled and revised; § 302.401, in which the first sentence of paragraph (a) and paragraph (a)(1) are revised; and § 302.402, which is revised. We are, however, republishing part 302 in its entirety for the convenience of the reader. In this republication, we have also made nomenclature changes throughout part 302.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulations affects only the procedures used to appoint certain Federal employees.

List of Subjects in 5 CFR Part 302

Administrative practice and procedure, Government employees.

Office of Personnel Management.

Constance Berry Newman,

Director.

Accordingly, OPM is revising 5 CFR part 302 to read as follows:

PART 302—EMPLOYMENT IN THE EXCEPTED SERVICE

Subpart A—General Provisions

Sec.
302.101 Positions covered by regulations.
302.102 Method of filling positions and status of incumbents.
302.103 Definitions.
302.104 Applicability of regulations to applicants and employees.
302.105 Special agency plans.

Subpart B—Eligibility Standards

302.201 Persons entitled to veteran preference.
302.202 Qualification requirements
302.203 Disqualifying factors.

Subpart C—Accepting, Rating and Arranging Applications

302.301 Receipt of applications.
302.302 Examination of applicants.
302.303 Maintenance of employment lists.
302.304 Order of consideration.

Subpart D—Selection and Appointment; Reappointment; and Qualifications for Promotion

302.401 Selection and appointment.
302.402 Reappointment.
302.403 Qualifications for promotion.

Subpart E—Appeals

302.501 Entitlement.

Authority: 5 U.S.C. 1302, 3301, 3302, 8151, E.O. 10577 (3 CFR 1954–1958 Comp., p. 218); § 302.105 also issued under 5 U.S.C. 1104, Pub. L. 95–454, sec. 3(5); § 302.501 also issued under 5 U.S.C. 7701 et seq.

Subpart A—General Provisions

§ 302.101 Positions covered by regulations.

(a) *Positions covered.* With respect to the application of veteran preference, this part applies to each position in the Executive Branch of the Federal Government that is not in the competitive service and that is subject to the provisions of title 5, United States Code, or subject to a statutory requirement to follow the veteran preference provisions of title 5. With respect to restoration rights that are due to compensable injury and appeals therefrom, this part applies to those positions covered by 5 U.S.C. 8101(1) that are not in the competitive service.

(b) *Positions not covered.* This part does not apply to a position or appointment that is required by the Congress to be confirmed by, or made with the advice and consent of, the Senate.

(c) *Positions exempt from appointment procedures.* In view of the circumstances and conditions surrounding employment in the following classes of positions, an agency is not required to apply the appointment procedures of this part to them, but each agency shall follow the principle of veteran preference as far as administratively feasible and, on the request of a qualified and available preference eligible, shall furnish him/her with the reasons for his/her nonselection. Also, the exemption from the appointment procedures of this part does not relieve agencies of their obligation to accord persons entitled to priority consideration (see § 302.103) their rights under 5 U.S.C. 8151:

(1) Positions filled by persons appointed without pay or at pay of $1 a year;

(2) Positions outside the continental United States and outside the State of Hawaii and the Commonwealth of Puerto Rico when filled by persons resident in the locality, and positions in the State of Hawaii and the Commonwealth of Puerto Rico when paid in accordance with prevailing wage rates;

(3) Positions which the exigencies of the national defense program demand be filled immediately before lists of qualified applicants can be established or used, but appointments to these positions shall be temporary appointments not to exceed 1 year which may be renewed for 1 additional year at the discretion of the agency;

(4) Positions filled by appointees serving on an irregular or occasional basis whose hours or days of work are not based on a prearranged schedule and who are paid only for the time when actually employed or for services actually performed;

(5) Positions paid on a fee basis;

(6) Positions included in Schedule A (see subpart C of part 213 of this chapter) and similar types of positions when OPM agrees with the agency that the positions should be included hereunder;

(7) Positions included in Schedule C (see subpart C of part 213 of this chapter) and positions excepted by statute which are of a confidential, policy-making, or policy-advocating nature;

(8) Student Trainee positions when filled under Schedule B (see subpart C of part 213 of this chapter);

(9) Positions filled by noncareer executive assignment (see subpart F of part 305 of this chapter);

(10) Attorney positions; and

(11) Positions filled by reemployment of an individual in the same agency and commuting area, at the same or lower grade, and under the same appointing authority as the position last held; *Provided That,* there are no candidates eligible for the position on the agency's priority reemployment list established in accordance with § 302.303.

§ 302.102 Method of filling positions and status of incumbent.

(a) To the extent permitted by statute and this chapter, each appointment, position change, and removal in the excepted service shall be made in accordance with any regulations or practices that the head of the agency concerned finds necessary.

(b) Except as authorized under paragraph (c) of this section, a person appointed to an excepted position does not acquire a competitive status by reason of the appointment. When an employee serving under a nontemporary appointment in the competitive service is selected for an excepted appointment or for noncareer executive assignment, the agency must—

(1) Inform the employee that, because the position is in the excepted service, it may not be filled by a competitive appointment, and that acceptance of the proposed appointment will take him/her out of the competitive service while he/she occupies the position; and

(2) Obtain from the employee a written statement that he/she understands he/she is leaving the competitive service voluntarily to accept an appointment in the excepted service.

(c) Upon a finding by OPM that in a particular situation the action will be in the interest of good administration, OPM may authorize an agency to make appointments to specified positions in the excepted service in the same manner as to positions in the competitive service. Persons given career-conditional or career appointments pursuant to a specific authorization by OPM under this paragraph may acquire a competitive status as provided in part 315 of this chapter.

§ 302.103 Definitions.

Person entitled to priority consideration means a person who was furloughed or separated without misconduct, from a position without time limit, because of a compensable injury and whose recovery takes longer than 1 year from the date compensation began. To be eligible under this part the person must apply for reappointment to his or her former agency within 30 days of the date of cessation of compensation.

§ 302.104 Applicability of regulations to applicants and employees.

Each agency shall follow the provisions of this part relating to examination, rating, and selection for appointment of an applicant when a qualified preference eligible or person entitled to priority consideration applies for appointment to a position covered by this part. Each agency, in its discretion, may follow these provisions when no preference eligible or person entitled to priority consideration applies.

§ 302.105 Special agency plans.

An agency having a position subject to this part may establish a system which will result in granting to eligible persons the preference or priority consideration referred to in sections 1302(c) or 8151 of title 5, United States Code, but which does not conform to all the procedural requirements set forth in this part. The agency establishing such a system must ensure that all eligible applicants entitled to veteran preference or priority consideration receive at least as much advantage in referral as they would receive under the procedures set forth in this part.

Subpart B—Eligibility Standards

§ 302.201 Persons entitled to veteran preference.

In actions subject to this part, each agency shall grant veteran preference as follows:

(a) When numerical scores are used in the evaluation and referral, the agency shall grant 5 additional points to preference eligibles under section 2108(3) (A) and (B) of title 5, United States Code, and 10 additional points to preference eligibles under section 2108(3) (C) through (G) of that title.

(b) When eligible candidates are referred without ranking, the agency shall note preference as "CP" for preference eligibles under 5 U.S.C. 2108(3)(C), as "XP" for preference eligibles under 5 U.S.C. 2108(3) (D) through (G), and as "TP" for all other preference eligibles under that title.

§ 302.202 Qualification requirements.

Before making an appointment to a position covered by this part, each agency shall establish qualification standards such as those relating to experience and training, citizenship, minimum age, physical condition, etc., which shall relate to the duties to be performed. An agency may delegate the establishment of standards relating to a group of positions or a specific position to the appropriate administrative level or subdivision in accordance with the needs of the locality in which the position is located, but the agency shall determine that each standard established is in conformity with this part. Each agency shall make its standards a matter of record in the appropriate office of the agency, and shall furnish information concerning the standards for a position to an applicant on his/her request. Each agency shall apply the standards for a position uniformly to all applicants, except for such waivers as are provided in this part for a preference eligible. An agency shall not include a minimum educational requirement in qualification standards, except for a scientific, technical, or professional position the duties of which the agency decides cannot be performed by a person who does not have a prescribed minimum education. An agency shall not establish a maximum age requirement for any position. Each agency shall make a part of its records the reasons for its decision under this section and shall furnish those reasons to an applicant on his/her request. The qualification standards shall include:

(a) A provision for waiver by the agency of requirements as to age, height, and weight for each preference eligible when the requirements are not essential to the performance of the duties of the position; and

(b) A provision for waiver by the agency of physical requirements for each preference eligible when the agency, after giving due consideration to the recommendation of an accredited physician, finds that the applicant is physically able to discharge the duties of the position.

§ 302.203 Disqualifying factors.

(a) The qualification standards established by an agency or by an administrative level or subdivision of an agency may provide that certain reasons disqualify an applicant for appointment. The following, among others, may be included as disqualifying reasons:

(1) Dismissal from employment for delinquency or misconduct;

(2) Criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct;

(3) Intentional false statement or deception or fraud in examination or appointment;

(4) Habitual use of intoxicating beverages to excess;

(5) Reasonable doubt as to the loyalty of the person involved to the Government of the United States;

(6) Any legal or other disqualification which makes the individual unfit for service; or

(7) Lack of United States citizenship.

(b) An agency may not disqualify an applicant solely because of his/her retired status.

Subpart C—Accepting, Rating, and Arranging Applications

§ 302.301 Receipt of applications.

(a) Each agency shall establish definite rules regarding the acceptance of applications for employment in positions covered by this part and shall make these rules a matter of record.

(b) Each agency shall apply its rules uniformly to all applicants who meet the conditions of the rules and shall furnish information concerning the rules to an applicant on his/her request.

§ 302.302 Examination of applicants.

(a) *Eligibility.* An evaluation of the qualifications of applicants for positions covered by this part may be conducted at any time before an appointment is made. The evaluation may involve only determination of eligibility or ineligibility or may include qualitative rating of candidates. If the evaluation involves only basic eligibility numerical scores will not be assigned and eligible candidates will be referred in accordance with the procedures described in paragraph (b)(5) of § 302.304. If qualitative ranking is desired, numerical scores may be assigned in accordance with paragraph (b) of this section. Each agency shall make a part of the records the reasons for its decision to use ranked or unranked referral and, for ranked actions, the quality ranking factors used. This information shall be made available to an applicant on his/her request.

(b) *Rating.* Numerical scores will be assigned on a scale of 100. Each applicant who meets the qualification requirements for the position established under § 302.202 will be assigned a rating of 70 or more and will be eligible for appointment. Candidates scoring 70 or more will receive additional points for veteran preference as provided in § 302.201. Numerical ratings are not required when all qualified applicants will be offered immediate appointment. When there is an excessive number of applicants, numerical ratings are required only for a sufficient number of the highest qualified applicants to meet the anticipated needs of the agency within a reasonable period of time. The agency must, however, adopt procedures to insure the consideration of preference eligibles in the order in which they would have been considered if all applicants had been assigned numerical ratings. An agency shall furnish a notice of the rating assigned to an applicant on his/her request.

(c) *Nonpreference applicants for certain positions.* An agency may not consider or rate an application for the position of elevator operator, messenger, guard, or custodian submitted by a nonpreference eligible as long as at least three qualified preference eligibles are available for the position.

(d) *Evaluating experience.* When experience is a factor in determining eligibility, an agency shall credit a preference eligible (1) with time spent in the military service of the United States if the position for which he/she is applying is similar to the position which he/she held immediately before his/her entrance into the military service; and (2) with all valuable experience, including experience gained in religious, civic, welfare, service, and organizational activities, regardless of whether pay was received therefor.

§ 302.303 Maintenance of employment lists.

(a) *Establishment*—(1) *Agency's obligation.* An agency must establish a priority reemployment list whenever any applicants rated eligible under § 302.302 meet the conditions set out in paragraphs (b)(1) through (b)(3) of this section and must consider candidates from that list in accordance with § 302.304(a). All applicants not included on the priority reemployment list will be listed on the regular employment list unless the agency elects to establish a reemployment list as provided in paragraph (c) of this section.

(2) *Agency discretion.* In establishing its lists, an agency may, but is not required to: Afford priority consideration to non-preference eligibles who meet the conditions set out in paragraph (b)(4) of this section; afford

priority consideration under paragraph (b) of this section for a longer time and/or in a broader geographic area than the minimum requirement; and/or provide reemployment consideration after the priority list is exhausted to additional current and former employees in accordance with paragraph (c) of this section. An agency may limit consideration granted at its discretion to applicants for specific positions or applicants who meet specific conditions, but must make those conditions a matter of record and must apply its policy uniformly to all eligible employees. Generally, full-time employees may be considered only for full-time positions and other-than-full-time employees only for other-than-full-time positions. However, full-time employees may be considered for other-than-full-time positions if there are no other-than-full-time employees on the appropriate priority or reemployment list; and other-than-full time employees may be considered for full-time positions if there are no full-time employees on the appropriate list.

(b) *Priority reemployment list.* Candidates are entered on the priority reemployment list in the geographic areas specified in paragraph (b)(1) of this section and remain on the list for 2 years unless the agency elects to provide a longer period of eligibility. The priority reemployment list includes:

(1) The name of each former employee of the agency who is a preference eligible, has been furloughed or separated from a continuing appointment without delinquency or misconduct, and applies for reemployment. Candidates in this category are considered for positions in the commuting area where they were separated unless the agency elects to provide broader consideration.

(2) The name of each former employee of the agency who is a preference eligible and who, as the result of an appeal under part 752 of this chapter, is found by the Merit Systems Protection Board to have been unjustifiably dismissed from the agency, but who is not entitled to immediate restoration under the Board's decision. Candidates in this category are considered in the commuting area from which separated unless the Board's decision specifies a broader or different area or the agency elects to afford broader geographic consideration.

(3) The name of each former employee of the agency who has been furloughed or separated due to compensable injury sustained under the provisions of 5 U.S.C. chapter 81, subchapter I, who is not entitled to immediate restoration, and who is eligible for priority consideration under this part. Candidates in this category are considered in the commuting area where they last served and, if the agency determines that an appropriate vacancy is unlikely to occur in that area during the candidates' period of reemployment priority, in other locations for which they are available.

(4) At the agency's discretion, the name of each former employee of the agency who is not a preference eligible, has been furloughed or involuntarily separated from a continuing appointment without delinquency or misconduct, and applies for reemployment. Candidates in this category are considered in the geographic area specified by the agency.

(c) *Reemployment list.* A reemployment list may be established at the agency's discretion to include the names of current employees of the agency and of former employees of the agency who are to be considered for future employment and who are not eligible for inclusion on the priority reemployment list. Employees may be entered on the reemployment list only for positions in which tenure and/or work schedule is no greater than that of the position previously held.

(d) *Order of entry.* An agency shall enter the names of all applicants rated eligible under § 302.302 on the appropriate list (priority reemployment, reemployment, or regular employment) in the following order:

(1) *When candidates have been rated only for basic eligibility under § 302.302(a).* (i) Preference eligibles having a compensable, service-connected disability of 10 percent or more (designated as "CP") unless the list will be used to fill professional positions at the GS–9 level or above, or equivalent;

(ii) All other candidates eligible for 10-point veteran preference;

(iii) All candidates eligible for 5-point veteran preference; and

(iv) Qualified candidates not eligible for veteran preference.

(2) *When qualified candidates have been assigned numerical scores under § 302.302(b).* (i) Preference eligibles having a compensable, service-connected disability of 10 percent or more, in the order of their augmented ratings, unless the list will be used to fill professional positions at the GS–9 level or above, or equivalent;

(ii) All other qualified candidates in the order of their augmented ratings. At each score, qualified candidates eligible for 10-point preference will be entered ahead of those eligible for 5-point preference or those not eligible for veteran preference, and those eligible for 5-point preference will be entered ahead of those not eligible for preference.

§ 302.304 Order of consideration.

(a) *Consideration of priority reemployment candidates.* An agency must consider all qualified candidates on its priority reemployment list before it may refer candidates from its reemployment list, if any, or regular employment list. When a qualified candidate is available on the priority list, the agency may appoint an individual who is not on the priority list or who has lower standing than others on that list *only* when necessary to obtain an employee for duties that cannot be taken over without undue interruption to the agency by an individual who is entitled to reemployment priority or has higher standing on the priority reemployment list than the one appointed. The agency must notify each individual on the priority reemployment list who is adversely affected by an appointment under this paragraph of the reasons for the exception and must further notify each such individual who is a preference eligible of his or her right of appeal to the Merit Systems Protection Board.

(b) *Consideration of other candidates.* Except as provided in paragraphs (b)(4) and (b)(5) of this section, an agency shall consider applicants on the reemployment and/or regular employment list who have been assigned eligible ratings for a given position in Order A, Order B, or Order C, as described in paragraphs (b)(1) through (b)(3) of this section. Order A must be used when the agency has not established a reemployment list.

(1) *Order A.* (i) The name of each qualified preference eligible who has a compensable, service-connected disability of 10 percent or more and is entitled to 10-point preference under section 3309 of title 5, United States Code, in the order of his/her numerical ranking.

(ii) The name of each other qualified applicant in the order of his/her numerical ranking.

(2) *Order B.* (i) The name of each qualified preference eligible who has a compensable, service-connected disability of 10 percent or more and is entitled to 10-point preference under section 3309 of title 5, United States Code, and whose name appears on the agency's reemployment list, in the order of his/her numerical ranking.

(ii) The name of each qualified preference eligible who has a compensable, service-connected

disability of 10 percent or more and is entitled to 10-point preference under section 3309 of title 5, United States Code, and whose name appears on the agency's regular employment list, in the order of his/her numerical ranking.

(iii) The name of each other qualified applicant on the agency's reemployment list, in the order of his/her numerical ranking.

(iv) The name of each other qualified applicant on the agency's regular employment list, in the order of his/her numerical ranking.

(3) *Order C.* (i) The name of each qualified preference eligible who has a compensable, service-connected disability of 10 percent or more and is entitled to 10-point preference under section 3309 of title 5, United States Code, and whose name appears on the agency's reemployment list, in the order of his/her numerical ranking.

(ii) The name of each other qualified applicant on the agency's reemployment list, in the order of his/her numerical ranking.

(iii) The name of each qualified preference eligible who has a compensable, service-connected disability of 10 percent or more and is entitled to 10-point preference under section 3309 of title 5, United States Code, and whose name appears on the agency's regular employment list, in the order of his/her numerical ranking.

(iv) The name of each other qualified applicant on the agency's regular employment list, in the order of his/her numerical ranking.

(4) *Professional order.* An agency shall consider applicants who have been assigned eligible ratings for professional and scientific positions at the GS-9 level and above, or equivalent, in the following order:

(i) *Applicants on the agency's reemployment list, if any.* If numerical scores have been assigned, the applicants will be considered in the order of their augmented scores. If numerical scores have not been assigned, all preference eligibles will be considered together regardless of the type of preference, followed by all other priority reemployment candidates.

(ii) *Applicants on the agency's regular employment list.* If numerical scores have been assigned, the applicants will be considered in the order of their augmented scores. If numerical scores have not been assigned, all preference eligibles will be considered together regardless of the type of preference, followed by all other candidates.

(5) *Unranked order.* When numerical scores are not assigned, the agency may consider applicants who have received eligible ratings for positions not covered by paragraph (b)(4) of this section in either of the following orders:

(i) *By preference status.* Under this method, preference eligibles having a compensable service-connected disability of 10 percent or more are considered first, followed, second, by other 10-point preference eligibles, third, by 5-point preference eligibles, and, last, by nonpreference eligibles. Within each category, applicants from the reemployment list will be placed ahead of applicants from the regular employment list.

(ii) *By reemployment/regular list status.* Under this method, all applicants on the reemployment list are considered before applicants on the regular employment list. On each list, preference eligibles having a compensable service-connected disability of 10 percent or more are considered first, followed, second, by other 10-point preference eligibles, third, by 5-point preference eligibles, and, last, by nonpreference eligibles.

Subpart D—Selection and Appointment; Reappointment; and Qualifications for Promotion

§ 302.401 Selection and appointment.

(a) *Selection.* When making an appointment from a priority reemployment, reemployment, or regular list on which candidates have not received numerical scores, an agency must make its selection from the highest available preference category, as long as at least three candidates remain in that group. When fewer than three candidates remain in the highest category, consideration may be expanded to include the next category. When making an appointment from a list on which candidates have received numerical scores, the agency must make its selection for each vacancy from not more than the highest three names available for appointment in the order provided in § 302.304. Under either method, an agency is not required to—

(1) Accord an applicant on its priority reemployment or reemployment list the preference consideration required by § 302.304 if the list on which the applicant's name appears does not contain the names of at least three preference eligibles; or

(2) Consider an applicant who has previously been considered three times or a preference eligible if consideration of his/her name has been discontinued for the position as provided in paragraph (b) of this section.

(b) *Passing over a preference applicant.* When an agency, in making an appointment as provided in paragraph (a) of this section, passes over the name of a preference eligible who is entitled to priority consideration under § 302.304 and selects a nonpreference eligible, it shall record its reasons for so doing, and shall furnish a copy of those reasons to the preference eligible or his/her representative on request. An agency may discontinue consideration of the name of a preference eligible for a position if on three occasions the agency has considered him/her for the position and has passed over his/her name and recorded its reasons for so doing.

§ 302.402 Reappointment.

An agency may reappoint a current or former nontemporary employee of the executive branch of the Federal Government who is a preference eligible to a position covered by this part without regard to the names of qualified applicants on the agency's priority reemployment, reemployment, or regular employment list.

§ 302.403 Qualifications for promotion.

In determining qualifications for promotion with respect to an employee who is a preference eligible, an agency shall waive:

(a) Requirements as to age, height, and weight unless the requirement is essential to the performance of the duties of the position; and

(b) Physical requirements if, in the opinion of the agency, after considering the recommendation of an accredited physician, the preference eligible is physically able to perform efficiently the duties of the position for which the promotion is proposed.

Subpart E—Appeals

§ 302.501 Entitlement.

An individual who is covered by 5 U.S.C. 8101(1) and is entitled to priority consideration under this part (see § 302.103) may appeal a violation of his/her restoration rights to the Merit Systems Protection Board under the provisions of the Board's regulations by presenting factual information that he or she was denied restoration rights because of the employment of another person.

[FR Doc. 90-5819 Filed 3-13-90; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 52

[FV-89-202]

United States Standards for Grades of Canned Tomatoes

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: In compliance with the requirements for periodic review of existing regulations and in response to a petition from the canned tomato industry, the Agricultural Marketing Service (AMS) is revising the United States Standards for Grades of Canned Tomatoes. The final rule: (1) Includes the styles of "whole," "sliced," "halves," "wedges," and "diced" for canned and stewed tomatoes; (2) eliminates the "U.S. Grade A Whole" classification; (3) eliminates drained weight as a scoreable factor but retains it as a grade requirement; (4) incorporates "character" as a scoreable quality factor in all styles; (5) redefines tomato flavor; (6) provides for the use of the U.S. Standard No. 8 circular sieve to determine drained weights of "sliced" and "diced" canned tomatoes; (7) changes from dual grade nomenclature to single letter grade designations; and (8) changes the format and makes other minor editorial changes consistent with other recently revised U.S. grade standards.

The effect of this final rule is to provide more comprehensive U.S. grade standards which reflect changes in cultivars, harvesting and processing techniques, and changes in consumer trends that have developed since the current standards became effective

EFFECTIVE DATE: April 13, 1990.

FOR FURTHER INFORMATION CONTACT: Harold A. Machias, Processed Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, room 0709, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-6247.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures, Executive Order 12291, and Departmental Regulation 1512-1 and has been designated as a "nonmajor" rule.

It will not result in an annual effect on the economy of $100 million or more. There will be no major increase in cost or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions. It will not result in significant effects on competition, employment, investments, productivity, innovations, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Agencies are required to periodically review existing regulations. An objective of the regulatory review is to ensure that the grade standards are serving their intended purpose, the language is clear, and the standards are consistent with AMS policy and authority.

The Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act, Public Law 96-354 (5 U.S.C. 601 et seq.). This revision reflects current marketing practices. The use of these standards is voluntary. A small entity may avoid incurring any economic impact by not employing the standards.

The United States Department of Agriculture (USDA) received a petition in March 1986 from the Indiana Food Processors Association (IFPA), now part of Mid-America Food Processors Association, a trade association of the canned tomato industry, requesting changes in the United States Standards for Grades of Canned Tomatoes. The grade standards were last revised in 1964.

The IFPA requested changes in the grade standards to reflect corresponding horticultural, harvesting, processing, and marketing changes in the canned tomato industy.

IFPA stated that over the last ten years there have been significant changes in the canned tomato industry.

Coreless tomato varieties have all but replaced the cored, round tomato varieties in the canned tomato market. New manufacturing techniques and procedures have improved the quality of canned tomatoes and tomato products. However, the grade standards by which these products are graded have not changed.

The USDA reviewed IFPA's request and conducted two informal market surveys during the 1987 and 1988 tomato processing seasons. The USDA solicited comments from the canned tomato industry including all the major canned tomato processing areas in California, Ohio, Indiana, Michigan, and the Southeast.

The market surveys indicated that tomato processors agreed that the then current grade standards were outdated and did not address current harvesting, processing, and marketing techniques.

With this input, USDA developed a proposed revision to the U.S. grade standards and a Notice of Proposed Rulemaking was published in the **Federal Register** on July 24, 1989 (54 FR 30750). In response, we received seven comments, all supportive of the proposed revisions. Six comments were received from canned tomato processors representing all major regions in the United States which produce tomatoes for processing. The Indiana Food Processors Association, Incorporated also submitted a comment in favor of the proposed rule.

The comments stated a variety of reasons for supporting the proposed changes, including a belief that the industry as well as the consumer would benefit from the changes. One comment was of the view that the current standards do not fully reflect current marketing practices concerning some of the packs for tomatoes. Furthermore, several comments were particularly supportive of the proposal to eliminate drained weight as a scoreable factor but retain it as a grade requirement.

With the exception of clarifying changes made to § 52.5166(e)(2), this final rule is the same as the proposed rule.

The current standards are based only on the style of "whole tomatoes." The canned tomato market is represented by a wide range of canned and stewed tomatoes of various styles.

This rule will provide for the additional styles of "sliced," "halves," "wedges," and "diced" and the product "stewed tomatoes" as defined in the Food and Drug Administration (FDA) Standards of Identity for Canned Tomatoes (21 CFR 155.190). Including these styles within the U.S. grade standards for canned tomatoes will promote uniformity in grading and marketing for this product.

Under this rule, the current grade classification "U.S. Grade A Whole" will be eliminated because "whole" is a specified style rather than a grade. The quality level for the current "U.S. Grade A Whole" standard (which requires at least 95% of the tomatoes are whole or almost whole) will be included under the grade classification "U.S. Grade A" for whole tomatoes (which requires at least 80% of the tomatoes be whole or almost whole).

This rule will eliminate drained weight as a scoreable factor but will retain it as a grade requirement as set out in § 52.5170, Table I. Elimination of drained weight as a scoreable quality factor was initially proposed by IFPA. For many years, marketing of canned tomatoes had been based on score

points assigned to drained weights. USDA specifically solicited comments on the desirability of eliminating drained weight as a scoreable factor. Eliminating drained weight as a scoreable factor will bring the standards in line with other U.S. grade standards since generally drained weight is not a quality factor. However, unlike most other standards, the drained weight requirements for canned tomatoes will be retained as grade requirements to reflect marketing practices. The drained weight requirements will apply to all styles of canned tomatoes.

This final rule will incorporate the quality factor of "character" in the grade standards as a scoreable factor. Character is the degree of firmness normally found when properly ripened tomatoes have been processed. Many segments of the industry favored the addition of this quality factor since many retail and food service specifications include it as a requirement.

Canned and stewed tomatoes containing specified amounts of excessively soft or mushy tomatoes will be classified "U.S. Grade B" or "U.S. Grade C." There is no "Substandard" classification for character for the purposes of these grade standards.

This final rule will redefine canned tomato flavor as "normal" or "off" flavor. In the current grade standards, flavor is "good", "normal", or "off". It is difficult to distinguish readily between "good" and "normal" flavor. However "normal" flavor is more readily distinguishable from "off" flavor.

This revision will provide for the use of the U.S. Standard No. 8 circular sieve to determine the drained weight averages for "diced" or "sliced" canned tomatoes. The U.S. Standard No. 2 circular sieve is currently used to determine drained weights for whole style in the current standards. In this revision, the No. 2 sieve will be used for "whole," "halves," and "wedges" styles and the No. 8 sieve will be used for "diced" and "sliced" styles.

Since the latter two styles expose more internal surface area, more of the placenta (gelatinous internal tissue) may drain through if the No. 2 sieve were used. The use of the No. 8 circular sieve will provide more representative drained weight determinations. Most other processed fruit and vegetable grade standards provide for the use of the U.S. Standard No. 8 circular sieve to determine drained weights.

This rule will replace dual grade nomenclature with single letter grade designations. Under this rule, "U.S. Grade A (or U.S. Fancy)", "U.S. Grade B (or U.S. Extra Standard)", and "U.S. Grade C (or U.S. Standard)" will become "U.S. Grade A", U.S. Grade B", and "U.S. Grade C" respectively. Also, this revision will change the format and will make other minor editorial changes by providing easy-to-read tables and definitions (explaining, where appropriate, some of the textual definitions in the current standards) in a comprehensive format consistent with recently revised U.S. grade standards.

After reviewing all available information including the comments received, the USDA has determined that this final rule will facilitate trade and improve marketing of canned tomatoes. The standards provide uniform guidelines for efficient marketing of canned tomatoes as authorized by the Agricultural Marketing Act of 1946.

List of Subjects in 7 CFR Part 52

Food grades and standards, Food labeling, Frozen foods, Fruit juices, Fruits, Reporting and recordkeeping requirements, Vegetables.

For reasons set forth in the preamble, 7 CFR part 52 is amended as follows:

PART 52—[AMENDED]

The Subpart—United States Standards for Grades of Canned Tomatoes, 7 CFR 52.5161–52.5171 is revised to read as follows:

Subpart—United States Standards for Grades of Canned Tomatoes

Sec.
52.5161 Product description.
52.5162 Styles.
52.5163 Type of pack.
52.5164 Definitions of terms.
52.5165 Fill of container.
52.5166 Minimum drained weight averages.
52.5167 Sample unit sizes.
52.5168 Grades.
52.5169 Factors of quality.
52.5170 Requirements for grades.
52.5171 Determining the grade of a lot.

Authority: Agricultural Marketing Act of 1946, secs. 203, 205, 60 Stat. 1087, as amended 1090, as amended (7 U.S.C. 1622, 1624).

Subpart—United States Standards for Grades of Canned Tomatoes

§ 52.5161 Product description.

The products to which these standards apply are defined in the Standards of Identity issued under the Federal Food, Drug, and Cosmetic Act as:

(a) *Canned tomatoes* (21 CFR 155.190); and

(b) *Canned stewed tomatoes* (21 CFR 155.190).

§ 52.5162 Styles.

(a) *Whole* means tomatoes, peeled or unpeeled, of any size that are substantially whole or almost whole.

(b) *Sliced* means tomatoes, peeled or unpeeled, that have been cut into units of approximately uniform thickness.

(c) *Halves* means tomatoes, peeled or unpeeled, that have been cut into two approximately equal halves.

(d) *Wedges* means tomatoes, peeled or unpeeled, that have been cut into approximate quarters or wedge-shaped sectors.

(e) *Diced* means tomatoes, peeled or unpeeled, that have been cut into approximate cube-shaped units.

§ 52.5163 Type of pack.

Regular pack means tomatoes packed in a medium consisting of tomato juice, tomato puree, or tomato paste.

§ 52.5164 Definitions of terms.

(a) *Character* means the degree of firmness normally found when tomatoes have been processed using good manufacturing practices as defined in 21 CFR part 110. Canned and stewed tomatoes that, when fully cooked, are *excessively soft or mushy* are considered to lack character. *Excessively soft* is further defined for all styles and means that the unit may disintegrate upon handling, has evidence of sloughing (erosion of the tomato tissue) or has ragged edges, and has lost ability to retain shape. For the purposes of these grade standards, character is classified as good, reasonably good and fairly good. There is no substandard classification for the quality factor of character.

(1) *Good character* in whole, halves, wedges, or sliced tomatoes is defined as tomatoes in which not more than 15 percent by count are excessively soft or mushy. *Good character* in diced tomatoes is defined as diced tomatoes in which not more than 15 percent by weight are excessively soft or mushy.

(2) *Reasonably good character* in whole, halves, wedges, or sliced tomatoes is defined as tomatoes in which not more than 25 percent by count are excessively soft or mushy. *Reasonably good character* in diced tomatoes is defined as diced tomatoes in which not more than 25 percent by weight are excessively soft or mushy.

(3) *Fairly good character* in whole, halves, wedges, or sliced tomatoes is defined as tomatoes in which more than 25 percent by count are excessively soft or mushy. *Fairly good character* in diced tomatoes is defined as diced tomatoes in which more than 25 percent by weight are excessively soft or mushy.

(b) *Color*— (1) *USDA Tomato Red* means the color of an USDA approved plastic color comparator.

(2) *Minimum Red for Canned Tomatoes* means the equivalent of any of the colors produced by blending the combinations of the following Munsell Color discs of equal diameter when placed as indicated.

Red—Munsell 5 R 2.6/13 (glossy finish)
Yellow—Munsell 2.5 YR 5/12 (glossy finish)
Black—Munsell N 1 (glossy finish)
Gray—Munsell N 4 (mat finish)

(i) The discs are placed so that one-third of the area of the Red disc, and not more than one-third of the area of the Yellow disc, are exposed. The exposed areas of the Black and Gray discs make up the remainder of the area.

(ii) To determine U.S. Grade C Color for canned and stewed tomatoes, apply the test for strength and redness of color outlined in 21 CFR 155.190(b).

(c) *Defects* refer to objectionable core material, tomato peel, extraneous vegetable material (EVM), blemished areas, and discolored portions that affect the appearance and eating quality of the product as further described below.

(1) *Blemished* areas are abnormal areas on the tomatoes which contrast strongly in color and/or texture with normal tomato tissue. Blemished areas may show objectionable discoloration ranging from light to dark discoloration. Blemished areas include but are not limited to scarred, raised, scabby tissue; darkened, tough areas which remain around the core area; internal or external dark tissue around blossom ends of the tomatoes; or any other areas that are objectionable or unsightly.

(2) *Discolored* portions are imperfections of the tomato tissue which may not be of strong contrasting color with respect to the tomato tissue but which detract slightly from the appearance of the product. Examples include sunburned areas, internal browning or tobacco mosaic, cloudy spots or ghost spots.

(3) *Extraneous vegetable material (EVM)* is vegetable material that is not harmful and includes, but is not limited to, whole or parts of stems, calyx bracts, tomato leaves or portions thereof, sprouted seeds, and other similar vegetable material which may not be part of the tomato plant.

(4) *Objectionable core material* is tomato material associated with the core of the tomato which detracts from the appearance or edibility of the product and includes tough fibers and tough or slightly discolored tomato tissue.

(5) *Peel* means the loose or attached skin of the tomato.

(d) *Drained tomatoes* means all of the tomato material that remains on the sieve after draining as prescribed in 21 CFR 155.190.

(e) *Flavor and odor*—(1) *Normal flavor and odor* means a typical characteristic flavor and odor of mature tomatoes.

(2) *Off-flavor and off-odor* means any flavor or odor other than typical characteristic flavor and odor of mature tomatoes that is objectionable.

(f) *Whole or almost whole*, for whole style only, regardless of size, means that:

(1) The contour of the tomato is not materially affected by coring, trimming, or other means;

(2) The tomato may be cracked or split but not to the extent that there is material loss of seeds or placenta (gelatinous mass filling the seed cavity); and

(3) The tomato units may be restored to their approximate original shape during handling.

§ 52.5165 Fill of container.

The standard of fill of container for canned tomatoes (21 CFR 155.190 (c)) requires that the product occupy not less than 90 percent of the water capacity of the container.

§ 52.5166 Minimum drained weight averages.

(a) The average minimum drained weight requirements for U.S. Grades are listed in Table I in § 52.5170.

(b) The drained weight must not be less than 50 percent of the weight of water required to fill the container.

(c) The minimum drained weight averages are based on equalization of the product 15 days or more after the product has been canned.

(d) The method of ascertaining drained weight for all styles of canned and stewed tomatoes is found in 21 CFR 155.190 except that the U.S. Standard Number 8 circular sieve is used in lieu of a U.S. Standard Number 2 circular sieve for "sliced" and "diced" styles of canned and stewed tomatoes.

(e) Meeting drained weight averages. A lot of canned tomatoes is considered as meeting the minimum drained weight averages if the following criteria are met:

(1) The average of the drained weights from all the containers in the sample meets the average drained weight in Table I in § 52.5170.

(2) The drained weights from the individual containers which do not meet the minimum are:

(i) For No. 2½ can size and smaller, *all styles except diced:* Not more than 0.7 ounce lower than the minimum average.

(ii) For No. 2½ can size and smaller, *diced* style: Not more than 0.5 ounce lower than the minimum average.

(iii) For No. 10 cans, *all styles*: Not more than 2.0 ounces below the minimum average; and

(3) The number of containers in the sample which do not meet the requirements of paragraph (e)(2) of this section, does not exceed the acceptance number prescribed for the sample size in 7 CFR 52.38, Table I.

§ 52.5167 Sample unit sizes.

(a) For "whole", "halves", and "wedges" styles, the sample unit size is the amount of product specified to be used for inspection in 7 CFR 52.38, Table I.

(b) For "sliced" and "diced" styles, the sample unit size is the same as indicated in paragraph (a) of this section *Except* in containers Number 10 (No. 10) can size and larger, an optional sample unit size of 32 ounces per container (drained weight) is permitted.

§ 52.5168 Grades.

(a) *U.S. Grade A* is the quality of canned tomatoes that meets the applicable requirements of tables I, II, and III of § 52.5170, and scores not less than 90 points.

(b) *U.S. Grade B* is the quality of canned tomatoes that meets the applicable requirements of Tables I, II, and III of § 52.5170, and scores not less than 80 points.

(c) *U.S. Grade C* is the quality of canned tomatoes that meets the applicable rquirements of Tables I, II, and III of § 52.5170, and scores not less than 70 points.

(d) *Substandard* is the quality of canned tomatoes that fails the requirements for U.S. Grade C.

§ 52.5169 Factors of quality.

The grade of canned tomatoes is based on the following quality factors:

(a) Drained weight;
(b) Character;
(c) Color;
(d) Wholeness ("whole style" only);
(e) Flavor and odor; and
(f) Defects.

§ 52.5170 Requirements for grades.

TABLE I.—MINIMUM DRAINED WEIGHT AVERAGES FOR CANNED TOMATOES AND STEWED TOMATOES ALL GRADES, ALL STYLES

[English (Avoirdupois) weights]

Container	Container dimensions [1]	Average drained weight (ounces)	
		U.S. grade A and B	U.S. grade C
8 oz. Tall	211 x 304	5.0	4.3
No. 300	300 x 407	8.8	7.6
No. 303	303 x 406	9.8	8.5

TABLE I.—MINIMUM DRAINED WEIGHT AVERAGES FOR CANNED TOMATOES AND STEWED TOMATOES ALL GRADES, ALL STYLES—Continued

[English (Avoirdupois) weights]

Container	Container dimensions [1]	Average drained weight (ounces)	
		U.S. grade A and B	U.S. grade C
No. 2	307 x 409	11.9	10.3
No. 2½	401 x 411	17.3	14.9
No. 10	603 x 700	63.5	54.7 ¼

[1] The first figure in this column represents the diameter of the container and the second figure represents the height. The first digit in each number represents inches and the second two digits represent sixteenths of an inch. Thus 307 is three and seven-sixteenths inches.

TABLE II.—MAXIMUM DEFECTS PERMITTED IN EACH GRADE ALL STYLES

	Defect (aggregate area)	In a single container		In total sample representing a lot; in cans of any size [per pound of total contents of all containers (average)]
		In cans of less than 2 pounds total contents (in any container)	In cans of 2 or more pounds total contents (equivalent amount per pound of contents of any container)	
Grade A	Peel	2 square inches	1 square inch	½ square inch.
	Blemished areas	⅛ square inch	1/16 square inch	1/16 square inch.
	Discolored portions	½ square inch	¼ square inch	¼ square inch.
Grade B	Peel	3 square inches	2 square inches	1.06 square inches.
	Blemished areas	¼ square inch	⅛ square inch	⅛ square inch.
	Discolored portions	1 square inch	½ square inch	½ square inch.
Grade C	Peel	No limit	No limit	1.06 square inches.
	Blemished areas	½ square inch	¼ square inch	¼ square inch.
	Discolored portions	1½ square inches	¾ square inch	¾ square inch.

TABLE III.—QUALITY REQUIREMENTS FOR CANNED TOMATOES AND STEWED TOMATOES [1]

WHOLE STYLE

Factor	Grade A	Grade B	Grade C
Average drained weight	See Table I	See Table I	See Table I.
Character: (by count)	Good character	Reasonably good character	Fairly good character.
Score	18–20 points	16–17 points [2]	14–15 points.[3]
Color: (by surface area)	At least 90% USDA Tomato Red, but not more than 5% less red than Minimum Red for Canned Tomatoes or yellow, and none may be vivid green.	At least 50% USDA Tomato Red but not more than 10% less red than Minimum Red for Canned Tomatoes or yellow, and none may be vivid green.	Meets FDA requirements for strength and redness of color [21 CFR 155.190(b)].
Score	27–30 points	24–26 points [2]	21–23 points.[3]
Wholeness	80% by weight whole or almost whole	70% by weight whole or almost whole	Less than 70% whole or almost whole.
Score	18–20 points	16–17 points [4]	14–15 points.[3]
Flavor	Normal	Normal	Normal.
Defects:			
Core material	Trace	Slight	Moderate.
EVM	Trace	Slight	Moderate.
Peel	See Table II	See Table II	See Table II.
Blemished areas	See Table II	See Table II	See Table II.
Discolored portions	See Table II	See Table II	See Table II.
Score	27–30 points	24–26 points [2]	21–23 points.[3]
Total score	90–100 points	80–89 points	70–79 points.

[1] Stewed tomatoes are graded excluding other vegetable ingredients.
[2] Cannot be graded above U.S. Grade B, regardless of the total score.
[3] Cannot be graded above U.S. Grade C, regardless of the total score.
[4] Can be graded U.S. Grade A, if the total score requirement is met.

TABLE IV.—QUALITY REQUIREMENTS FOR CANNED TOMATOES AND STEWED TOMATOES [1]

HALVES AND WEDGES STYLES

Factor	Grade A	Grade B	Grade C
Average drained weight	See Table I	See Table I	See Table I.
Character: (by count)	Good character	Reasonably good character	Fairly good character.
Score	18-20 points	16-17 points [2]	14-15 points.[3]
Color: (by surface area)	At least 90% USDA Tomato Red, but not more than 5% less red than Minimum Red for Canned Tomatoes or yellow, and none may be vivid green.	At least 50% USDA Tomato Red but not more than 10% less red than Minimum Red for Canned Tomatoes or yellow, and none may be vivid green.	Meets FDA requirements for strength and redness or color [21 CFR 155.190(b)].
Score	27-30 points	24-26 points [2]	21-23 points.[3]
Flavor	Normal	Normal	Normal.
Defects:			
Core material	Trace	SSlight	Moderate.
EVM	Trace	Slight	Moderate.
Peel	See Table II	See Table II	See Table II.
Blemished areas	See Table II	See Table II	See Table II.
Discolored portions	See Table II	See Table II	See Table II.
Score	27-30 points	24-26 points [2]	21-23 points.[3]
Total score [4]	90-100 points	80-89 points	70-79 points.

[1] Stewed tomatoes are graded excluding other vegetable ingredients.
[2] Cannot be graded above U.S. Grade B, regardless of the total score.
[3] Cannot be graded above U.S. Garde C, regardless of the total score.
[4] For "Halves" and "Wedges" styles, the final total score is adjusted by dividing the total score by 80 then multiplying by 100 to allow for the absence of the factor of wholeness.

TABLE V—QUALITY REQUIREMENTS FOR CANNED TOMATOES AND STEWED TOMATOES [1]

SLICED AND DICED STYLES

Factor	Grade A	Grade B	Grade C
Average drained weight	See Table I	See Table I	See Table I.
Character Sliced: by count Diced: by weight	Good character	Reasonably good Character	Fairly good character.
Score	18-20 points	16-17 points [2]	14-15 points.[3]
Color: (by surface area)	At least 90% USDA Tomato Red, but not more than 5% less red than Minimum Red for Canned Tomatoes or yellow, and none may be vivid green.	At least 50% USDA Tomato Red but not more than 10% less red than Minimum Red for Canned Tomatoes or yellow, and none may be vivid green.	Meets FDA requirements for strength and redness of color [21 CFR 155.190(b)].
Score	27-30 points	24-26 points [2]	21-23 points.[3]
Flavor	Normal	Normal	Normal.
Defects:			
Core material	Trace	Slight	Moderate.
EVM	Trace	Slight	Moderate.
Peel	See Table II	See Table II	See Table I.
Blemished areas	See Table II	See Table II	See Table II.
Discolored portions	See Table II	See Table II	See Table II.
Score	27-30 points	24-26 points [2]	21-23 points.[3]
Total score [4]	90-100 points	80-89 points	70-79 points.

[1] Stewed tomatoes are graded excluding other vegetable ingredients.
[2] Cannot be graded above U.S. Grade B, regardless of the total score.
[3] Cannot be graded above U.S. Grade C, regardless of the total score.
[4] For "Sliced" and "Diced" styles, the final total score is adjusted by dividing the total score by 80 then multiplying by 100 to allow for the absence of the factor of wholeness.

§ 52.5171 Determining the grade of a lot.

The grade of a lot of canned tomatoes covered by these standards is determined by the procedures found in the "Regulations Governing Inspection and Certification of Processed Fruits and Vegetables, Processed Products Thereof, and Certain Other Processed Food Products" (7 CFR 52.1 through 52.83).

Dated: March 9, 1990.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 90-5817 Filed 3-13-90; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 925

[Docket No. FV-90-126]

Expenses and Assessment Rate for Marketing Order No. 925

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes an assessment rate under Marketing Order 925 for the 1990 fiscal period. Authorization of this budget will allow the California Desert Grape Administrative Committee (committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATE: January 1, 1990, through December 31, 1990.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6465, telephone 202-447-5331.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 925 and Marketing Order No. 925 (7 CFR part 925) regulating the handling of grapes grown in a designated area of southeastern California. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), herinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

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

There are approximately 20 handlers of California desert grapes under this marketing order, and approximately 90 desert grape producers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of the handlers and producers may be classified as small entities.

The marketing order requires that the assessment rate for a particular fiscal period shall apply to all assessable grapes handled from the beginning of such period. An annual budget of expenses is prepared by the committee and submitted to the Department of Agriculture for approval. The members of the committee are handlers and producers of grapes. They are familiar with the committee's needs and with the costs for goods, services, and personnel in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the committee was derived by dividing anticipated expenses by expected shipments of grapes. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses. A recommended budget and rate of assessment is usually acted upon by the committee before the season starts, and expenses are incurred on a continuous basis. Therefore, the budget and assessment rate approval must be expedited so that the committee will have funds to pay its expenses.

The committee met on January 17, 1990, and unanimously recommended a 1990 budget of $27,825. The budget is $20,175 less than last year's, due to decreases in expenditures for the committee manager's salary and vehicle expense, payroll taxes, rent and contingency reserve. The committee also recommended an assessment rate of $0.003 per lug. This rate, when applied to anticipated shipments of 8,000,000 lugs will yield $24,000 in assessment revenue which, when added to $3,825 from interest income and reserve funds, will be adequate to cover budgeted expenses.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

A proposed rule was published in the **Federal Register** on February 16, 1990 (55 FR 5602). That document contained a proposal to add § 925.209 to authorize expenses and establish an assessment rate for the committee. That rule provided that interested persons could file written comments through February 26, 1990. No comments were received.

It is found that the specified expenses are reasonable and likely to be incurred and that such expenses and the specified assessment rate to cover such expenses will tend to effectuate the declared policy of the Act.

This action should be expedited because the committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1990 fiscal period began January 1, and the marketing order requires that the rate of assessment apply to all assessable grapes handled during the fiscal period. In addition, handlers are aware of this action which was recommended by the committee at a public meeting. Therefore, it is also found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553).

List of Subjects in 7 CFR Part 925

Grapes, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 925 is amended as follows:

PART 925—GRAPES GROWN IN A DESIGNATED AREA OF SOUTHEASTERN CALIFORNIA

1. The authority citation for 7 CFR part 925 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. A new § 925.209 is added to read as follows:

(Note: This section prescribes the annual expenses and assessment rate and will not be published in the Code of Federal Regulations).

§ 925.209 Expenses and assessment rate.

Expenses of $27,825 by the California Desert Grape Administrative Committee are authorized, and an assessment rate of $0.003 per 22-pound container of grapes is established for the fiscal period ending December 31, 1990. Unexpended funds may be carried over as a reserve.

Dated: March 9, 1990.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 90-5856 Filed 3-13-90; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. 25304]

RIN 2120-AC35

Terminal Control Area (TCA) Classification and TCA Pilot and Navigational Equipment Requirements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects the terminal control area (TCA) clarification and TCA pilot and navigational equipment requirements in 14 CFR part 91 to clarify an earlier amendment on the equipment requirement exclusion applicable to helicopters. The classification is necessary because the earlier amendment, published January 4, 1990, failed to state that the requirement will be continued beyond August 18, 1990, when a revised version of part 91 is scheduled to go into effect. This will ensure that the January 4, 1990 amendment will be incorporated into the version of part 91 going into effect August 18, 1990, as well as the current version of part 91.

EFFECTIVE DATE: The amendment to § 91.131 is effective August 18, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. A. Wayne Pierce, Air Traffic Rules Branch, ATO-230, Airspace—Rules and Aeronautical Information Division, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267-8783.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 4, 1990, the FAA amended § 91.90(c)(1), effective December 29, 1989, to delay the effective date of the previous equipment requirement exclusion applicable to helicopters from January 1, 1990 to October 1, 1990. This final rule amended the version of part 91 currently in effect and did not state that the amendment is to continue in effect past August 18, 1990, when a revised version of part 91 will go into effect. This document corrects the January 4, 1990, amendment to § 91.90(c)(1) by including a statement that § 91.90(c)(1) will be redesignated as § 91.131 as of August 18, 1990.

List of Subjects in 14 CFR Part 91

Agriculture, Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Freight, Reporting and recordkeeping requirements.

Accordingly, 14 CFR part 91 is amended as follows:

PART 91—[AMENDED]

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 (as amended by Pub. L. 100-223), 1422 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 et seq.; E.O. 11514; Pub. L. 100-202; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

§ 91.131 [Amended]

2. The following amendment is made to part 91 as it will be revised on August 18, 1990.

Section 91.131(c)(1) is amended by replacing the words "January 1, 1990" with the words "October 1, 1990".

Issued in Washington, DC on March 7, 1990.

Donald P. Byrne,

Acting Assistant Chief Counsel for Regulations and Enforcement.

[FR Doc. 90-5685 Filed 3-13-90; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 5

Delegations of Authority and Organization

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is revising the regulations to set forth the current organizational structure of the agency as well as the current addresses for Headquarters and field offices.

EFFECTIVE DATE: March 14, 1990.

FOR FURTHER INFORMATION CONTACT: Ellen Rawlings, Division of Management and Operations (HFA-340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4976.

SUPPLEMENTARY INFORMATION: The regulations are being amended in 21 CFR 5.100 and 5.115 to reflect the current organizational structure of the agency and provide current addresses for Headquarters and field offices.

The major changes in FDA's organizational structure in 1989 were in the Center for Drug Evaluation and Research (CDER) where a new Office of Generic Drugs, made up of two divisions, was established. In addition, the following center offices renamed, added, or deleted divisions: Office of Drug Evaluation I, Office of Drug Standards, and Office of Research Resources, CDER; Office of Training and Assistance, Center for Devices and Radiological Health (CDRH); and Office of Management, Office of Research, and Office of Research Services, National Center for Toxicological Research (NCTR).

Further redelegation of the authority delegated is not authorized. Authority delegated to a position by title may be exercised by a person officially designated to serve in such position in an acting capacity or on a temporary basis.

List of Subjects in 21 CFR Part 5

Authority delegations (Government agencies), Imports, Organization and functions (Government agencies).

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 5 is amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for 21 CFR part 5 continues to read as follows:

Authority: 5 U.S.C. 504, 552, App. 2; 7 U.S.C. 2271; 15 U.S.C. 638, 1261-1282, 3701-3711a; secs. 2-12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451-1461); 21 U.S.C. 41-50, 61-63, 141-149, 467f, 679(b), 801-886, 1031-1309; secs. 201-903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321-393); 35 U.S.C. 156; secs. 301, 302, 303, 307, 310, 311, 351, 352, 354-360F, 361, 362, 1701-1706, 2101 of the Public Health Service Act (42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 263b-263n, 264, 265, 300u-300u-5, 300aa-1); 42 U.S.C. 1395y, 3246b, 4332, 4831(a), 10007-10008; E.O. 11490, 11921, and 12591.

2. Section 5.100 is revised to read as follows:

§ 5.100 Headquarters.

The central organization of the Food and Drug Administration consists of the following:

Office of the Commissioner [1]

Office of Regulatory Affairs.
Office of Management and Operations.
Office of Health Affairs.
Office of Science.
Office of Planning and Evaluation.
Office of Legislative Affairs.
Office of Public Affairs.
Office of Consumer Affairs.

[1] Mailing address: 5600 Fishers Lane, Rockville, MD 20857.

Immediate Office

Office of Equal Employment and Civil Rights.
Office of Executive Operations.
Office of Orphan Products Development.

Center For Drug Evaluation And Research [1]

Office of Management

Division of Management and Budget.
Division of Information Systems Design.
Division of Drug Information Resources.
Medical Library.

Office of Epidemiology and Biostatistics

Division of Epidemiology and Surveillance.
Division of Biometrics.

Office of Compliance

Division of Drug Labeling Compliance.
Division of Drug Quality Evaluation.
Division of Manufacturing and Product Quality.
Division of Scientific Investigations.
Division of Regulatory Affairs.

Office of Drug Evaluation I

Division of Cardio-Renal Drug Products.
Division of Neuropharmacological Drug Products.
Division of Oncology and Pulmonary Drug Products.
Division of Medical Imaging, Surgical, and Dental Drug Products.
Division of Gastrointestinal and Coagulation Drug Products.

Office of Drug Evaluation II

Division of Metabolism and Endocrine Drug Products.
Division of Anti-Infective Drug Products.
Division of Anti-Viral Drug Products.

Office of Drug Standards

Division of OTC Drug Evaluation.
Division of Drug Advertising and Labeling.

Office of Generic Drugs

Division of Generic Drugs.
Division of Bioequivalence.

Office of Research Resources

Division of Research and Testing.
Division of Drug Analysis.
Division of Biopharmaceutics.

Center for Biologics Evaluation and Research [2]

Office of Management

Division of Management and Budget.

Office of Compliance

Office of Biological Product Review

Division of Product Quality Control.
Division of Biological Investigational New Drugs.
Division of Product Certification.

Office of Biologics Research

Division of Bacterial Products.
Division of Blood and Blood Products.
Division of Virology.
Division of Biochemistry and Biophysics.
Division of Cytokine Biology.

[2] Mailing address: 8800 Rockville Pike, Bldg. 29, Bethesda, MD 20892.

Center for Food Safety and Applied Nutrition [3]

Office of Management

Division of Program Operations.
Division of Administrative Operations.
Division of Information Resources Management.

Office of Compliance

Division of Regulatory Guidance.
Division of Food and Color Additives.
Division of Cooperative Programs.

Office of Toxicological Sciences

Division of Toxicological Studies.
Division of Toxicological Review and Evaluation.
Division of Pathology.
Division of Mathematics.

Office of Physical Sciences

Division of Contaminants Chemistry.
Division of Colors and Cosmetics.
Division of Food Chemistry and Technology.

Office of Nutrition and Food Sciences

Division of Consumer Studies.
Division of Nutrition.
Division of Microbiology.

Center for Devices and Radiological Health [4]

Office of Management Services

Division of Planning, Evaluation, and Information Services.
Division of Resource Management.

Office of Information Systems

Division of Computer Services.
Division of Information Resources.

Office of Health Physics

Office of Health Affairs [4]

Office of Standards and Regulations

Office of Compliance and Surveillance [4]

Division of Management Information.
Division of Compliance Programs.
Division of Compliance Operations.
Division of Product Surveillance.
Division of Standards Enforcement.

Office of Device Evaluation [4]

Division of Cardiovascular Devices.
Division of Gastroenterology/Urology and General Use Devices.
Division of Anesthesiology, Neurology, and Radiology Devices.
Division of Obstetrics/Gynecology, Ear, Nose, Throat, and Dental Devices.
Division of Surgical and Rehabilitation Devices.
Division of Clinical Laboratory Devices.
Division of Ophthalmic Devices.

Office of Science and Technology

Division of Mechanics and Materials Science.
Division of Life Sciences.
Division of Physical Sciences.
Division of Biometric Sciences.

[3] Mailing address: 200 C St. SW., Washington, DC 20204.

[4] Mailing address: 1390 Piccard Dr., Rockville, MD 20850.

Division of Electronics and Computer Sciences.

Office of Training and Assistance

Division of Consumer Affairs.
Division of Small Manufacturers Assistance.
Division of Technical Development.
Division of Professional Practices.
Division of Training Support.

Center for Veterinary Medicine [1]

Office of Management

Office of New Animal Drug Evaluation

Division of Biometrics, Informatics, and Environmental Sciences.
Division of Chemistry.
Division of Therapeutic Drugs for Food Animals.
Division of Therapeutic Drugs for Non-Food Animals.
Division of Toxicology.
Division of Production Drugs.

Office of Surveillance and Compliance

Division of Compliance.
Division of Surveillance.
Division of Animal Feeds.
Division of Voluntary Compliance and Hearings Development.

Office of Science

Division of Veterinary Medical Research.

National Center for Toxicological Research [5]

Office of Management

Division of Information and Management Services.
Division of Facilities Engineering and Maintenance.

Office of Research

Division of Reproductive and Developmental Toxicology.
Division of Genetic Toxicology.
Division of Biochemical Toxicology.
Division of Comparative Toxicology.

Office of Research Services

Division of Microbiology.
Division of Veterinary Services.
Division of Chemistry.

3. Section 5.115 is revised to read as follows:

§ 5.115 Field structure.

Northeast Region

Regional Field Office: 830 Third Ave., Brooklyn, NY 11232.
New York Regional Laboratory: 850 Third Ave., Brooklyn, NY 11232.
New York District Office: 850 Third Ave., Brooklyn, NY 11232.
Boston District Office: One Montvale Ave., Stoneham, MA 02180.
Buffalo District Office: 599 Delaware Ave., Buffalo, NY 14202.

Mid-Atlantic Region

Regional Field Office: 900 U.S. Customhouse, Second and Chestnut Sts., Philadelphia, PA 19106.

[5] Mailing address: Jefferson, AR 72079-9502.

Philadelphia District Office: 900 U.S. Customhouse, Second and Chestnut Sts., Philadelphia, PA 19106.
Baltimore District Office: 900 Madison Ave., Baltimore, MD 21201.
Cincinnati District Office: 1141 Central Pkwy., Cincinnati, OH 45202-1097.
Newark District Office: 61 Main St., West Orange, NJ 07052.

Southeast Region

Regional Field Office: 60 Eighth St. NE., Atlanta, GA 30309.
Atlanta Regional Laboratory: 60 Eighth St. NE., Atlanta, GA 30309.
Atlanta District Office: 60 Eighth St. NE., Atlanta, GA 30309.
Nashville District Office: 297 Plus Park Blvd., Nashville, TN 37217.
New Orleans District Office: 4298 Elysian Fields Ave., New Orleans, LA 70122.
Orlando District Office: 7200 Lake Ellenor Dr., Suite 120, Orlanda, FL 32809.
San Juan District Office: Fernandez Juncos Ave., Stop 8½, Puerta de Tierra Station, San Juan, PR. Mail to : P.O. Box 5719, Puerta de Tierra Station, San Juan, PR 00906-5719.

Midwest Region

Regional Field Office: 20 North Michigan Ave., Rm. 550, Chicago, IL 60602.
Chicago District Office: 433 West Van Buren St., Rm. 1222, Chicago, IL 60607.
Detroit District Office: 1560 East Jefferson Ave., Detroit, MI 48207.
Minneapolis District Office: 240 Hennepin Ave., Minneapolis, MN 55401.

Southwest Region

Regional Field Office: 3032 Bryan St., Dallas, TX 75204.
Dallas District Office: 3032 Bryan St., Dallas, TX 75204.
Denver District Office: Bldg. 20, Denver Federal Center, Sixth and Kipling Sts., P.O. Box 25087, Denver, CO 80225-0087.
Kansas City District Office: 1009 Cherry St., Kansas City, MO 64106.
St. Louis Branch: 808 North Collins Alley, St. Louis, MO 63102.

Pacific Region

Regional Field Office: Rm. 568, Federal Office Bldg., 50 U.N. Plaza, San Francisco, CA 94102.
San Francisco District Office: Rm. 526, Federal Office Bldg., 50 U.N. Plaza, San Francisco, CA 94102.
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Dated: March 6, 1990.

Ronald G. Chesemore,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 90-5792 Filed 3-13-90; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8295]

RIN 1545-AO43

Consolidated Return Regulations—Modification of Rules Relating to Intercompany Transactions and Distributions of Property

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary and final regulations.

SUMMARY: This document contains temporary and final regulations under section 1502 that relate to deferred intercompany transactions and distributions of property among members of an affiliated group filing consolidated returns. As a result of changes to the Internal Revenue Code, literal application of the deferral rules may produce tax consequences to the group that are inconsistent with the tax consequences that would have resulted if an intercompany transfer had not occurred.

The temporary regulations provide rules concerning the creation and restoration of deferred gain or loss in these transfers. The purpose of the temporary regulations is to confirm the original intent of the deferral mechanism by assuring that intercompany transfers generally do not affect the overall federal income tax consequences to the group. The text of the temporary regulations set forth in this document also serves as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking in the Proposed Rules section of this issue of the **Federal Register.**

DATES: These temporary and final regulations are effective for taxable years for which the due date (without extensions) of the federal income tax return is after March 14, 1990. However, transition rules §§ 1.1502-13T (m) (4) (ii) and 1.1502-14T (c) (3) (ii) apply to certain dispositions outside the group occurring before March 9, 1990. In addition, § 1.1502-13T (n) applies only to intercompany transactions attributable to long term contracts entered into after June 20, 1988.

FOR FURTHER INFORMATION CONTACT: Roy A. Hirschhorn or Jerilynn V. Chapman at telephone (202) 566-3231 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

This regulation is being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collections of information requirement contained in this regulation has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under control number 1545-1161. The estimated annual burden per respondent varies from 1½ to 2½ hours, depending on individual circumstances, with an estimated average of 2 hours.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents may require greater or less time, depending on their particular circumstances.

For further information concerning these collections of information, where to submit comments on these collections of information, the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-referenced notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register.**

Background

This document amends the Income Tax Regulations (26 CFR part 1) under section 1502 of the Internal Revenue Code of 1986. The temporary and final regulations added by this document amend §§ 1.1502-13T and 1.1502-14T and amend and add cross-references to §§ 1.1502-13 and 1.1502-14. The temporary and final regulations added by this document will remain in effect until superseded by later temporary or final regulations relating to these matters.

The present consolidated return regulations provide a system which replicates in many ways the federal income tax consequences which would arise if the members of an affiliated group of corporations filing consolidated returns were a single entity. Under the regulations, gain or loss realized and recognized on transfers of property from one member ("selling member") to another member ("purchasing member") of an affiliated group filing consolidated returns is deferred and taken into account by the selling member when, for example, the property is depreciated or disposed of outside the group by the purchasing member. Although the gain

or loss is deferred, the purchasing member has a cost basis in the transferred property. See §§ 1.1502–13, 1.1502–13T, 1.1502–14, 1.1502–14T, and 1.1502–31 (a).

Prior to 1966, the consolidated return regulations provided for the elimination of the selling member's gain or loss if the property was not sold outside the group during the same consolidated return year. Under the prior regulations, the purchasing member received a carryover basis in the property.

The change to the deferral system was made because the gain elimination system resulted in certain gain escaping tax, being recognized by the wrong member of the group at the wrong time, and being characterized improperly. Further, the earnings and profits of the members were not properly reflected.

The deferral mechanism was adopted to fix more accurately the location, character and source of the gain or loss on transactions between members. It generally was not intended to affect the group's overall income or loss (or other tax consequences) either while the transferred property remains in the group or after the property is disposed of outside the group.

As a result of changes in the Internal Revenue Code, literal application of the deferral rules may produce tax consequences to the group that are inconsistent with the tax consequences that would have resulted if an intercompany transfer had not occurred. The purpose of the temporary regulations is to assure that the deferral provisions operate as they were intended—*i.e.*, to promote neutrality so that the overall tax consequences to the group generally are not affected by transfers of property among members.

Explanation of Provisions

Consistent with the neutrality principle, the temporary regulations provide four general rules concerning the creation and restoration of gain or loss deferred as the result of transfers of property between members of a group.

First, under the temporary regulations, any gain or loss deferred with respect to property sold or exchanged in an intercompany transaction or distributed by one member to another is taken into account in an amount equal to any increase (or decrease) in a deduction or basis recovery attributable to the increase (or decrease) in the basis of the property (or that of any other property the basis of which is determined, directly or indirectly, in whole or in part, by reference to the basis of the property) resulting from the transfer. For example, if, as a result of an intercompany transfer the purchasing member takes depreciation deductions in excess of the deductions that would have been taken by the selling member, deferred gain must be taken into account at the same time and in the same amount as the excess depreciation deductions. For purposes of this rule, basis is not treated as recovered by reason of a subsequent intercompany transfer.

Second, if property sold or exchanged in an intercompany transaction or distributed by one member to another member (or property the basis of which is determined, directly or indirectly, in whole or in part, by reference to the basis of the property) is disposed of outside the group, deferred gain (and any associated tax consequences) generally must be taken into account as if the selling member had disposed of the property at the same time and in the same manner as the member making the disposition. The source and character of the gain to the selling member and the status of the selling member for tax purposes, however, is determined at the time of the intercompany transfer. This rule applies to property disposed of in a non-recognition transaction only to the extent gain or loss is recognized.

For purposes of this rule, an event (other than a non-recognition transaction) requiring restoration of gain under § 1.1502–13 (e) or (f) constitutes a disposition of property outside the group. For example, under this rule, if the parent of a group recognizes and defers gain on the sale of property to a subsidiary, and the subsidiary makes an installment sale of the property outside the group, the deferred tax liabilities of both the parent and the subsidiary must be taken into account in determining the interest charge under section 453A beginning with the taxable year in which the subsidiary's sale occurs.

Third, the temporary regulations provide a special rule for long term contracts subject to section 460. Generally, where a member has entered into a long term contract and is required to account under section 460 for any income and expense attributable to the contract, any other member's activities that benefit, or are performed by reason of, the long term contract must also be accounted for under section 460 (*i.e.*, generally under the percentage of completion method). See Notice 89–15, Q&A–8, 1989–1 C.B. 634, 636. The temporary regulations provide that as the selling member incurs costs attributable to such activities, it must recognize and may not defer gain or loss associated with income and expense accounted for (or required to be accounted for) under the percentage of completion method.

Fourth, the temporary regulations provide a rule for the restoration of gain attributable to a distribution of the stock of a subsidiary by one member to another. Upon a disposition of the stock of the subsidiary, the distributing member must take into account the deferred gain to the extent that, absent the adjustment to the basis (or excess loss account) of the subsidiary stock resulting from the distribution, the member disposing of the subsidiary stock would have had an excess loss account or increased excess loss account with respect to the subsidiary stock. In addition, following a disposition of the stock of the subsidiary, the distributing member must take into account the deferred gain to the extent that, absent the adjustment to the basis of the former subsidiary's stock resulting from the distribution, distributions with respect to the stock of the former subsidiary owned by a member exceed the member's basis in such stock. For this purpose, a disposition is defined in § 1.1502–19(b)(2), and, for example, includes a case in which a distributed subsidiary ceases to be a member of the group as the result of issuing additional stock outside the group, even though the group retains all of the stock distributed.

Effective Dates

The temporary regulations generally apply to intercompany transfers or dispositions outside the group in taxable years of the group for which the due date (without extensions) of the income tax return is after March 14, 1990. However, several special rules are provided.

First, where property sold or exchanged in an intercompany transaction or distributed from one member to another member is disposed of outside the group, the temporary regulations do not apply if the intercompany transfer, resulting in deferred gain or loss, occurred before January 1, 1989, and the property was disposed of before March 9, 1990. The temporary regulations apply, however, if the intercompany transfer occurred after December 31, 1988, and the property was disposed of before March 9, 1990, unless, at the time of the intercompany transfer, there was no plan or intention to dispose of such property outside the group, and the group files a disclosure statement for the taxable year in which the property is disposed of outside the group.

Second, the temporary regulations apply only to long term contracts entered into by a member after June 20, 1988.

Third, where stock of a subsidiary distributed from one member of the group to another is considered disposed of outside the group, the temporary regulations do not apply to gain deferred with respect to the distributed stock if the distribution of the stock occurred before January 1, 1989, and the stock was disposed of before March 9, 1990.

The temporary regulations do not limit the application, to transactions occurring before or after the effective date of the regulations, of other sections of the Code or general principles of tax law, including sections 337(d) and 482, the substance-over-form doctrine (*e.g.*, application of *Commissioner* v. *Waterman Steamship Corp.*, 430 F.2d 1185 (5th Cir. 1970), *cert. denied*, 401 U.S. 939 (1971)), and the tax benefit rule.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking for the regulations was submitted to the Administrator of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these temporary and final regulations is Roy A. Hirschhorn of the Office of Assistant Chief Counsel (Corporate), Internal Revenue Service. However, other personnel from the Service and the Treasury Department participated in their development.

List of Subjects in 26 CFR 1.1501–1 Through 1.1564–1

Income taxes, Controlled group of corporations, Consolidated returns.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR chapter I, part 1 is amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1986

Paragraph 1. The authority citation for part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805 * * * Sections 1.1502–13T and 1.1502–14T also issued under 26 U.S.C. 1502.

Par. 2. Section 1.1502–13 is amended as follows:

1. A new sentence is added to the end of paragraph (c)(1)(iii) to read as set forth below:

§ 1.1502–13 Intercompany transactions.

* * * * *

(c) * * *

(1) * * *

(iii) * * * See § 1.1502–13T, relating to the time and manner of restoring deferred gain or loss in taxable years for which the due date (without extensions) of the income tax return is after March 14, 1990.

* * * * *

Par. 3. Section 1.1502–13T is amended as follows:

1. The last sentence of paragraph (c)(2) is removed.

2. The last sentence of paragraph (f)(2) is removed.

3. New paragraphs (l), (m), (n), and (o) are added to read as follows:

§ 1.1502–13T. Temporary regulations for certain intercompany transactions.

* * * * *

(l) *Restoration of deferred gain before disposition outside group*—(1) *In general.* For purposes of § 1.1502–13, gain (or loss) deferred with respect to property sold or exchanged in an intercompany transaction shall be taken into account for any taxable year (whether consolidated or separate) in an amount equal to any increase (or decrease) in a deduction or basis recovery for the taxable year that is attributable to an increase (or decrease) in the basis of the property (or to the basis of any other property the basis of which is determined, directly or indirectly, in whole or in part, by reference to the basis of such property) resulting from the sale or exchange. For purposes of the preceding sentence, basis shall not be treated as recovered by reason of a subsequent deferred intercompany transaction or distribution described in §1.1502–14 (a) or (b).

(2) *Examples.* The application of this paragraph (l) is illustrated by the following examples.

Example (1). (i) Corporations P and S file consolidated returns on a calendar year basis. P owns a 40% interest in the capital and profits of XYZ, a partnership. P has a basis of $20 in its partnership interest. XYZ owns a single depreciable asset. P's share of the basis of the asset is $20 and its share of the value of the asset is $60. In 1989, P sells its partnership interest to S for $60 and recognizes a gain of $40, all of which is deferred under § 1.1502–13(c). S's basis in the XYZ interest is increased to $60 under § 1.1502–31(a). Because XYZ has made an election under section 754, the basis of the asset with respect to S is increased, under section 743, to $60 by reference to S's basis in the XYZ interest.

(ii) If P had not transferred its partnership interest to S, its allocable share of depreciation with respect to the asset would have been $5 for 1990. As a result of the basis adjustment under section 743 resulting from the sale of the XYZ interest to S, S's depreciation with respect to the asset for 1990 is $15 ($10 of which is attributable to the basis adjustment). P is therefore required to take into account $10 of deferred gain under this paragraph (l).

(iii) In 1991, XYZ sells the asset and S's share of the amount realized with respect to the sale is $65. Without regard to depreciation for 1991, if P had not transferred its XYZ interest to S, its basis recovery on the sale of the asset would have been $15. As a result of the basis adjustment under section 743 resulting from the sale of the XYZ interest to S, S's share of the basis of the asset at the time it is sold is $45 ($60 minus $15). Accordingly, there has been a $30 increase in basis recovery in 1991 as a result of the sale of the XYZ interest to S and, under this paragraph (l), P must therefore take into account the remaining $30 of deferred gain at the time of the sale.

Example (2) (i) Corporations P and S file consolidated returns on a calendar year basis. S purchases and places in service on August 1, 1989, construction equipment costing $1,000,000. S elects to use the straight-line method over the equipment's recovery period (5 years) and appropriately applies the half-year convention to compute its depreciation deduction for the equipment. Thus, S's depreciation deduction for the equipment for 1989 is $100,000 (½ of 20% of $1,000,000). In 1990, S sells the equipment to P and recognizes a gain of $500,000, all of which is deferred under § 1.1502–13(c). P does not dispose of the equipment before 1996.

(ii) Under section 168(i)(7), P must use the same depreciation method that S used over S's remaining recovery period for so much of the adjusted basis of the equipment in P's hands as does not exceed the adjusted basis of the equipment in S's hands immediately before the sale (the "carryover portion"). Therefore, P's depreciation deduction that is attributable to the carryover portion is the same in each year as S's deduction would have been if S had not sold the equipment to P. The amount of the deferred gain attributable to the equipment that S must take into account in any year (that is, the amount of the increased depreciation deduction to the group) is the amount of the depreciation deduction attributable to the portion of P's basis which exceeds the carryover portion (the "excess portion"). P appropriately depreciates the excess portion ($500,000) under the 200-percent declining balance method over a 5-year recovery period, applying a half-year convention. Thus, the amount of deferred gain that S is required to take into account, which equals the amount of depreciation claimed by P on the excess portion, is $100,000 for 1990,

$160,000 for 1991, $96,000 for 1992, $57,600 for 1993, $57,600 for 1994, and $28,800 for 1995.

(3) *Effective date.* This paragraph (l) applies to intercompany transactions in taxable years for which the due date (without extensions) of the income tax return is after March 14, 1990.

(m) *Restoration of deferred gain on disposition outside group*—(1) *In general.* Except as provided in paragraph (m)(2) of this section, for purposes of § 1.1502–13, if property sold or exchanged in an intercompany transaction (or property the basis of which is determined, directly or indirectly, in whole or in part, by reference to the basis of such property) is disposed of outside the group, any remaining deferred gain (and any associated tax consequences) shall be taken into account as if the selling member had disposed of the property at the same time and in the same manner as the property is disposed of outside the group. Notwithstanding the previous sentence, the source and character of the gain to the selling member and the status of the selling member for tax purposes (*e.g.*, as a dealer or non-dealer in the property sold) shall be determined as of the time of the intercompany transaction. Any event requiring the restoration of gain pursuant to § 1.1502–13(e) or § 1.1502–13(f), as modified by paragraph (f) of this section, is treated as a disposition outside the group.

(2) *Exception.* Paragraph (m)(1) of this section does not apply, and § 1.1502–13(e) and § 1.1502–13(f), as modified by paragraph (f) of this section, apply, to the extent that gain or loss is not recognized in a transaction in which property, which was sold or exchanged in an intercompany transaction, (or property the basis of which is determined, directly or indirectly, in whole or in part, by reference to such property) is disposed of outside the group. However, to the extent gain or loss is recognized in such transaction, paragraph (m)(1) of this section applies.

(3) *Examples.* The application of this paragraph (m) is illustrated by the following examples.

Example (1). (i) Corporations P and S file consolidated returns on a calendar year basis. P regularly sells real property in the ordinary course of business. In 1990, P sells nondepreciable real property with a basis of $7,000 to S for $10,000 and P recognizes $3,000 of gain, all of which is deferred under § 1.1502–13(c).

(ii) In 1991, S, which does not regularly sell real property in the ordinary course of business, sells the real property to X, an unrelated third party, for a $12,000 obligation, bearing interest at the applicable federal rate and payable in two equal annual installments of $6,000 in 1992 and 1993. If, instead of selling the property to S in 1990, P had sold it to X, P would not have been eligible, under section 453(b), to use the installment method of reporting with respect to its $3,000 gain because it was a dealer in real property in 1990. When S sells the real property to X in 1991, P must therefore take into account its entire $3,000 of deferred gain.

Example (2). (i) Corporations P and S file consolidated returns on a calendar year basis. S owns depreciable property described in section 1245 that it purchased for $10 million. At the end of 1989, when S's basis in the property has been reduced to $7 million as a result of depreciation deductions, S sells the property to P for $20 million and recognizes $13 million of gain, $3 million of which is subject to recapture under section 1245. All of the gain is deferred under § 1.1502–13(c).

(ii) At the end of 1990, P sells the property to X, an unrelated third party, for a $25 million obligation, bearing interest at the applicable federal rate and payable in two equal annual installments of $12.5 million in 1991 and 1992. Without regard to depreciation in 1990, P realizes $5 million of gain, which it reports on the installment method under section 453. If, instead of selling the property to P, S had sold it to X in an installment sale, S would have been required to report under section 453(i) the $3 million of recapture income. When P sells the property to X, S must therefore take into account $3 million of deferred gain that is subject to recapture under section 1245.

(iii) Under § 1.1502–13(e)(2), S takes into account the $10 million of deferred gain not subject to recapture as P receives the installment payments. Thus, P recognizes $2.5 million of gain under section 453, and S takes into account $5 million of its deferred gain, in each of 1991 and 1992. Section 453A requires interest to be paid on a group's tax liability deferred by reason of section 453 if the installment obligations of the group (and related persons) outstanding at the close of the group's taxable year exceed an aggregate face amount of $5 million. Because the aggregate face amount of the group's installment obligations, $25 million, exceeds $5 million, the deferred tax liabilities of both P and S must be taken into account in determining the interest charge under section 453A beginning with the taxable year in which P's sale occurs.

Example (3). (i) Corporations P, S and T file consolidated returns on a calendar year basis. S holds nondepreciable property A and T holds nondepreciable property B. Properties A and B each have a basis of $1,000 and a fair market value of $10,000. In 1989, T sells property B to P for $10,000. T recognizes $9,000 of gain in 1989 on its sale of property B to P, all of which is deferred under § 1.1502–13(c). Under § 1.1502–31(a), P's basis in property B is $10,000.

(ii) In 1991, P and S exchange property A and property B in an exchange that qualifies for nonrecognition of gain or loss under section 1031 with respect to both P and S. P does not recognize gain or loss on the exchange, and P's basis in property A is $10,000.

(iii) In 1993, in a transaction to which sections 1031 (f) and (g) do not apply, P sells property A to X, an unrelated third party, for $10,000. P realizes no gain on the sale of property A to X. T is required to take into account the $9,000 of deferred gain with respect to property B in 1993, because property A (the basis of which is determined by reference to the basis of property B) was disposed of outside the group.

(4) *Effective date*—(i) *In general.* Except as provided in paragraph (m)(4)(ii) of this section, this paragraph (m) applies to dispositions (as described in this paragraph) of property in taxable years for which the due date (without extensions) of the income tax return is after March 14, 1990.

(ii) *Exception.* Notwithstanding paragraph (m)(4)(i) of this section, this paragraph (m) does not apply to deferred gain taken into account on a disposition of property before March 9, 1990 if the gain was deferred in an intercompany transaction—

(A) After December 31, 1988, provided that, at the time of the intercompany transaction, there was no plan or intention to dispose of the property outside the group and the taxpayer files a separate statement with the taxpayer's return for the taxable year in which such property is disposed of disclosing—

(1) A description of the transferred property and the dates of the intercompany transaction and the disposition,

(2) The name and employer identification number (E.I.N.) of the member disposing of the property and the amount realized and gain realized by such member on the disposition, and

(3) The amount realized and gain realized by the selling member on the intercompany transaction with respect to the property and the name and E.I.N. of the selling member; or

(B) Before January 1, 1989.

(n) *Exception to deferral rules*—(1) *In general.* Section 1.1502–13(c) shall not apply to defer gain or loss with respect to a sale or exchange in an intercompany transaction of property to the extent the gain (or loss) is attributable to any income and expense (i) accounted for (or required to be accounted for) by the selling member in accordance with the percentage of completion method and (ii) arising from any activity performed by the selling member for the benefit of, or by reason of, a long term contract between a member and a person not a member that is accounted for by such member, in whole or part, under the percentage of completion method.

(2) *Example.* This paragraph (n) is illustrated by the following example.

Example. (i) Corporations P and S file consolidated returns on a calendar year basis. In 1990, P enters into a contract with X,

a person not a member of the group, for the manufacture and sale of 5 airplanes for a total contract price of $500 million. The contract is a long term contract within the meaning of section 460 (f) and P is required to account for income and expense attributable to the contract under the percentage of completion method. By reason of the contract, S manufactures and sells engines for the airplanes to P for a total price of $50 million. S begins to manufacture the engines in 1991 and delivers them in 1992. In 1991, S incurs $20 million out of total estimated costs of $40 million, and, in 1992, S incurs an additional $20 million of costs to complete manufacture of the engines. S accounts for income and expense attributable to the production of the engines pursuant to the percentage of completion method.

(ii) S's sales of the engines to P is a deferred intercompany transaction. However, § 1.1502–13(c) does not apply to defer gain attributable to the income and expense accounted for by S under the percentage of completion method. Under the percentage of completion method, S takes into account $20 million in costs and $25 million in income in each of 1991 and 1992.

(3) *Effective date.* This paragraph (n) applies to intercompany transactions in taxable years for which the due date (without extensions) of the income tax return is after March 14, 1990 that are attributable to long term contracts entered into by a member after June 20, 1988.

(o) *References.* A reference in this part to § 1.1502–13 is treated as including a reference to this section.

§ 1.1502–14 [Amended]

Par. 4. Section 1.1502–14 is amended by adding the words "or after March 14, 1990" immediately following the word "1988" in paragraph (c)(3).

Par. 5. Section 1.1502–14T is amended as follows:

1. The last sentence of paragraph (a) is revised to read as follows:

§ 1.1502–14T Treatment of distributing corporation (temporary).

(a) * * * Such deferred gain or loss shall be taken into account at the time and in the manner specified in § 1.1502–13 (d), (e), and (f), and § 1.1502–13T (l) and (m), as if such distributing corporation were a "selling member," the distributee were a "purchasing member" and the distribution described in § 1.1502–14 were a "deferred intercompany transaction."

* * * * *

2. The last sentence of paragraph (b) is removed.

3. New paragraphs (c) and (d) are added to read as follows:

§ 1.1502–14T Treatment of distributing corporation (temporary).

* * * * *

(c) *Limitation on application of this section*— (1) *In general.* For purposes of this section, § 1.1502–13, § 1.1502–13T and § 1.1502–14, gain deferred with respect to a distribution of stock of a subsidiary from one member to another member shall be taken into account (i) upon a disposition (as defined in § 1.1502–19(b)(2)) of the stock of the subsidiary in an amount equal to the amount that would have created or increased the excess loss account if the adjustment to the basis (or the excess loss account) of the stock of the subsidiary resulting from the distribution had not occurred, or (ii) following a disposition, to the extent distributions with respect to any stock owned by a member would exceed the basis of such stock if the adjustment to the basis of the stock resulting from the distribution had not occurred.

(2) *Examples.* This paragraph (c) is illustrated by the following examples.

Example (1). (i) Corporations P, S, and T file consolidated returns on a calendar year basis. P owns all 100 shares of the outstanding stock of S. S owns all 200 shares of the outstanding stock of T. The T shares have an adjusted basis of $1,000 and a value of $10,000. S distributes all of its T stock to P. As a result of the distribution, S recognizes $9,000 of gain under section 311(b) and the gain is deferred under paragraph (a) of this section. P receives a $10,000 basis in the T stock under § 1.1502–31(a).

(ii) T borrows $9,000 in 1989 and distributes the $9,000 to P in the same year. T has no current earnings and profits, and the distribution reduces P's basis in the T stock from $10,000 to $1,000. In 1990, T has $1,000 of earnings and profits which are not distributed. At the end of 1990, T issues 100 shares of stock to X, an unrelated third party. As a result P no longer owns 80 percent or more of the stock of T and T ceases to be a member of the group. T's ceasing to be a member of the group constitutes a disposition of the T stock under § 1.1502–19(b)(2)(i). If the basis of the T stock had not been adjusted as a result of S's distribution of the T stock to P, the $9,000 distribution to P would have resulted in a $7,000 excess loss account with respect to the T stock. Accordingly, S is required to take into account $7,000 of deferred gain (the amount that would have been in the excess loss account but for the adjustment to the basis of the T stock resulting from its distribution).

Example (2). The facts are the same as in Example (1) except that T borrows and distributes the $9,000 to S before S distributes the T stock to P. The results are the same as in Example (1) because P would have had an excess loss account of $7,000 with respect to the T stock at the time T ceased to be a member of the P group but for the adjustment to the excess loss account resulting from S's distribution of the T stock to P.

(3) *Effective date.*—(i) *In general.* Except as provided in paragraph (c)(3)(ii) of this section, this paragraph (c) applies to dispositions (as defined in this paragraph (c)) of stock of a subsidiary in taxable years for which the due date (without extensions) of the income tax return is after March 14, 1990.

(ii) *Exception.* Notwithstanding paragraph (c)(3)(i) of this section, this paragraph (c) does not apply to gain deferred with respect to a distribution of stock of a subsidiary from one member to another member before January 1, 1989, if the disposition (as defined in this paragraph (c)) of the stock of the subsidiary occurs before March 9, 1990.

(d) *References.* A reference in this part to § 1.1502–14 is treated as including a reference to this section.

There is a need for immediate guidance with respect to the provisions contained in this Treasury decision. It is therefore found impracticable and contrary to the public interest to issue this Treasury decision with notice and public procedure under section 553(b) of title 5 of the United State Code or subject to the effective date limitations of section 553(d) of title 5 of the United States Code.

Charles H. Brennan,
Acting Commissioner of Internal Revenue.

Approved: March 5, 1990.

Kenneth W. Gideon,
Assistant Secretary of the Treasury.

[FR Doc. 90–5830 Filed 3–9–90; 2:14 pm]
BILLING CODE 4830–01–M

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26 CFR Part 1

[T.D. 8293]

RIN 1545–A016

Treatment of Salvage and Reinsurance Under Section 832(b)

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to the treatment of salvage and reinsurance under section 832(b)(5) of the Internal Revenue Code. The regulations affect property and casualty insurance companies, and are necessary to provide them with guidance in computing the losses incurred deduction of that section. The text of the temporary regulations set forth in this document also serves as the text of the proposed regulations for the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register.**

EFFECTIVE DATES: Section 1.832–7T is effective for taxable years beginning before January 1, 1990. The amendments

to § 1.832–4T are effective for taxable years beginning after December 31, 1989.

FOR FURTHER INFORMATION CONTACT: William L. Blagg of the Office of the Assistant Chief Counsel (Financial Institutions and Products), Branch 4 (CC:FI&P:4), P.O. Box 7604, Ben Franklin Station, Washington, DC 20044, (202) 566–3294 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document amends the Income Tax Regulations (26 CFR part 1) to provide temporary rules relating to the treatment of salvage and reinsurance under section 832(b)(5) of the Internal Revenue Code.

Explanation of Provisions

The losses incurred deduction described in section 832(b)(5) includes both losses paid and unpaid losses. Section 832(b)(5) requires that the losses paid component of the deduction be reduced by any increase in salvage and reinsurance recoverable.

The regulations under section 832 were amended by the Internal Revenue Service on January 5, 1988, to require that salvage recoverable be taken into account in the computation of both losses paid and unpaid losses. Although section 832(b)(5) requires this treatment with respect to losses paid, the prior regulations allowed taxpayers to exclude any salvage not permitted to be taken into account for state insurance regulatory purposes. The regulations were amended to delete this exclusion and thereby produce a clearer reflection of income.

The regulations also were amended in 1988 to clarify that a reasonable estimate of the amount of unpaid losses that a taxpayer will be required to pay must take into account expected recoveries on account of salvage and reinsurance attributable to such losses. In addition, the 1988 amendments provided guidance on accounting adjustments to be made by taxpayers not already in compliance with the amended regulations, and clarified that the term "salvage" includes subrogation claims.

On September 22, 1989, the Internal Revenue Service issued temporary regulations postponing the effective date of the 1988 amendments until taxable years beginning after December 31, 1988, and reinstating the prior regulations for taxable years beginning before January 1, 1989.

The temporary regulations published in this treasury decision further postpone the effective date of the 1988 amendments until taxable years beginning after December 31, 1989, and continue the application of the prior regulations for taxable years beginning before January 1, 1990. For taxable years beginning before January 1, 1990, a taxpayer complying with the provisions of section 1.832–4T is deemed to have used a proper method of accounting for salvage.

Special analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking for the regulations was submitted to the Administrator of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these proposed regulations is William L. Blagg of the Office of the Assistant Chief Counsel (Financial Institutions and Products), Internal Revenue Service. However, other personnel from the Internal Revenue Service and Treasury Department participated in their development.

List of Subjects in 26 CFR 1.801–1 Through 1.832–7T

Income taxes, Insurance companies.

Amendments to the regulations

For the reasons set out in the preamble, part 1 of title 26 of the Code of Federal Regulations is amended as set forth below:

Income Tax Regulations (26 CFR Part 1)

PART 1—[AMENDED]

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

Authority: 26 U.S.C. 7805.

Par. 2. Section 1.832–4T is amended by revising paragraphs (d)(1) and (e) to read as follows:

§ 1.832–4T Gross income (temporary).

* * * * *

(d)(1) The treatment of salvage and reinsurance is a method of accounting. Every insurance company to which this section applies that did not treat salvage and reinsurance as provided in this section for the last taxable year beginning before January 1, 1990, must change its method of accounting with respect to salvage and reinsurance in the first taxable year beginning after December 31, 1989. The change in method of accounting will result in a section 481(a) adjustment. The fresh start provision of section 1023(e) of the Tax Reform Act of 1986 does not apply to the change in method of accounting required by this paragraph (d)(1).

* * * * *

(e) Paragraphs (b), (c), and (d) of this section are effective for taxable years beginning after December 31, 1989. Taxpayers complying with the provisions of this section for taxable years beginning before January 1, 1990, are deemed to have used a proper method of accounting for salvage for such taxable years. In computing unpaid losses for taxable years beginning before January 1, 1990, an insurance company to which this section applies is not required to take into account estimated recoveries on account of salvage attributable to unpaid losses. In addition, the provisions of § 1.832–7T apply to the treatment of salvage recoverable in the computation of paid losses for such taxable years.

Par. 3. Section 1.832–7T is amended by revising the caption and paragraph (d) to read as follows:

§ 1.832–7T Treatment of salvage and reinsurance in computing "losses incurred" deduction, taxable years beginning before January 1, 1990 (temporary).

* * * * *

(d) This section is effective for taxable years beginning before January 1, 1990.

There is a need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason it is impracticable to issue this Treasury decision with notice and public procedure under section (b) of section 553 of title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

Approved: February 28, 1990.

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

Kenneth W. Gideon,

Assistant Secretary of the Treasury.

[FR Doc. 90–5744 Filed 3–13–90; 8:45 am]

BILLING CODE 4830-01-M

26 CFR Part 1

[T.D. 8294]

RIN 1545-AK95

Consolidated Return Regulations; Special Rules Relating to Dispositions and Deconsolidations of Subsidiary Stock

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations under sections 337(d) and 1502 that implement the repeal of the *General Utilities* doctrine and eliminate duplication of loss with respect to members of affiliated groups filing consolidated returns. The regulations apply on a disposition or deconsolidation of stock of a subsidiary of the group. The text of the temporary regulations set forth in this document also serves as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking in the Proposed Rules section of this issue of the **Federal Register**.

DATES: The regulations in this document are effective March 9, 1990. Section 1.337(d)-1T applies with respect to dispositions occurring after January 6, 1987, of stock of a corporation that became a member of an affiliated group after January 6, 1987, if the disposition is not subject to § 1.1502-20T.

FOR FURTHER INFORMATION CONTACT: Mark S. Jennings, 202-566-2455 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collections of information contained in these regulations have been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under control number 1545-1160. The estimated average annual burden per respondent varies from 1½ to 2½ hours, depending on individual circumstances, with an estimated average of 2 hours.

The estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents may require greater or less time, depending on their particular circumstances.

For further information concerning these collections of information, and where to submit comments on these collections of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-referenced notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**.

A. Introduction

This document adds temporary regulations §§ 1.1502-20T, 1.1502-1T, and 1.337(d)-1T to part 1 of title 26 of the Code of Federal Regulations, and adds cross-references to §§ 1.1502-12, 1.1502-32, 1.1502-33 and 1.1502-79. The temporary regulations added by this document will remain in effect until superseded by later temporary or final regulations relating to these matters.

Temporary regulations § 1.1502-20T adds to the consolidated return regulations a general rule that disallows all losses on the disposition by a member of stock of a subsidiary when both are members of the same affiliated group filing consolidated returns (the "loss disallowance rule"). The regulations also provide a number of related rules to ensure the proper application of the loss disallowance rule (*e.g.*, a "basis reduction" rule that applies a deconsolidation of stock of a subsidiary and an "anti-stuffing" rule). Also provided is a rule that permits reattribution of a subsidiary's (or lower-tier subsidiary's) losses to the common parent to the extent, if any, of the loss disallowed to the selling member on the sale of the subsidiary's stock. These rules generally apply with respect to dispositions occurring on or after March 9, 1990.

Temporary regulations § 1.337(d)-1T adds a transition rule that generally disallows loss on the disposition by a member of a subsidiary's stock if the subsidiary became a member of the group after January 6, 1987, and if the disposition is not subject to § 1.1502-20T, but permits the loss to the extent the selling member establishes that the loss is not attributable to the recognition of "built-in-gain" on the disposition of assets owned, directly or indirectly, by the subsidiary.

These temporary regulations implement Notice 87-14, 1987-1 C.B. 445, in which the Internal Revenue Service announced its intention to publish regulations that would, in effect, prevent utilization of the investment adjustment rules of §§ 1.1502-32 and 1.1502-33 (c) (the "investment adjustment rules") to circumvent the repeal of the *General Utilities* doctrine by the Tax Reform Act of 1986 (the "1986 Act"). The loss disallowance rule of § 1.1502-20T also addresses another problem by preventing a subsidiary's losses from being duplicated as investment losses of the parent when the parent disposes of the subsidiary's stock.

B. The Investment Adjustment Rules and General Utilities Repeal

1. The Investment Adjustment Rules

The investment adjustment rules are designed to prevent income or loss that has been recognized at the subsidiary level from again being recognized as investment gain or loss by the subsidiary's parent upon disposition of the subsidiary's stock. This is generally accomplished by requiring positive or negative adjustments to the basis of the subsidiary's stock owned by members of the group to reflect the increase or decrease in value of the subsidiary resulting from income or loss that has been taken into account by the group.

Example 1: Corporation P forms corporation S by transferring $100 cash to S in exchange for all of S's stock. P and S elect to file consolidated returns. S earns $50 during the next 5 years, which is included in the consolidated taxable income of the P group. Under the investment adjustment rules, P's basis in its S stock is increased by $50. Thus, if P sells S for $150 at the end of Year 5, the P group does not recognize any further gain or loss.

Without the increase to the basis of the S stock provided under the investment adjustment rules, the P group would, in effect, recognize S's $50 of income twice, once when it was earned by S and again as an investment gain when P sold the S stock.

2. The General Utilities Doctrine

In general, income earned by a corporation is taxed twice, once to the corporation when the income is earned and a second time to the corporation's shareholders when the earnings are distributed. For many years, the *General Utilities* doctrine provided an exception to this two-level system of taxation. Under this doctrine, which takes its name from *General Utilities & Operating Co.* v. *Helvering*, 296 U.S. 200 (1935), corporations were not required to recognize gain or loss when they distributed appreciated or depreciated property to their shareholders, either in liquidation or simply as a part of ongoing operations (*e.g.*, as a dividend), or when they sold the property and distributed the proceeds in liquidation. Subject to certain exceptions, this doctrine permitted the permanent elimination of corporate-level tax on the disposition of appreciated assets

because the transferee received a fair market value basis in the assets as they left corporate solution, despite the fact that no corporate-level tax had been paid on the appreciation. The *General Utilities* doctrine was codified in sections 311, 336 and 337 of the Internal Revenue Code of 1954.

3. Repeal of the General Utilities Doctrine

The scope of the *General Utilities* doctrine was restricted by a series of amendments beginning in 1969 (relating generally to non-liquidating distributions governed by section 311) and the doctrine was ultimately repealed by the 1986 Act, which amended sections 336 and 337 to require, with limited exceptions, that corporations recognize gain or loss when property is distributed in liquidation or sold in connection with a liquidation.

The legislative history of the 1986 Act indicates that the principal reason for the repeal of the *General Utilities* doctrine was that it tended to undermine the corporate income tax because "[u]nder normally applicable tax principles, nonrecognition of gain is available only if the transferee takes a carryover basis in the transferred property, thus assuring that a tax will eventually be collected on the appreciation." H.R. Rep. No. 99–426, 99th Cong., 1st Sess. 282 (1985). See also H.R. Conf. Rep. No. 99–841, 99th Cong., 2d Sess. II–202 (1986), which states as the rationale for continuing tax-free treatment under section 332 for liquidating distributions of assets of controlled subsidiaries that, because the carryover basis rules apply, "the corporate level tax will be paid if the distributed property is disposed of by the recipient corporation to a person outside of the group."

Thus, it is clear that the principal purpose for the repeal of the *General Utilities* doctrine was to require the payment of a corporate-level tax in a transaction that results in a stepped-up basis to the new owner.

4. Results Under Investment Adjustment Rules Conflict With General Utilities Repeal in Some Cases

The investment adjustment rules reflect the application of the *General Utilities* doctrine and can therefore be used to obtain a stepped-up basis in corporate assets without the payment of corporate-level tax.

Example 2: Corporation S has one asset with a basis of $0 and a value of $100. Corporation P buys all the stock of S for $100 and P and S elect to file consolidated returns. S then sells the asset for $100 and recognizes gain of $100. Under the investment adjustment rules, P's basis in the stock of S is increased to $200 because the sale of the asset generated $100 of earnings and profits to S. This basis increase permits P to recognize a loss of $100 if P sells the S stock, thus offsetting the gain on the sale of the asset.

The increase in the basis of P's stock in S is inconsistent with the repeal of the *General Utilities* doctrine. The failure to require the P group to fully account for S's recognized built-in gain in effect permits the elimination of corporate-level tax on this gain, because the increase in P's basis for the S stock is attributable to S's recognition of built-in gain (gain already reflected in P's cost basis for the S stock) and not to earnings that increase S's value. Moreover, P's loss does not represent an economic loss of either P or S.

Although the taxpayer that sold the S stock to P may have recognized gain on the sale that corresponded to S's built-in gain, if the taxpayer was not a corporation, no corporate-level tax would have been paid in connection with the basis step up. However, even if the seller was a corporation, transferee taxpayers generally are not given credit for tax on gain recognized by unrelated transferor taxpayers.

The problem is not limited to dispositions of built-in gain assets, but also arises when built-in gain assets are consumed.

Example 3: The facts are the same as in Example 2, except that S uses the asset in business operations rather than selling it. The asset earns $20 and declines in value by $20 in each year over a 5-year period. As in Example 2, P's basis in the stock of S is increased by the earnings to $200, but the value of S remains $100 and P may recognize a loss of $100 if P sells the S stock.

In Examples 2 and 3, disallowing P's $100 loss eliminates the possibility that investment adjustments caused by S's recognition of built-in gain, whether from dispositions or operations, will result in elimination of the gain. Disallowing P's loss therefore gives effect to *General Utilities* repeal by assuring that a corporate-level tax will be imposed on S's recognized built-in gain.

C. Loss Duplication

In addition to resolving the problems created under the investment adjustment rules by *General Utilities* repeal, the loss disallowance rule also resolves a problem involving the duplication of losses. Under current rules, there are several situations in which a loss may be duplicated by a parent and its subsidiary.

Example 4: Corporation P forms subsidiary S with a contribution of $100 and P and S elect to file consolidated returns. S has an operating loss of $60. The group is unable to use the loss and it becomes a consolidated net operating loss carryover attributable to S. P sells S for $40. A special adjustment under § 1.1502–32(b)(1)(ii) prevents S's unused $60 loss from reducing P's $100 basis in its S stock. Accordingly, P recognizes a $60 loss on the sale of S. P's $60 loss reflects P's economic loss on its investment in S (P contributed $100 to S and sold it for $40 without using S's inside loss on its consolidated return). S's loss carryover is apportioned to S for use after leaving the P group (subject to any limitation imposed by section 382 or otherwise). P's loss on the sale of the S stock is therefore duplicated when S uses its loss after leaving the P group.

This duplication may be offset at a later date. If S uses its loss carryover in the consolidated return of another group (P1), the use reduces the basis of S's stock in the hands of P1 under § 1.1502–32(b)(2)(ii). As a result of this reduction, there is a potential offsetting gain if P1 sells the S stock. However, in some circumstances P1 may use self-help measures to postpone recognition of the gain indefinitely (by retaining the S stock) or to avoid recognition of the gain altogether (by liquidating S or by selling the S stock and electing deemed asset sale treatment under section 338(h)(10)).

Loss duplication also occurs in Example 4 if S uses the $100 contributed by P to purchase an asset and the asset declines in value by $60. Because the loss is unrealized, it is not reflected in S's earnings and profits and P's basis in its S stock therefore remains $100. When P sells the S stock to P1, it recognizes a $60 loss. S later recognizes a loss of $60 when it sells the built-in loss asset. Although P1 must reduce the basis of S's stock when the loss is used, establishing the potential for an offsetting gain if P1 sells the stock, once again P1 can use self-help measures to postpone or totally avoid recognizing the gain by retaining the S stock indefinitely, by liquidating S or by selling the S stock in a transaction in which section 338(h)(10) is elected.

Duplication of gain can also occur under the current rules. If an asset of S simply increases in value by $60, P will recognize $60 of gain when it sells the S stock to P1 and S will recognize $60 of gain when it subsequently sells the asset. When S sells the asset, P1's basis in its S stock is increased by $60, thereby establishing the potential for an offsetting loss if P1 sells the S stock. In contrast to the two loss duplication situations, however, P1 has no incentive to avoid recognizing this loss because recognizing the loss eliminates gain duplication.

As noted, duplication of gain and loss can be avoided under the current rules if S's assets, rather than its stock, are sold (either by S or by P after a liquidation of S) or if the P group and P1 elect deemed asset sale treatment under section 338(h)(10). Because the structure of many transactions is generally elective as between stock sales and asset sales (or stock sales treated as asset sales), taxpayers will often be able to use these self-help measures to avoid duplication of gain, but will avoid using them in order to preserve duplication of loss. Disallowing loss of P's sale of the S stock eliminates this selective duplication of loss.

D. Approaches Not Adopted

Notice 87–14 announced that the investment adjustment rules would be amended to "prevent recognition of losses that are attributable to the sudsidiary's recognition of built-in gains." Implementation of Notice 87–14 requires either a rule that would eliminate positive basis adjustments of the type illustrated in Examples 2 and 3 or a rule that would disallow losses resulting from such adjustments.

Following the publication of Notice 87–14, the Treasury Department and the Service undertook an intensive study of the various methods for reconciling the results under the consolidated return regulations with the intent of Congress in repealing the *General Utilities* doctrine. The study also took into account the effect of each method on the problem of loss duplication.

1. Tracing

The most accurate method of eliminating losses resulting from the recognition of built-in gain would be to eliminate positive basis adjustments under the investment adjustment rules when those adjustments are from earnings attributable to the recognition of built-in gain and to reduce stock basis if a distribution of current earnings and profits is attributable to such gain. This method is commonly referred to as "tracing."

The theoretical accuracy that would be achieved by tracing is undermined, however, by the fact that it would impose tremendous administrative burdens on both taxpayers and the Service. In order to determine the extent of built-in gain or loss in each asset, all assets and liabilities of an acquired subsidiary (and of any lower tier subsidiaries) would have to be appraised at the time the subsidiary's stock is acquired. Furthermore, each asset with built-in gain or loss would have to be traced to determine the extent to which the built-in gain or loss was recognized while the group held the stock of the subsidiary. Although appraisals and tracing might be relatively simple in a few cases (*e.g.*, when the acquired subsidiary has only one asset or relatively few assets), most cases would present extremely difficult problems because of the number and nature of the assets held by the acquired subsidiary.

Tracing involves other burdens in addition to requiring taxpayers to appraise assets and trace their disposition. For example, by using up or wearing out an asset in the process of earning income, the subsidiary is, in effect, disposing of the asset in exchange for the income. Accordingly, if the subsidiary, rather than selling a built-in gain asset, uses it in its business, the wearing out or obsolescence of the asset must be matched with the earnings generated by its use. In practice, to restrict basis adjustments to those derived from the subsidiary's earnings that are not related to the effective disposition of built-in gain assets, it would be necessary to appraise the subsidiary's assets, mark their bases to market (for earnings and profits purposes), and depreciate those bases over the assets' remaining economic life (also for earnings and profits purposes). Recurring appraisals may be required to deal with the creeping acquisitions and fluctuations in the value of assets.

The possibility of adopting a tracing rule, but limiting the tracing of assets to a particular period was rejected because it would fail to prevent the elimination of corporate-level tax on income earned from the sale or operation of corporate assets.

Because of the administrative burdens that tracing would place on both taxpayers and the Service and because tracing relies heavily on accurate appraisals, tracing was rejected as a solution to the problems presented by the repeal of the *General Utilities* doctrine.

2. Built-in Gain Presumptions

A simpler, but less accurate, method of preventing the investment adjustment rules from eliminating corporate-level tax would be to create a presumption concerning the extent to which a subsidiary's recognized gain is built-in gain and to eliminate positive adjustments to the basis of the subsidiary's stock to that extent. The presumption would be irrebuttable because the ability to rebut the presumption would entail tracing and its administrative burdens.

For example, such a presumption might apply to disallow positive adjustments for 50 percent of the subsidiary's post-acquisition income, up to the amount of its built-in gain. If this were the rule, a subsidiary that had $50 or more of built-in gain and $100 of post-acquisition income would be permitted positive adjustments, for earnings and profits purposes, of only $50. The presumption would not necessarily have to relate to all post-acquisition income. It could instead apply to a percentage of all gains recognized on dispositions of assets by the subsidiary or be restricted to extraordinary dispositions of assets.

Adoption of any presumption produces the correct result only if the actual facts correlate with the facts presumed—for example, if 50 percent of a subsidiary's $100 of post-acquisition income is in fact from the disposition or consumption of built-in gain assets. If the facts do not correlate—for example, if all $100 of a subsidiary's post-acquisition income represents operating income not attributable to built-in gain or, on the other hand, operating income entirely attributable to built-in gain—the basis of the subsidiary's stock would increase by $50 in both cases, but its value would increase by either $100 (where all of the income was not attributable to built-in gain) or $0 (where all of the income was attributable to built-in gain). Thereafter, if the stock of the subsidiary is sold for its fair market value, there will either be a $50 gain, in which case $50 of the subsidiary's income will have been taxed twice, or a $50 loss, in which case $50 of the subsidiary's income will not have been taxed at all. Thus, a presumption rule would impose harsh results in some cases while failing to prevent the elimination of corporate-level tax in other cases.

Other presumption rules were also considered, but rejected. For example, a presumption based on the amount of net built-in gain at the time a subsidiary is acquired would permit the elimination of corporate-level tax where the built-in gain actually recognized exceeds the built-in loss actually recognized by more than the amount of the net built-in gain. On the other hand, a presumption based on gross built-in gain would prevent the elimination of corporate-level tax in all cases, but would amount to an unduly harsh restriction of positive basis adjustments in many cases.

3. Tracing/presumption Combinations

Several approaches involving the combination of tracing with some form of presumption rule were determined to be unsatisfactory because of the degree of inaccuracy involved in any presumption rule and because of concern that the availability of tracing

as an alternative would effectively require taxpayers to compare results, thereby compounding the complexity and administrative burdens occasioned by a pure tracing rule.

4. Loss Disallowance Combined with Tracing (Loss Limitation)

Consideration was also given to adopting a loss disallowance rule (discussed below), but permitting taxpayers to avoid disallowance of their losses by establishing that the loss was not attributable to investment adjustments resulting from the recognition of built-in gain in the subsidiary's assets. This approach, referred to as the loss limitation approach, was rejected because it was concluded that taxpayers, in order to take advantage of the rule, would be forced to resort to tracing, with all of its attendance complexity and administrative burdens for both taxpayers and the Service.

5. Summary

Each of the approaches discussed above presents either significant administrative burdens from taxpayers and the Service or permits an unacceptable level of elimination of corporate-level tax. In addition, none of these approaches addresses the problem of loss duplication.

E. The Loss Disallowance Rule

The regulations retain the present investment adjustment rules, but disallow any loss on the sale or other disposition by a member of the stock of a subsidiary. This loss disallowances rule eliminates the possibility that gain recognized on the disposition or consumption of an acquired subsidiary's built-in gain assets can be offset by a loss at the parent level created by an investment adjustment caused by the subsidiary's recognition of built-in gain, as in Examples 2 and 3. The rule therefore assures the imposition of a corporate-level tax on the subsidiary's recognized built-in gains.

The loss disallowance rule also prevents losses of the subsidiary (either unrealized losses or realized losses that have not been utilized by the group) from being duplicated as investment losses of the parent when the parent disposes of the subsidiary's stock. Although it can be argued that it is inappropriate to address the problem of loss duplication only as it relates to consolidated returns because the problem also occurs in the context of separate returns, this argument ignores the fact that the consolidated return regulations adopt a comprehensive approach to gain and loss duplication that represents a fundamental departure from separate return treatment. For example, the double taxation of a subsidiary's earnings in separate return situations has never been advanced as a rationale for not resolving the problem in the context of consolidated returns.

1. Effect of Loss Disallowance Rule on Post-Acquisition Gain

Although the loss disallowance rule disallows all loss on the sale of a subsidiary's stock by a member, it has no impact in situations in which basis increases resulting from the recognition of built-in gain do not create (or contribute to) an overall loss on the sale. This aspect of the rule will in many cases permit the parent to shelter post-acquisition appreciation in stock of an acquired subsidiary.

Example 5: Corporation S has two assets, one with a basis of $0 and a value of $100 and the other with a basis and value of $0. P buys all the stock of S for $100 and P and S elect to file consolidated returns. S sells the first asset for $100. The second asset appreciates in value to $100. P then sells the S stock for $200. Because P's basis in its S stock was increased from $100 to $200 as a result of the sale of the first asset, P has no gain or loss on the sale of S's stock.

In Examples 2 and 3, the basis increase resulting from S's recognition of built-in gain created a loss on P's sale of the S stock that would, but for the operation of the loss disallowance rule, offset the gain recognized by S. In Example 5, because of the post-acquisition increase in value of the second asset, the basis increase does not create a loss, but instead shelters P's investment gain on the sale of the S stock.

There is, however, a crucial distinction between Examples 2 and 3, and Example 5. In Examples 2 and 3, permitting the basis increase resulting from S's recognition of built-in gain to create a loss on P's sale of the S stock would mean that a corporate-level tax would *never* be collected with respect to the gain realized by S (because the purchaser would take a stepped-up basis in the S assets). In Example 5, however, the investment gain that is not taxed to P on the sale of S's stock is a duplication of gain that remains preserved in the low basis of S's second asset. Thus, the loss disallowance rule would permit the elimination of gain on the sale of the S stock that would be duplicated when S sells its assets.

To prevent taxpayers from aligning post-acquisition gain with loss otherwise subject to disallowance, the regulations provide an "anti-stuffing" rule that prevents avoidance of potential loss on the sale of a subsidiary's stock through the transfer of built-in gain assets to increase the value of the stock. The rule applies only to assets transferred to a subsidiary by any member of the group within the two years preceding the group's disposition of the subsidiary's stock.

2. Effect of Loss Disallowance Rule on Post-Acquisition Loss

As previously discussed, the investment adjustment rules were designed to prevent "inside" gain or loss on the disposition of a subsidiary's assets from being duplicated as "outside" gain or loss when the group disposes of the subsidiary's stock. However, the present rules do not eliminate this duplication when the group recognizes its outside gain or loss (by selling the subsidiary's stock) before the subsidiary recognizes its inside gain or loss (by selling its assets).

The loss disallowance rule eliminates loss duplication. It also eliminates gain duplication in situations such as Example 5, in which basis adjustments resulting from the recognition of built-in gain by the subsidiary provide shelter for the parent if it sells the subsidiary's stock before the subsidiary recognizes post-acquisition appreciation in its assets. This results in an exception to the general rule that gain or loss is recognized when a taxpayer liquidates its investment (such as when P sells the S stock in Examples 4 and 5). This exception is necessary to avoid the complexities and administrative burdens of tracing. In these cases, the recognition of post-acquisition gain or loss is deferred until the subsidiary disposes of the assets.

Because taxpayers are generally free to arrange their affairs to minimize the tax cost, they have an incentive to structure their transactions to preserve the deferral of post-acquisition gain permitted by the loss disallowance rule. This does not mean, however, that the benefit of post-acquisition loss must also always be deferred. The selling group may be able to elect deemed asset sale treatment under section 338(h)(10) on the sale of a subsidiary. Under section 338(h)(10), the group's stock sale is ignored and its gain or loss is determined by reference to the gain or loss inherent in the subsidiary's assets. Thus, although the loss disallowance rule does not permit a stock loss to duplicate the unrealized loss in a subsidiary's assets, the selling group may nevertheless realize the tax benefit of this unrealized loss through a section 338(h)(10) election.

The selling group may also avoid the effect of the loss disallowance rule by

causing the subsidiary to sell assets reflecting post-acquisition loss or built-in loss and using the losses on the group's consolidated return. If losses have been recognized but not used, the temporary regulations provide a special rule which permits the common parent of the group to retain such losses of the subsidiary (or of any lower-tier subsidiary) to the extent loss is disallowed on the sale of the subsidiary's stock. Thus, recognized losses may be retained by the selling group or apportioned to the subsidiary that is sold, at the election of the common parent. This provides the group additional flexibility to avoid the effects of the loss disallowance rule, for example, in situations where selective sales of the subsidiary's loss assets or the election of deemed asset sale treatment under section 338(h)(10) is not desirable or feasible.

3. Loss of Built-in Gain

In arriving at the decision to adopt a loss disallowance rule, the Treasury Department and the Service considered cases in which a group has an economic loss on its investment in a subsidiary because built-in gain in the subsidiary's assets has been "lost" as a result of a decline in the value of the assets.

Example 6: Corporation S has one asset with a basis of $0 and a value of $100. Corporation P buys all the stock of S for $100 and P and S elect to file consolidated returns. S's asset declines in value and is sold for $0. Because S's sale of its asset results in no gain or loss, P's basis in S remains $100. P then sells S for $0 and recognizes a loss of $100. The loss is disallowed by the loss disallowance rule.

It may be argued that P's loss should not be disallowed in this case, because there is no possibility for S to duplicate the loss, as in Example 4, and there are no self-help techniques available to P. To provide this exception in a case where S has multiple assets, however, it would be necessary to require P to show that its loss on the sale of S is attributable to a decline in the amount of S's built-in gain and not a decline in value that could allow S to claim a loss. Thus, the exception would require tracing and would also entail ordering rules that would produce arbitrary results.

In any case, the decline in the value of built-in gain assets provides the potential for eliminating corporate-level tax, as illustrated by the following example.

Example 7. The facts are the same as in Example 6, except that, although the asset declines in value to $0, S earns $100 not attributable to built-in gain. The $100 of earnings causes P's basis in S to increase to $200. P then sells S for $100 and recognizes a $100 loss, which is disallowed by the loss disallowance rule.

In Example 7, P's $100 loss, if not disallowed, would offset S's $100 of income on the P group's consolidated return. From P's point of view, the result in Example 7 is the same as the results in Examples 2 and 3. In each case, P buys S for $100, receives a $100 basis increase because of S's $100 of income and recognizes a $100 loss on the sale of the S stock. In each case, S's $100 of income will permanently escape corporate-level taxation unless P's loss is disallowed.

Thus, Example 7 closely resembles Examples 2 and 3. In fact, many cases that appear to be Example 7 cases are in reality Example 3 cases. These are cases in which built-in gain that appears to have been "lost," as in Example 6, has been converted into income, as in Example 3. In view of the above, it was decided not to adopt an exception to the loss disallowance rule for cases involving the loss of built-in gain.

F. Transition Rule

Notice 87–14 stated that the regulations dealing with the effect of built-in gains on investment adjustments "will be effective with respect to stock in a target that was acquired after January 6, 1987." Notice 87–14 anticipated the issuance of regulations under the authority of section 337(d), which gives the Treasury Department broad authority to prevent circumvention of *General Utilities* repeal. The Treasury Department and the Service believe that transitional relief is warranted because Notice 87–14 did not describe the loss disallowance rule that is adopted in these regulations.

Accordingly, § 1.337(d)–1T provides a loss limitation rule that applies with respect to stock of corporations that became members of a group after January 6, 1987 ("transitional subsidiaries"), if the stock is disposed of and temporary regulations § 1.1502–20T does not apply with respect to the disposition. This rule disallows loss on the disposition of stock of a transitional subsidiary except to the extent the taxpayer establishes that the loss is not attributable to basis increases resulting from the recognition of built-in gain by the subsidiary.

G. Explanation of Provisions—Prospective Rules

1. Loss Disallowance Rule

No deduction is allowed for any loss recognized by a member with respect to the disposition of stock of a subsidiary. The rule does not affect the use by the group of "inside" losses of the subsidiary, such as operating losses. There is an exception to the rule to the extent the member recognizes gain in the same transaction with respect to stock of the same subsidiary.

2. Basis Reduction on Deconsolidation

The basis of a subsidiary's stock is reduced to its fair market value immediately before the subsidiary's stock is deconsolidated. Stock is treated as deconsolidated when it is no longer owned by a member of any consolidated group of which the subsidiary is also a member.

The basis reduction rule complements the loss disallowance rule by eliminating loss that is built into the basis of the subsidiary's stock immediately before the stock ceases to be subject to the loss disallowance rule. For example, assume that a group sells 25 percent of a subsidiary's stock to a nonmember, thus disaffiliating the subsidiary. The group has a built-in loss in the subsidiary's stock that it continues to own, but because the stock is no longer subject to the loss disallowance rule, the basis of the stock is reduced to its fair market value to eliminate the loss.

A special rule applies in cases in which the basis of stock of a subsidiary is reduced, and the group realizes a loss on the disposition of the stock within 2 years after the basis reduction. The taxpayer must attach a statement to the return for the year of the disposition, disclosing the amount realized and the amount of loss on the disposition. If the statement is not attached to the return, no deduction is allowed for any loss claimed on the disposition.

3. Anti-Stuffing Rule

As described above in the general discussion of the loss disallowance rule, basis increases in the stock of a subsidiary resulting from the disposition or consumption of built-in gain assets can have the effect of deferring tax on unrealized post-acquisition gain of the subsidiary's assets when the subsidiary's stock is sold. The regulations contain an anti-stuffing rule to prevent a group from creating a comparable benefit by transferring appreciated property to a subsidiary and thereby avoiding the impact of the loss disallowance rule on the sale of the subsidiary's stock.

4. Earnings and Profits and Investment Adjustments

The regulations clarify that the earnings and profits of a member are reduced by the amount of a loss on the

sale of a subsidiary's stock, even though the loss is disallowed.

The regulations also provide that a member's earnings and profits are reduced by the amount of the basis reduction required on the deconsolidation of stock of a subsidiary. This rule is needed because the basis reduction eliminates a future recognition of the loss (and the associated future reduction in earnings and profits).

Under the investment adjustment rules, these reductions in earnings and profits tier up and cause disallowed losses and basis reductions on deconsolidation to be reflected as reductions in the basis of higher tier members. Special rules are provided to prevent investment adjustments in situations where they would overlap with basis reductions under § 1.1502–20T.

The regulations also make clear that, for purposes of the consolidated return regulations, a basis reduction under § 1.1502–20T is treated as an investment adjustment under § 1.1502–32(e). Thus, any consolidated return rule that applies to investment adjustments also is applicable to basis reductions under § 1.1502–20T. For example, a member's basis reduction account under § 1.1502–32T is determined by taking into account the net negative adjustments under § 1.1502–32(e) (1) for all consolidated return years. Accordingly, any basis reduction in the member's stock under § 1.1502–20T would be treated as a § 1.1502–32(e) (1) adjustment for purposes of determining the amount of the basis reduction account.

5. Election to Retain Losses of Subsidiary

A common parent may elect to reattribute to itself the portion of a consolidated loss carryover attributable to a subsidiary (or to a lower-tier subsidiary) that is leaving the group. If the election is made, the carryover is not apportioned to the subsidiary under § 1.1502–79. Instead, it remains part of the consolidated net operating loss or net capital loss of the group. This special rule applies only to the extent that a member is otherwise subject to loss disallowance with respect to the subsidiary's stock and the losses are not from separate return limitation years.

The common parent may elect to identify particular losses of a subsidiary (or lower tier subsidiary) to retain, notwithstanding their character or the year in which they arose. Retained losses may not be carried back to any prior taxable year of the common parent.

Solely for the purpose of the investment adjustment rules, a loss that is reattributed to the common parent is treated as absorbed by the subsidiary (or lower tier subsidiary), thereby causing a reduction in the stock basis and earnings and profits of the subsidiary whose losses are reattributed. These adjustments reduce the members' stock basis and earnings and profits of the subsidiary whose losses are reattributed. These adjustments reduce the members' stock basis and earnings and profits to reflect the loss. The adjustments reduce or eliminate the member's loss on the disposition of the subsidiary's stock, thus reducing or eliminating the impact of the loss disallowance rule on the disposition.

6. Effective Dates

The loss disallowance rule and the basis reduction on deconsolidation apply with respect to stock disposed of or deconsolidated on or after March 9, 1990. The anti-stuffing rule applies only with respect to transfers of assets on or after that date.

H. Explanation of Provisions—Transition Rules

1. Loss Limitation Rule

Temporary regulations § 1.337(d)–1T disallows a deduction for any loss recognized by a member with respect to the disposition of stock of a transitional subsidiary (or any subsidiaries that are higher-tier subsidiaries with respect to the transitional subsidiary), except to the extent the taxpayer establishes that the loss is not attributable to the recognition of built-in gain. A transitional subsidiary is any corporation that became a subsidiary in the group after January 6, 1987.

2. Effective Date

Section 1.337(d)–1T does not contain provisions comparable to the basis reduction rules of temporary regulations § 1.1502–20T. The loss limitation rule therefore applies with respect to dispositions occurring after January 6, 1987, of stock of a transitional corporation (or any equity interest the basis of which is determined, directly or indirectly, in whole or in part, by reference to the basis of stock of a transitional corporation), but only if the disposition is not subject to § 1.1502–20T.

I. Additional Relief

Losses disallowed by the temporary regulations may in some instances include economic losses in circumstances in which the taxpayer cannot utilize the self-help measures described above (or other self-help measures) to obtain deductions for the losses. The Treasury Department and the Service invite comments from taxpayers and professional groups as to appropriate circumstances for additional relief under the temporary regulations, possibly including, for example, rare and unusual circumstances in which relief would be appropriate and could be provided without heavy administrative burdens.

The Treasury Department and the Service also invite comments on whether the relief for cases in which the loss is related to gain taken into account in the same transaction should be extended to other situations.

J. Consideration of Anti-breakup Rule

The Treasury Department and the Service recognize that the ability to shelter post-acquisition gain that is inherent in the loss disallowance rule might be used to facilitate corporate breakups. This is because, in many cases, the assets of a breakup target that are intended to be sold reflect separate market values not fully reflected in the price paid for the target. Although the temporary regulations do not include an anti-breakup rule, serious consideration is being given to adopting some form of anti-breakup rule in the final regulations. The rule would prevent the sheltering of post-acquisition gain when a target is disposed of within 2 years after its stock is acquired by the group. To provide such a rule without the complexity of tracing may require eliminating the net positive adjustments with respect to the target stock (and the effect of distributions of earnings and profits that do not reduce basis). It is intended that the anti-breakup rule would apply on a retroactive basis from the effective date of § 1.1502–20T.

Public comment is invited concerning the need for an anti-breakup rule, the form such a rule might take and whether or not such a rule should be retroactive.

Special Analysis

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It is hereby certified that these rules do not have a significant impact on a substantial number of small entities. The rules will primarily affect affiliated groups of corporations filing (or required to file) consolidated returns, which tend to be larger businesses. It will not significantly alter the reporting or recordkeeping duties of small entities. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not

required. Pursuant to section 7805 (f) of the Internal Revenue Code, the notice of proposed rulemaking for the regulations was submitted to the Administrator of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Mark S. Jennings of the Office of Assistant Chief Counsel (Corporate), Internal Revenue Service. However, other personnel of the Internal Revenue Service and the Treasury Department participated in their development.

List of Subjects

26 CFR 1.301–1 through 1.383–3

Corporate adjustments, Corporate distributions, Corporations, Income taxes, Reorganizations.

26 CFR 1.1501–1 through 1.1564–1

Income taxes, Controlled group of corporations, Consolidated returns.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR chapter I, part 1 is amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1986

Paragraph 1. The authority citation for part 1 is amended by adding the following citations:

Authority: 26 U.S.C. 7805; * * * § 1.337(d)–1T also issued under 26 U.S.C. 337(d) * * * § 1.1502–20T also issued under 26 U.S.C. 337(d) and 1502.

Par. 2. New § 1.337(d)–1T is added to read as follows:

§ 1.337(d)–1T Transitional loss limitation rule (temporary).

(a) *Loss limitation rule for transitional subsidiaries*—(1) *General rule.* No deduction is allowed for any loss recognized by a member of a consolidated group with respect to the disposition of stock of a transitional subsidiary.

(2) *Exception*—(i) *In general.* Paragraph (a)(1) of this section does not apply to the extent the taxpayer establishes that the loss is not attributable to the recognition of built-in gain by any transitional subsidiary on the disposition of an asset after January 6, 1987, but only if a separate statement is filed with the taxpayer's return for the year of the stock disposition.

(ii) *Contents of statement and time of filing.* The statement required to be filed under paragraph (a)(2)(i) of this section must contain the name and employer identification number (E.I.N.) of the transitional subsidiary, the amount realized, and the amount of the deduction not disallowed under paragraph (a)(1) of this section. If the separate statement is required to be filed with a return the due date (including extensions) of which is before May 16, 1990, or with a return due after May 15, 1990 (including extensions), but filed before that date, the statement may be filed with the taxpayer's first subsequent return the due date (including extensions) of which is after May 15, 1990.

(3) *Definitions.* For purposes of this section—

(i) The definitions in §§ 1.1502–1, 1.1502–1T, and 1.1502–20T apply.

(ii) "Transitional subsidiary" means any corporation that became a subsidiary of the group (whether or not the group was a consolidated group) after January 6, 1987. Notwithstanding the preceding sentence, a subsidiary is not a transitional subsidiary if the subsidiary (and each predecessor) was a member of the group at all times after the subsidiary's (and each predecessor's) organization.

(iii) "Built-in gain" of a transitional subsidiary means any excess of value over basis, determined immediately before the transitional subsidiary became a subsidiary, with respect to any asset (including stock)—

(A) Owned directly or indirectly by the transitional subsidiary at that time, or

(B) The basis of which is determined, directly or indirectly, in whole or in part, by reference to the basis of an asset described in paragraph (a)(3)(iii)(A).

(4) *Examples.* For purposes of the examples in this section, unless otherwise stated, the group files consolidated returns on a calendar year basis, and the facts set forth the only corporate activity. Unless otherwise stated, all sales and purchases are with unrelated buyers or sellers. The basis of each asset is the same for determining earnings and profits adjustments and taxable income. Tax liability and its effect on basis, value, and earnings and profits are disregarded. "Investment adjustment system" means the rules of §§ 1.1502–32 and 1.1502–33(c). The principles of this paragraph (a) are illustrated by the following examples:

Example (1): Loss attributable to recognized built-in gain. P buys all the stock of T for $100 on February 1, 1987, and T becomes a member of the P group. T has an asset with $100 of bulit-in gain. T sells the asset in 1989 and recognizes the $100 of gain on the sale. Under the investment adjustment system, P's basis in T increases to $200. P sells all the stock of T on December 31, 1989, and recognizes a loss of $100. Under paragraph (a)(1) of this section, no deduction is allowed to P for the $100 loss.

Example (2): Loss attributable to economic loss. P buys all the stock of T for $100 on February 1, 1987, and T becomes a member of the P group. T has $50 cash and an asset with $50 of built-in gain. During 1988, T retains the asset but loses $40 of the cash. The P group is unable to use the loss, and the loss becomes a consolidated net operating loss carryover attributable to T. Under the investment adjustment system, P's basis in the stock of T remains $100. P sells all the stock of T on December 31, 1988, for $60 and recognizes a $40 loss. Under paragraph (a)(2)(i) of this section, P establishes that it did not dispose of the built-in gain asset. None of P's loss is disallowed under paragraph (a)(1) if P satisfies the requirements of paragraph (a)(2)(ii) of this section.

Example (3): Stacking rules—stock loss attributable to either economic loss or recognized built-in gain. P buys all the stock of T for $100 on February 1, 1987, and T becomes a member of the P group. T has two assets. Asset 1 has a basis and value of $50, and asset 2 has a basis of $0 and a value of $50. During 1989, asset 1 declines in value to $0, and T sells asset 2 for $50, and reinvests the proceeds in asset 3. Asset 3 appreciates to $90. Under the investment adjustment system, P's basis in the stock of T increases from $100 to $150 as a result of the gain recognized on the sale of asset 2 but is unaffected by the unrealized post-acquisition decline in the value of asset 1. On December 31, 1989, P sells all the stock of T for $90 and recognizes a $60 loss. Although T incurred a $50 economic loss because of the decline in the value of asset 1, T also recognized $50 of built-in gain. Under paragraph (a)(2) of this section, any loss on the sale of stock is treated first as attributable to recognized built-in gain. Thus $50 of the $60 loss is attributable to the recognition of built-in gain on the disposition of assets. Therefore, only $10 of P's $60 loss is allowed if P satisfies the requirements of paragraph (a)(2) of this section.

Example (4): Outside basis partially corresponds to inside basis. (i) Individual A owns all the stock of T, for which A has a basis of $60. On February 1, 1987, T owns one asset with a basis of $0 and a value of $100. P acquires all the stock of T from A in an exchange to which section 351(a) applies, and T becomes a member of the P group. P has a carryover basis of $60 in the T stock. During 1988, T sells the asset and recognizes $100 of gain. Under the investment adjustment system, P's basis in T increases from $60 to $160. T reinvests the $100 proceeds in another asset, which declines in value to $90. On January 1, 1989, P sells all the stock of T for $90 and recognizes a loss of $70.

(ii) Although P's basis in the T stock was increased by $100 as a result of the recognition of built-in gain on the disposition of T's asset, only $60 of the $70 loss on the sale of the stock is attributable under paragraph (a)(2) of this section to the recognition of built-in gain from the disposition of the asset. (Had T's asset not

declined in value to $90, the T stock would have been sold for $100, and a $60 loss would have been attributable to the recognition of the built-in gain.) Therefore, $10 of the $70 loss is allowed if P satisfies the requirements of paragraph (a)(2). If P had sold the stock of T for $95 because T's other assets had unrealized appreciation of $5, $60 of the $65 loss would still be attributable to T's recognition of built-in gain on the disposition of assets.

Example (5): Creeping acquisition. P owns 60 percent of the stock of S on January 6, 1987. On February 1, 1987, P buys an additional 20 percent of the stock of S, and S becomes a member of the P group. P sells all the S stock on March 1, 1989 and recognizes a loss of $100. All 80 percent of the stock of S owned by P is subject to the rules of this section and, under paragraphs (a) (1) and (2) of this section, no deduction is allowed to P for the $100 loss, except to the extent P establishes the loss is not attributable to the recognition by S of built-in gain on the disposition of assets.

(b) *Indirect disposition of transitional subsidiary*—(1) *Loss limitation rule for transitional parent.* No deduction is allowed for any loss recognized by a member of a consolidated group with respect to the disposition of stock of a transitional parent.

(2) *Exception.* Paragraph (b)(1) of this section does not apply to the extent the taxpayer establishes that the loss exceeds the amount that would be disallowed under paragraph (a) of this section if each highest tier transitional subsidiary's stock in which the transitional parent has a direct or indirect interest had been sold immediately before the disposition of the transitional parent's stock. In applying the preceding sentence, appropriate adjustments shall be made to take into account circumstances where less than all the stock of a transitional parent owned by members of a consolidated group is disposed of in the same transaction, or the stock of a transitional subsidiary or a transitional parent is directly owned by more than one member.

(3) *Definitions.* For purposes of this section:

(i) "Transitional parent" means any subsidiary, other than a transitional subsidiary, that owns a direct or indirect interest in the stock of a transitional subsidiary, and

(ii) "Highest tier transitional subsidiary" means the transitional subsidiary (or subsidiaries) in which the transitional parent has a direct or indirect interest and that is the highest transitional subsidiary (or subsidiaries) in a chain of members.

(4) *Examples.* The principles of this paragraph (b) are illustrated by the following examples:

Example (1): Ownership of chain of transitional subsidiaries. (i) P forms S with $200 on January 1, 1985, and S becomes a member of the P group. On February 1, 1987, S buys all the stock of T, and T buys all the stock of T1, and both T and T1 become members of the P group. On January 1, 1988, P sells all the stock of S and recognizes a $90 loss on the sale.

(ii) Under paragraph (a)(3)(ii) of this section, both T and T1 are transitional subsidiaries, because they became members of the P group after January 6, 1987. Under paragraph (b)(3)(i) of this section, S is a transitional parent, because it owns a direct interest in stock of transitional subsidiaries and is not itself a transitional subsidiary.

(iii) Under paragraph (b)(2) of this section, because S is a transitional parent, no deduction is allowed to P for its $90 loss except to the extent it exceeds the amount of S's loss that would have been disallowed if S had sold all the stock of T, S's highest their transitional subsidiary, immediately before P's sale of all the S stock. Assume all the T stock would have been sold for a $90 loss and that all the loss would be attributable to the recognition of built-in gain from the disposition of assets. Because in that case $90 of loss would be disallowed, all of P's loss on the sale of the S stock is disallowed under paragraph (b)(1).

Example (2): Ownership of brother-sister transitional subsidiaries. (i) P forms S with $200 on January 1, 1985, and S becomes a member of the P group. On February 1, 1987, S buys all the stock of both T and T1, and T and T1 become members of the P group. On January 1, 1988, P sells all the stock of S and recognizes a $90 loss on the sale.

(ii) Under paragraph (b)(2) of this section, no deduction is allowed to P for its $90 loss except to the extent P establishes that the loss exceeds the amount of S's stock losses that would be disallowed if S sold all the stock of T and T1, S's highest tier transitional subsidiaries, immediately before P's sale of all the S stock. Assume that all the T stock would have been sold for a $50 loss, all the T1 stock for a $40 loss, and that the entire amount of each loss would be attributable to the recognition of built-in gain on the disposition of assets. Because $90 of loss would be disallowed with respect to the sale of S's T and T1 stock, P's loss on the sale of all the S stock is disallowed under paragraph (b)(1).

(c) *Successor*—(1) *General rule.* If this section applies to disallow the deduction of a member for a loss on the disposition of stock of a subsidiary, it also applies in a similar manner, to the extent necessary to carry out the purposes of this section, to any successor to the member and to stock or other equity interests of any successor to the subsidiary. A successor is any entity the basis of whose equity interests is determined, directly or indirectly, in whole or in part, by reference to the basis of the subsidiary's stock.

(2) *Examples.* The application of this paragraph (c) is illustrated by the following examples:

Example (1): Merger into grandfathered subsidiary. P, the common parent of a group, owns all the stock of T, a transitional subsidiary. On January 1, 1989, T merges into S, a subsidiary that is not a transitional subsidiary. Under paragraph (c)(1) of this section, all the stock of S is treated as stock of a transitional subsidiary. As a result, no deduction is allowed for any loss recognized on the disposition of any S stock owned by a member, except to the extent the P group establishes under paragraph (a)(2) that the loss is not attributable to the recognition of built-in gain on the disposition of assets of T.

Example (2): Nonrecognition exchange of transitional stock. P, the common parent of a group, owns all the stock of T, a transitional subsidiary. On January 1, 1989, P transfers the stock of T to X, a corporation that is not a member of the P group, in exchange for 20 percent of its stock in a transaction to which section 351 (a) applies. Under paragraph (c)(1) of this section, all the stock of X owned by members of the P group is treated as stock of a transitional subsidiary. As a result, no deduction will be allowed for any loss recognized on the disposition of any X stock owned by a member, except to the extent permitted under paragraph (a) of this section. Moreover, under paragraph (c)(1), X is treated as a member owning the stock of T, and T continues to be a transitional subsidiary with respect to X.

(d) *Earnings and profits and investment adjustments*— (1) *In general.* For purposes of computing the earnings and profits of a corporation and any investment adjustments with respect to stock, appropriate adjustments consistent with the rules of § 1.1502–20T (e) shall be made.

(2) *Example.* (i) In 1986, P forms S with a contribution of $100 and S becomes a member of the P group. On February 1, 1987, S buys all the stock of T for $100. T has an asset with a basis of $0 and a value of $100. In 1988, T sells the asset for $100. As a result, under the investment adjustment system, S's basis in the T stock increases to $200, P's basis in the S stock increases to $200, and P's earnings and profits and S's earnings and profits increase by $100. In 1989, S sells T for $100, recognizing a loss of $100. The entire loss is disallowed under paragraph (a)(1) of this section.

(ii) Under paragraph (d)(1) of this section, S's earnings and profits for 1989 are reduced by $100, the amount of the loss disallowed under paragraph (a)(1). As a result, P's basis in the S stock is reduced from $200 to $100 under the investment adjustment system. P's earnings and profits for 1989 are correspondingly reduced by $100.

(e) *Effective date*—(1) *General rule.* This section applies with respect to any disposition of stock or other equity interest occurring after January 6, 1987, but only with respect to a disposition occurring on or after March 9, 1990, if the disposition is not subject to § 1.1502–20T.

(2) *Binding contract rule.* For purposes of this section, if a corporation became a subsidiary pursuant to a binding written contract entered into and in continuous effect until the corporation became a subsidiary, or a disposition was pursuant to a binding written contract entered into and in continuous effect until the disposition, the date the contract became binding shall be treated as the date the corporation became a subsidiary or as the date of disposition.

Par. 3. New § 1.1502–1T is added to read as follows:

§ 1.1502–1T Definitions (temporary).

Consolidated group. The term "consolidated group" means a group filing (or required to file) consolidated returns for the tax year.

Par. 4. Section 1.1502–12 is amended by adding at the end a new paragraph (r) to read as follows:

§ 1.1502–12 Separate taxable income.

* * * * *

(r) *Cross-reference to temporary regulations.* For rules relating to loss disallowance or basis reduction on the disposition or deconsolidation of stock of a subsidiary, see §§ 1.337(d)–1T and 1.1502–20T.

Par. 5. New § 1.1502–20T is added under the heading "Computation of Separate Taxable Income" to read as follows:

§ 1.1502–20T Disposition or deconsolidation of subsidiary stock (temporary).

(a) *General rules*—(1) *Loss disallowance rule.* No deduction is allowed for any loss recognized by a member with respect to the disposition of stock of a subsidiary.

(2) *Exception.* Paragraph (a)(1) of this section does not apply to the extent gain is recognized (but not deferred) in the same transaction by the member with respect to stock of the same subsidiary, or was recognized by any member with respect to stock of the same subsidiary in a prior transaction and is taken into account in the transaction.

(3) *Disposition.* "Disposition" means any event in which gain or loss is recognized, in whole or in part.

(4) *Examples.* For purposes of the examples in this section, unless otherwise stated, the group files consolidated returns on a calendar year basis, and the facts set forth the only corporate activity. Unless otherwise stated, all sales and purchases are with unrelated buyers or sellers. The basis of each asset is the same for determining earnings and profits adjustments and taxable income. Tax liability and its effect on basis, value, and earnings and profits are disregarded. "Investment adjustment system" means the rules of §§ 1.1502–32 and 1.1502–33(c). The principles of this paragraph (a) are illustrated by the following examples:

Example (1): Loss attributable to recognized built-in gain. P buys all the stock of T for $100, and T becomes a member of the P group. T has an asset with a basis of $0 and a value of $100. T sells the asset for $100. Under the investment adjustment system, P's basis in the T stock increases to $200. Five years later, P sells all the stock of T for $100 and recognizes a loss of $100. Under paragraph (a)(1) of this section, no deduction is allowed to P for the $100 loss.

Example (2): Effect of post-acquisition appreciation. P buys all the stock of T for $100, and T becomes a member of the P group. T has an asset with a basis of $0 and a value of $100. T sells the asset for $100. Under the investment adjustment system, P's basis in the T stock increases to $200. T reinvests the proceeds in an asset that appreciates in value to $180. Five years later, P sells all the stock of T for $180 and recognizes a $20 loss. Under paragraph (a)(1) of this section, no deduction is allowed to P for the $20 loss.

Example (3): Disallowance of duplicated loss. P forms S with a contribution of $100 in exchange for all the shares of S stock, and S becomes a member of the P group. S has an operating loss of $60. The group is unable to use the loss, and the loss becomes a consolidated net operating loss carryover attributable to S. Five years later, P sells the stock of S for $40, recognizing a $60 loss. Under paragraph (a)(1) of this section, P's $60 loss on the sale of the S stock is disallowed. (See paragraph (f) of this section for the elective reattribution of S's $60 net operating loss to P in connection with the sale.)

Example (4): Deemed asset sale election. (i) P forms S with a contribution of $100 in exchange for all the S stock, and S becomes a member of the P group. S buys an asset for $100, and the value of the asset declines to $40. P sells all the stock of S to P1 for $40. Under paragraph (a)(1) of this section, P's $60 loss on the sale of the S stock is disallowed.

(ii) If P and P1 instead elect deemed asset sale treatment under section 338(h)(10), T is treated as selling all of its assets, and no loss is recognized by P on its sale of the T stock. As a result of the recharacterization of the stock sale as an asset sale, the $60 loss in the asset is recognized. Under the section 338(h)(10) regulations, T is treated as liquidating into P following the deemed asset sale, and the $60 is inherited by P.

Example (5): Gain and loss recognized on sale of stock in one transaction. P, the common parent of a group, owns all 100 shares of the stock of T, with an aggregate basis of $50 in 50 shares and $100 in the other 50 shares. P sells all the stock of T in a secondary offering for $140. P therefore recognizes a gain of $20 on 50 shares and a loss of $30 on the other 50 shares. Under paragraph (a)(2) of this section, the amount of the $30 loss that would be disallowed under paragraph (a)(1) of this section is limited to $10 ($30 reduced by the $20 gain recognized on T stock in the same transaction).

Example (6): Deferred gain and recognized loss. P, the common parent of a group, owns all the stock of S and S owns all the stock of T, which as a basis of $100 and a value of $150. S distributes all the T stock to P and recognizes a $50 gain under section 311, which is deferred under § 1.1502–14(c). P later sells all the T stock to a nonmember for $90 and recognizes a loss of $60. Under § 1.1502–13(f), the $50 of deferred gain is taken into account on the sale of the T stock to the nonmember. Under paragraph (a)(2) of this section, the amount of the $60 loss disallowed under paragraph (a)(1) of this section is limited to $10 ($60 reduced by the $50 gain recognized on the T stock taken into account in the same transaction).

(b) *Basis reduction on deconsolidation.* (1) If a member's basis in a share of stock of a subsidiary exceeds its value immediately before a deconsolidation of the share, the basis of the share is reduced at that time to an amount equal to its value. If both a disposition and a deconsolidation occur with respect to a share in the same transaction, paragraph (a) applies and paragraph (b) does not apply to the share in connection with the transaction.

(2) *Deconsolidation.* "Deconsolidation" means any event that causes a share of stock of a subsidiary to be no longer owned by a member of any consolidated group of which the subsidiary is also a member.

(3) *Value.* "Value" means fair market value.

(4) *Dispositions within 2 years after basis reduction*—(i) *In general.* If the basis of stock has been reduced under paragraph (b)(1) of this section and a disposition of the stock occurs within 2 years after the date of the basis reduction, a separate statement must be filed with the taxpayer's return for the year of disposition. If the taxpayer fails to file the statement as required, no deduction is allowed for any loss recognized on the disposition.

(ii) *Contents of statement.* The statement required to be filed under this paragraph (b)(4) must disclose with respect to the disposition of stock the amount realized, the amount of the loss on the disposition, and the name and employer identification number (E.I.N.) of the subsidiary whose stock is disposed of.

(5) *Examples.* The principles of this paragraph (b) are illustrated by the following examples:

Example (1): Simultaneous application of loss disallowance rule and basis reduction rule to stock of the same subsidiary. P forms S with $100 in exchange for all 100 shares of S stock, and S becomes a member of the P group. The value of S declines from $100 to $50, and P sells 60 shares of S stock for $30. The sale causes a deconsolidation of the remaining 40 shares held by P. Under paragraph (b)(1) of this section, P must reduce the basis of the 40 shares of S stock it continues to own from $40 to $20, the value of the shares immediately before the deconsolidation. Although P's disposition of the 60 shares also causes a deconsolidation of these shares, paragraph (b)(1) of this section provides that paragraph (a) of this section applies to the shares that are both sold and deconsolidated in the same transaction. Under paragraph (a)(1), P's $30 loss on the sale of the 60 shares is disallowed.

Example (2): Deconsolidation of subsidiary stock upon contribution to a partnership. P buys all the stock of T for $100, and T becomes a member of the P group. P later transfers all the stock of T to partnership M in exchange for a partnership interest in M, in a transaction to which section 721 applies. At the time of the exchange, P's basis in the T stock is $100 and the T stock's value is $75. Under paragraph (b)(1) of this section, the transfer to M causes a deconsolidation of the T stock, and P must reduce its basis in the T stock to $75, the stock's value immediately before the transfer to M. As a result, P has a basis of $75 in its interest in M, and M has a basis of $75 in the stock of T.

Example (3): Simultaneous application of loss disallowance rule and basis reduction rule to stock of different subsidiaries. (i) P owns all the stock of S, which in turn owns all the stock of S1, and S and S1 are members of the P group. P's basis in S is $100 and S's basis in S1 is $100. S1 buys all the stock of T for $100, and T becomes a member of the P group. T has an asset with a basis of $0 and a value of $100. T sells the asset for $100. Under the investment adjustment system, S1's basis in T, S's basis in S1, and P's basis in S each increase from $100 to $200. S then sells all the stock of S1 for $100 and recognizes a loss of $100.

(ii) Under paragraph (a)(1) of this section, S's $100 loss on the sale of the stock of S1 is disallowed.

(iii) If S1 and T are not members of a consolidated group immediately after the sale of the stock of S1, the T stock is deconsolidated, and under paragraph (b)(1) of this section, S1 must reduce the basis of the T stock to $100, its value immediately before the sale.

(iv) If S1 and T are members of a consolidated group immediately after the sale of the stock of S1, the T stock is not deconsolidated, and no reduction is required under paragraph (b)(1).

(c) *Successors*—(1) *General rule.* If a rule of this section applies to the stock of a subsidiary, it also applies to stock or other equity interests in any successor to the subsidiary to the extent necessary to effectuate the purposes of the rule. A successor is any entity the basis of whose equity interests is determined, directly or indirectly, in whole or in part, by reference to the basis of the subsidiary's stock.

(2) *Example.* (i) P, the common parent of a group, buys all the stock of T for $100. T's only asset has a basis of $0 and a value of $100. T sells the asset for $100, and buys another asset for $100. Under the investment adjustment system, P's basis in the T stock increases to $200, and the earnings and profits of P increase by $100. P later transfers all the stock of T to partnership M in exchange for a partnership interest in M, in a transaction to which section 721 applies. Less than two years later, P sells its interest in M for $80.

(ii) Under paragraph (b)(1) of this section, because the stock of T is deconsolidated on the transfer to M, P reduces its basis in the T stock to $100, the amount P determines to be the value of the stock immediately before the transfer. As a result, P has a basis of $100 in its interest in M, and M has a basis of $100 in the T stock.

(iii) When P sells its interest in M for $80, it recognizes a $20 loss. Under paragraph (b)(4) of this section, P is required to file a statement with its return for the year of its disposition of its interest in M in order to deduct its loss. P does not file the required statement. The failure to file the statement described in paragraph (b)(4) results in the disallowance of P's loss on the disposition of its interest in M.

(d) *Anti-stuffing rule*—(1) *Application.* This paragraph (d) applies if—

(i) A transfer of any asset (including stock) between members is followed by a related direct or indirect disposition of stock of a subsidiary within 2 years after the transfer, and

(ii) The transfer is with a view to avoiding, directly or indirectly, in whole or in part, the disallowance of loss on the disposition (or basis reduction with respect to a deconsolidation prior to the disposition) of, or the recognition of the unrealized gain on, the transferred asset.

(2) *Basis reduction.* If this paragraph (d) applies, the basis of the subsidiary's stock disposed of is reduced, immediately before the disposition (or deconsolidation prior to disposition), to cause recognition of gain in an amount equal to the loss disallowance (or basis reduction) or gain recognition otherwise avoided by reason of the transfer.

(3) *Examples.* The principles of this paragraph (d) are illustrated by the following examples:

Example (1): Basic stuffing case. (i) In Year 1, P buys all the stock of T for $100, and T becomes a member of the P group. T has an asset with a basis of $0 and a value of $100. T sells the asset for $100. Under the investment adjustment system, P's basis in T increases from $100 to $200. In Year 5, P transfers to T an asset with a basis of $0 and a value of $100 in a transaction to which section 351 applies, with the view described in paragraph (d)(1) of this section. In Year 6, P sells all the stock of T for $200.

(ii) Under paragraph (d)(2) of this section, P must reduce the basis in its T stock immediately before the sale to cause recognition of gain in an amount equal to the loss disallowance otherwise avoided by reason of the transfer. The amount of this basis reduction is $100, causing a $100 gain to be recognized on the sale.

Example (2): Stacking rules. (i) In Year 1, P buys all the stock of T for $100, and T becomes a member of the P group. T has an asset with a basis of $0 and a value of $100. T sells the asset for $100. Under the investment adjustment system, P's basis in the T stock increases from $100 to $200. In Year 5, when the value of the T stock remains $100, P transfers to T an asset with a basis of $0 and a value of $100 in a transaction to which section 351 applies, with the view described in paragraph (d)(1) of this section. Thereafter, the value of the contributed asset declines to $10. In Year 6, P sells all the T stock for $110.

(ii) Because the transferred asset declined in value by $90, the transfer enabled P to avoid the disallowance of loss on the sale of T only to the extent of $10. Under paragraph (d)(2) of this section, P must reduce the basis in its T stock immediately before the sale to cause recognition of gain in an amount equal to the loss disallowance otherwise avoided by reason of the transfer. The amount of this basis reduction is $100, causing a $10 gain to be recognized on the sale.

(iii) Assume, instead, that the transferred asset did not decline in value and that T reinvests the $100 in proceeds from the asset sale in another asset that appreciates in value to $190. In Year 6, P sells T for $290. Because the new asset appreciated in value by $90, the transfer enabled P to avoid the disallowance of loss on the sale of T only to the extent of $10. Under paragraph (d)(2) of this section, P must reduce the basis in its T stock immediately before the sale to cause recognition of gain in an amount equal to the loss disallowance otherwise avoided by reason of the transfer. The amount of this basis reduction is $10, causing a $100 gain to be recognized on the sale.

Example (3): Contribution of built-in loss asset. (i) In Year 1, P forms S with a contribution of $100 in exchange for all of S's stock, and S becomes a member of the P group. S buys an asset for $100, and the asset appreciates in value to $200. P then buys all the stock of T for $100, and T becomes a member of the P group. T has an asset with a basis of $0 and a value of $100. T sells the asset for $100, and under the investment adjustment system P's basis in the T stock increases from $100 to $200. In Year 5, when the value of the T stock remains $100, P Transfers the T stock to S in a transaction to

which section 351 applies, with the view described in paragraph (d)(1) of this section. The transfer causes P's basis in S to increase from $100 to $300 and the value of S to increase from $200 to $300. In Year 6, P sells S for $300.

(ii) Under paragraph (d)(2) of this section, P must reduce the basis in its S stock immediately before the sale to cause recognition of gain in an amount equal to the gain recognition otherwise avoided by reason of the transfer. The amount of this basis reduction is $100, causing a $100 gain to be recognized on the sale.

Example (4): Absence of view. (i) In Year 1, P forms S with a contribution of $100, and S becomes a member of the P group. S buys two assets, asset 1 with a basis of $50, which appreciates to $100, and asset 2 with a basis of $50 which declines in value to $0. S sells asset 1 for $100. Under the investment adjustment system, P's basis in S increases from $100 to $150. In Year 5, S transfers asset 2 to P in a transaction to which § 1.1502-14(a) applies, with a view to avoiding disallowance of loss on the subsequent disposition of the S stock. This transfer reduces P's basis in S from $150 to $100. In Year 6, P sells all the stock of S for $100.

(ii) Because the transfer from S to P achieves a result that could have been obtained by other methods that would not have been prevented by this section, the transfer is not with the view described in paragraph (d)(1) of this section. P is in substantially the same position holding asset 2 as it would be if S sold the asset and the resulting loss was available to the P group (either through S or by reattribution under paragraph (f) of this section).

(e) *Earnings and profits and investment adjustments*—(1) *Effect on earnings and profits*—(i) *General rule.* For purposes of computing the earnings and profits of a member that owns stock in a subsidiary, any deduction that is disallowed, or any amount by which basis is reduced, under this section is treated as a loss allowed in the tax year in which the disallowance or basis reduction occurs.

(ii) *Example:* (A) In Year 1, P forms S with a contribution of $100, and S becomes a member of the P group. S buys all the stock of T for $100. T has an asset with a basis of $0 and a value of $100. In Year 2, T sells the asset for $100. Under the investment adjustment system, S's basis in the T stock increases to $200, and P's basis in the S stock increases to $200. In Year 6, S sells all the stock of T for $100, and S's recognized loss of $100 is disallowed under paragraph (a)(1) of this section.

(B) Under paragraph (e)(1) of this section, the earnings and profits of S for Year 6 are reduced by $100, the amount of the loss disallowed under paragraph (a)(1). P's basis in the S stock is reduced from $200 to $100 under the investment adjustment system. Correspondingly, P's earnings and profits for Year 6 are reduced by $100, the amount of the loss disallowed under paragraph (a)(1) of this section.

(2) *Coordination with investment adjustment rules*—(i) *Order of adjustments.* Deconsolidation of a share is treated as a disposition of the share for purposes of determining when investment adjustments are made to the share under §§ 1.1502-32 and 1.1502-32T.

(ii) *No tiering up of certain adjustments.* If the basis of stock of a subsidiary owned by a member (the "owning member") is reduced under this section upon the deconsolidation of the stock, no corresponding adjustment is made under § 1.1502-32 to the basis of the stock of the owning member (or any higher tier member) if a disposition or deconsolidation occurs in the same transaction with respect to all the stock of the owning member. In the case of a disposition or deconsolidation in the same transaction of less than all the stock of the owning member, appropriate adjustments shall be made under § 1.1502-32 with respect to the stock of the owning member (or any higher tier member).

(iii) *Example:* (A) P, the common parent of a group, owns all the stock of S, S owns all the stock of S1, and S1 owns all the stock of S2. P's basis in S is $100, S's basis in S1 is $100, and S1's basis in S2 is $100. In Year 1, S2 buys T for $100. T has an asset with a basis of $0 and a value of $100. In Year 2, T sells the asset for $100. Under the investment adjustment system, the basis of each subsidiary's stock increases from $100 to $200. In Year 6, S sells all the stock of S1 for $100 to A, an individual, and recognizes a loss of $100. S1, S2, and T are not members of a consolidated group immediately after the sale because the new S1 group does not file a consolidated return for its first taxable year.

(B) Under paragraph (a)(1) of this section, no deduction is allowed to S for its loss on the sale of the S1 stock. Under paragraph (e)(1) of this section, S's earnings and profits for Year 6 are reduced by the $100 loss that is disallowed. Correspondingly, under the investment adjustment system, S's reduction in earnings and profits causes a reduction in P's basis in S, and a reduction in P's earnings and profits for Year 6.

(C) Under paragraph (b)(1) of this section, because the stock of T and S2 is deconsolidated, S2 must reduce the basis of the T stock from $200 to $100 (its value immediately before the deconsolidation), and S1 must reduce the basis of the S2 stock from $200 to $100 (its value immediately before the deconsolidation). Under paragraph (e)(1), S2's earnings and profits for Year 6 are reduced by the $100 reduction to the basis of the T stock, and S1's earnings and profits are reduced by the $100 reduction to the basis of the S2 stock. Under paragraph (e)(2)(ii) of this section, because the stock of S2 is deconsolidated in the same transaction, the basis reduction to the T stock does not cause any corresponding investment adjustment to the stock of S2, or to the stock of any higher tier subsidiary. Similarly, because the stock of S1 is disposed of in the same transaction, the reduction to the basis of the S2 stock does not cause an investment adjustment to the stock of S1, or the stock of any higher tier subsidiary.

(iv) *Basis reduction treated as investment adjustment.* For purposes of the consolidated return regulations, the amount of any basis reduction to stock under this section is treated as a net negative adjustment under § 1.1502-32(e) (in addition to the adjustment otherwise required under § 1.1502-32(e)) with respect to the stock.

(f) *Reattribution of subsidiary's losses to common parent*—(1) *Reattribution rule.* If a member disposes of stock of a subsidiary and the member's loss is subject to disallowance under paragraph (a)(1) of this section, the common parent may elect to reattribute to itself any portion of the reattributable losses of the subsidiary without regard to the order in which they were incurred, provided the amount reattributed does not exceed the amount subject to disallowance before taking into account this paragraph (f). The common parent succeeds to the reattributed losses of the subsidiary (or the subsidiary's lower tier subsidiaries) as if the losses were succeeded to on the day of the disposition in a transaction to which section 381 applies.

(2) *Investment adjustments.* The reattributed losses are treated, solely for purposes of determining investment adjustments under § 1.1502-32 and earnings and profits under §1.1502-33(c), as absorbed by the subsidiary (or any of its lower tier subsidiaries) immediately before the disposition. The losses, however, are not treated as absorbed for other tax purposes, such as section 172.

(3) *Definitions*—(i) *Reattributable losses of the subsidiary.* "Reattributable losses of the subsidiary" are losses that are reflected as a positive adjustment under § 1.1502-32(b)(1)(ii) immediately before the subsidiary (or its lower tier subsidiaries) ceases to be a member with respect to the group that is disposing of its stock.

(ii) *Lower tier subsidiary.* "Lower tier subsidiary" means a subsidiary owned, directly or indirectly, by the subsidiary whose stock is disposed of.

(4) *Examples.* The principles of this paragraph (f) are illustrated by the following examples:

Example (1): Basic reattribution case. (i) P, the common parent of a group, forms S with a contribution of $100. S has an operating loss of $60, which produces a deficit in earnings and profits that reduces P's basis in the S stock by $60 under the investment adjustment system. The group is unable to use the loss, and the loss becomes a consolidated net operating loss carryover attributable to S. Under the investment adjustment system, P's basis in the S stock is increased by $60, the amount of the unused loss, thus preserving P's $100 basis in the S stock. The remaining assets of S appreciate in value, and P sells S for $55. Under paragraph (a)(1) of this section, but for the application of this paragraph (f), P's $45 loss on the sale of S is disallowed.

(ii) S's $60 portion of the consolidated net operating loss is reflected in stock basis as a positive adjustment of $60 to the basis of the S stock immediately before S ceases to be a member of the P group. Accordingly, under paragraph (f)(3)(i) of this section, this loss is the reattributable loss of S with respect to the disposition.

(iii) P elects under paragraph (f)(1) of this section to reattribute to itself $45 of the S loss (the maximum amount permitted). As a result, $45 of the $60 reattributable losses of S is reattributed to P. This reattributed loss may be included in the consolidated net operating loss carryover to subsequent consolidated return years of the P group. The remaining $15 of S's reattributable losses is carried over to the first separate return year of S.

(iv) The $45 reattributed loss is treated, solely for purposes of the investment adjustment system, as absorbed by S immediately before the disposition. This reduces P's basis in the S stock to $55 immediately before the disposition. As a result, P does not recognize any gain or loss on the disposition. However, this deemed absorption for purposes of determining investment adjustments does not affect the use of the loss by the P group or reduce the $45 limitation on the amount of the S loss that P may elect to reattribute.

(v) Assume that $20 of S's losses arose in Year 1 and $40 in Year 2, and that P elects to reattribute all $40 from Year 2 and $5 from Year 1. These losses retain their character as ordinary losses arising in Years 1 and 2. The losses continue to be subject to any limitations originally applicable to S, but P succeeds to them and may absorb the losses independent of S. (For example, P's use of the year 2 losses does not depend on S's use of the Year 1 losses that were not reattributed to P.)

Example (2): Lower tier subsidiary. (i) The facts are the same as in Example (1), except that $10 of S's assets are invested in T in exchange for all of T's stock. T has an operating loss of $5, which is not used by the P group and becomes a consolidated net operating loss carryover attributable to T. Because of other appreciation, P's sale price for the S stock remains $55.

(ii) Under paragraph (f) (3) (1) of this section, all of T's loss is a reattributable loss with respect to a lower tier subsidiary of S. Therefore, T's loss is included in the losses that P may choose to reattribute, subject to the $5 limitation.

Example (3): Separate return limitation year losses. (i) The facts are the same as in Example (1), except that S buys all the stock of T for $10. T has a $30 loss carryover from a separate return limitation year.

(ii) T's loss is not reflected as a positive adjustment to the basis of its stock owned by S under § 1.1502-32 (b) (1) (ii) immediately before it ceased to be a member of the P group. Therefore, T's loss is not a reattributable loss, and the results in Example (1) are unaffected.

(5) *Time and manner of making the election*—(i) *In general.* (A) The election described in paragraph (f) (1) of this section must be made in a separate statement in the following (or a substantially similar) form:

THIS IS AN ELECTION UNDER SECTION 1.1502-20T (f) (1) OF THE INCOME TAX REGULATIONS TO REATTRIBUTE LOSSES OF [insert names and employer identification numbers (E.I.N.) of the subsidiary that ceased to be a member of the group and each lower tier subsidiary whose losses are reattributed] TO [insert name and employer identification number of common parent].

(B) The statement must include the following information:

(*1*) For each subsidiary and lower tier subsidiary whose losses are reattributed, the amount of each net operating loss and net capital loss, and the year in which each arose, that is reattributed to the common parent, and

(*2*) If stock of a subsidiary (or any of its lower tier subsidiaries) is acquired by another corporation, the acquiring corporation's name and employer identification number.

The statement must be signed by the common parent and by each subsidiary and lower tier subsidiary with respect to which loss is reattributed under this paragraph (f). The statement must be filed with the consolidated group's income tax return for the tax year of the disposition and a copy delivered on or before the time that return is filed to the acquiring corporation of each subsidiary or lower tier subsidiary whose losses are reattributed. If the acquiring corporation is a subsidiary in a consolidated group, the name and employer identification number of the common parent of the group must be included in the statement, and a copy of the statement must also be delivered to the common parent.

(ii) *Filing of subsidiary's copy of statement.* The subsidiary (and any lower tier subsidiaries) whose losses are reattributed (or the common parent of the consolidated group that includes the subsidiary and any lower tier subsidiaries) must attach its copy of the statement described in paragraph (f)(5)(i) of this section to its return for the first year ending after the due date, including extensions, of the return in which the election required by paragraph (f)(5)(i) is to be filed.

(6) *Election irrevocable.* An election under paragraph (f)(1) of this section is irrevocable.

(g) *Effective dates*—(1) *General rule.* Except as otherwise provided in this paragraph (g), this section applies with respect to dispositions and deconsolidations occurring on or after March 9, 1990. For this purpose, transactions deferred under §§ 1.1502-13, 1.1502-13T, 1.1502-14, and 1.1502-14T are deemed to occur at the time the deferred gain or loss is taken into account.

(2) *Anti-stuffing rule.* Paragraph (d) of this section applies only with respect to transfers occurring on or after March 9, 1990.

(3) *Binding contract rule.* For purposes of paragraphs (g) (1) and (2) of this section, if the disposition, deconsolidation, or transfer was pursuant to a binding written contract entered into and in continuous effect until the disposition, deconsolidation, or transfer, the date the contract became binding is treated as the date of the disposition, deconsolidation, or transfer.

(4) *Cross reference.* For additional rules relating to loss disallowance, see § 1.337(d)-1T.

Par. 6. Section 1.1502-32 is amended by adding at the end of paragraph (a) a new sentence to read as follows:

§ 1.1502-32 Investment adjustments.

(a) *In general.* * * * For rules relating to loss disallowance or basis reduction on the disposition or deconsolidation of stock of a subsidiary, see §§ 1.337(d)-1T and 1.1502-20T.

* * * * *

Par. 7. Section 1.1502-33 (c) (6) is amended by adding a new sentence at the end to read as follows:

§ 1.1502-33 Earnings and profits.

* * * * *

(c) * * *

(6) * * * For rules relating to the effect on earnings and profits of loss disallowance or basis reduction on the disposition or deconsolidation of stock of a subsidiary, see §§ 1.337(d)-1T and 1.1502-20T.

* * * * *

Par. 8. Section 1.1502–79 is amended by adding paragraph (a) (1) (iii) to read as follows:

§ 1.1502–79 Separate return years.

(a) * * *

(1) * * *

(iii) For rules permitting the reattribution of losses of a subsidiary to the common parent in the case of loss disallowance or basis reduction on the disposition or deconsolidation of stock of the subsidiary, see § 1.502–20T.

* * * * *

Need for temporary regulations

Because of the need to conform the consolidated return regulations to the repeal of the *General Utilities* doctrine, it is impracticable and contrary to the public interest to issue these temporary regulations with notice and public procedure under section 553 (b) of title 5 of the United States Code, or subject to the effective date limitation of section 553 (d) of title 5.

Fred T. Goldberg, Jr.,

Commissoner of Internal Revenue.

Approved: March 1, 1990.

Kenneth W. Gideon,

Assistant Secretary of the Treasury.

[FR Doc. 90–5847 Filed 3–9–90; 2:19 pm]

BILLING CODE 4830–01–M

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26 CFR Parts 301 and 602

[T.D. 8292]

RIN 1545–AM87

Treaty-Based Return Positions

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final Income Tax Regulations relating to the requirement that any taxpayer who takes a position that a treaty of the United States overrules, or otherwise modifies, an internal revenue law of the United States shall disclose such position. These final regulations are necessary to provide guidance needed to implement sections 6114 and 6712 of the Internal Revenue Code of 1986 as added by the Technical and Miscellaneous Revenue Act of 1988 (TAMRA).

DATES: These regulations are effective for taxable years of the taxpayer for which the due date for filing returns (without extensions) occurs after December 31, 1988. However, if the due date for filing the return (with extensions) occurs on or before April 13, 1990, the taxpayer may choose to apply the provisions of the temporary regulations, §§ 301.6114–1T and 301.6712–1T.

FOR FURTHER INFORMATION CONTACT: David Bergkuist of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC: CORP:T:R (INTL–361–89)) (202–566–6442, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this final regulation has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3504(h)) under the control number 1545–1126. The estimated annual burden per respondent varies from ½ hour to 3 hours depending on individual circumstances, with an average estimate of one hour.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents may require greater or less time, depending on their particular circumstances.

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

Background

On September 11, 1989, the **Federal Register** published proposed amendments (54 FR 37451) to the Income Tax Regulations (26 CFR part 301) under sections 6114 and 6712 of the Internal Revenue Code. These amendments implement and provide guidance with respect to section 6114, which was added to the Code by section 1012(aa)(5)(A) of TAMRA, and section 6712, which was added to the Code by section 1012(aa)(5)(B) of TAMRA. Written comments responding to this notice were received. No public hearing was requested and none was held. After consideration of all comments regarding the proposed amendments, the amendments are adopted by this Treasury Decision with revisions in response to those comments. The significant comments and revisions are described below.

Explanation of Provisions

Example (2) of § 301.6114–1(a)(3) has been removed as unnecessary.

Several comments were received suggesting that the exception in § 301.6114–1(c)(1) to the waiver of the reporting requirement concerning the reporting of fixed or determinable annual or periodical income subject to withholding under section 1441 or 1442 and received by a foreign person from a U.S. person when either person controls, within the meaning of section 6038 or 6038A, the other person would result in burdensome reporting duplicative of other reporting requirements. In response to these comments, the language of § 301.6114–1(b)(4)(ii) has been modified to exclude from the disclosure requirement of section 6114 and § 301.6114–1(a)(1) positions taken by a taxpayer that a treaty reduces the rate of tax on fixed or determinable annual or periodical income subject to withholding received by a controlled foreign corporation. In addition, this reporting is no longer required on payments between related parties (as defined) when the payment has been properly reported to the Service on Form 1042S. The language of § 301.6114–1(b)(4)(ii) has been revised, effective for tax years beginning after July 10, 1989, to apply to shareholders of a domestic corporation (or a foreign corporation engaged in a trade or business in the United States) that is 25-percent foreign-owned within the meaning of section 6038A, to conform with the revision to section 6038A made by section 7403 of the Revenue Reconciliation Act of 1989.

The Service expects to consider revising applicable information reporting forms (such as Forms 1042S, 5471 and 5472) to require disclosure of additional information, such as the provision(s) of any limitation of benefits article which the taxpayer relies upon to prevent the application of that article.

Although no change has been made to § 301.6114–1(c)(1), the Service recognizes that this provision does not relate to fixed or determinable annual or periodical income attributable to a permanent establishment that is subject to tax on a net basis (see also § 301.6114–1(b)(5)(i)).

The language of § 301.6114–1(c)(2) should not be read to relax or modify any reporting requirement of any other provision of the Code or regulations. Thus, for example, any reporting requirement under section 7701(b) would not be affected by this provision.

In response to a comment, a new § 301.6114–1(c)(4) has been added to waive reporting under section 6114 and § 301.6114–1(a) with respect to income of an individual that is resourced (for purposes of applying the foreign tax credit limitation) under a treaty provision relating to elimination of double taxation. Examples of types of income that would be subject to this provision would be income subject to paragraph 3 or paragraph 6 of Article XXIV of the United States-Canada Income Tax Treaty. Section 301.6114–1(c) (4) and (5) have been renumbered, and a cross reference in § 301.6114–1(b)(6) has been added.

In response to comments, a new § 301.6114–1(c)(7) has been added to waive reporting with respect to the excise tax imposed by section 4371 if reporting that would otherwise be required on a quarterly basis is made on an annual basis; or if a person, other than the taxpayer, who is liable under section 4374 for such excise tax on the same premium properly reports the information required by § 301.6114–1(d)(4); or if a closing agreement has been entered into with the Service by the foreign insurance company that is the beneficial recipient of the premium subject to the excise tax.

Language has been added to § 301.6114–1(c) to indicate that reporting under section 6114 is not required with respect to income items the tax treatment of which is mandated by the terms of a closing agreement with the Service.

Language has been added to § 301.6114–1(d)(4) to indicate that, for purposes of paragraph (d)(4)(i), a taxpayer not having a permanent establishment or fixed base in the United States (and properly disclosing that position) need not report its payment of actual or deemed dividends or interest exempt from tax by reason of a treaty (or any liability for tax under section 884(a)).

In addition, § 301.6114–1(d)(4)(i) has been clarified to indicate that it is the nature and amount (or a reasonable estimate thereof) of each separate gross payment or separate gross income item for which the treaty benefit is claimed that is to be reported.

Comments were received stating that certain foreign corporations engaged in trade or business in the United States are, pursuant to specific treaty provisions, subject to U.S. tax solely on income from sources inside the United States (and not on otherwise effectively connected foreign source income). To provide a separate disclosure statement for each item of excluded foreign source income would be unduly burdensome. Language has been added to § 301.6114–1(d)(4) to permit the treatment of these payments or income items of the same type as a single payment or income item. This provision is relevant only to claims under certain older treaties that restrict the right of the United States to tax effectively connected foreign source income.

Comments were also received stating that sales in the United States by an agent on behalf of a foreign corporation not having a permanent establishment in the United States are often exempt from U.S. tax under an article of a treaty relating to business profits. To provide a separate disclosure for each such sale would be unduly burdensome. Language has been added to § 301.6114–1(d) to permit the treatment of income from separate sales or services, whether or not made by an agent, as a single payment or income item.

In addition, in response to comments, it should be observed that an exchange of notes (such as an exchange confirming reciprocal exemptions from certain taxes on transportation income), by itself and not under a treaty, is not considered to be a treaty and, thus, would not be considered to overrule or otherwise modify a provision of the Code so that reporting would be required under section 6114. However, if an exchange of notes operates in conjunction with a treaty to overrule or otherwise modify a provision of the Code, reporting would be required if a position is taken under that exchange of notes.

One commenter has suggested that disclosure under section 6661 should be viewed as adequate disclosure for purposes of section 6114 as well. Disclosure for section 6661 is not disclosure for purposes of section 6114 and § 301.6114–1(a) unless such disclosure is clearly labeled as also applying to section 6114 and contains all of the information required by, and otherwise meets the requirements of, § 301.6114–1(d). In addition, section 6114 and § 301.6114–1 do not change or otherwise modify the filing requirements of section 6012.

The language of § 301.6712–1 has been expanded to state more clearly that the penalties imposed by section 6712 are imposed on each separate payment or income item and that, for purposes of section 6712 and § 301.6712–1, aggregation of separate payments or income items of the same type or received from the same ultimate payor is not permitted. However, for purposes of determining the number of separate penalties to be imposed under § 301.6712–1(a), the District Director will have discretion to aggregate separate payments or income items, in whole or in part, in accordance with the rules for the aggregation of such payments or income items for purposes or reporting, as described in § 301.6114–1(d).

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking for the regulations was submitted to the Administrator of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is David Bergkuist of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. Other personnel from the Internal Revenue Service and Treasury Department participated in developing these regulations.

List of Subjects

26 CFR Part 301

Administrative practice and procedure, Bankruptcy, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Penalties, Pensions, Statistics. Taxes, Disclosure of information, Filing requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of amendments to the regulations

Accordingly, 26 CFR parts 301 and 602 are amended as follows:

PART 301—REGULATIONS ON PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority for part 301 is amended by removing the citation for § 301.6114–1T and adding the following citation for § 301.6114–1:

Authority: 26 U.S.C. 7805. * * * Section 301.6114–1 also issued under 26 U.S.C. 6114. * * *

§§ 301.6114-1T and 301.6712-1T [Removed]

Par. 2. Sections 301.6114-1T and 301.6712-1T are removed.

Par. 3. New §§ 301.6114-1 and 301.6712-1 are added in the appropriate places to read as follows:

§ 301.6114-1 Treaty-based return positions.

(a) *Reporting requirement*—(1) *General rule.* (i) Except as provided in paragraph (c) of this section, if a taxpayer takes a return position that any treaty of the United States (including, but not limited to, an income tax treaty, estate and gift tax treaty, or friendship, commerce and navigation treaty) overrules or modifies any provision of the Internal Revenue Code and thereby effects (or potentially effects) a reduction of any tax incurred as any time, the taxpayer shall disclose such return position on a statement (in the form required in paragraph (d) of this section) attached to such return.

(ii) If a return of tax would not otherwise be required to be filed, a return must, nevertheless, be filed for purposes of making the disclosure required by this section. For this purpose, such return need include only the taxpayer's name, address, Taxpayer Identification Number (if any), and be signed under the penalties of perjury (as well as the subject disclosure). Also, the taxpayer's taxable year shall be deemed to be the calendar year (unless the taxpayer has previously established, or timely chooses for this purpose to establish, a different taxable year).

(2) *Application.* (i) A taxpayer is considered to adopt a "return position" when the taxpayer determines its tax liability with respect to a particular item of income, deduction or credit. A taxpayer may be considered to adopt a return position whether or not a return is actually filed. To determine whether a return position is a "treaty-based return position" so that reporting is required under this paragraph (a), the taxpayer must compare:

(A) The tax liability (including credits, carrybacks, carryovers, and other tax consequences or attributes for the current year as well as for any other affected tax years) to be reported on a return of the taxpayer, and

(B) The tax liability (including such credits, carrybacks, carryovers, and other tax consequences or attributes) that would be reported if the relevant treaty provision did not exist.

If there is a difference (or potential difference) in these two amounts, the position taken on a return is a treaty-based return position that must be reported.

(ii) In the event a taxpayer's return position is based on a conclusion that a treaty provision is consistent with a Code provision, but the effect of the treaty provision is to alter the scope of the Code provision from the scope that it would have in the absence of the treaty, then the return position is a treaty-based return position that must be reported.

(iii) A return position is a treaty-based return position unless the taxpayer's conclusion that no reporting is required under paragraphs (a)(2) (i) and (ii) of this section has a substantial probability of successful defense if challenged.

(3) *Examples.* The application of section 6114 and paragraph (a)(2) of this section may be illustrated by the following examples:

Example (1): X, a Country A corporation, claims the benefit of a provision of the income tax treaty between the United States and Country A that modifies a provision of the Code. This position does not result in a change of X's U.S. tax liability for the current tax year but does give rise to, or increases, a net operating loss which may be carried back (or forward) such that X's tax liability in the carryback (or forward) year may be affected by the position taken by X in the current year. X must disclose this treaty-based return position with its tax return for the current tax year.

Example (2): Z, a domestic corporation, is engaged in a trade or business in Country B. Country B imposes a tax on the income from certain of Z's petroleum activities at a rate significantly greater than the rate applicable to income from other activities. Z claims a foreign tax credit for this tax on its tax return. The tax imposed on Z is specifically listed as a creditable tax in the income tax treaty between the United States and Country B; however, there is no specific authority that such tax would otherwise be a creditable tax for U.S. purposes under sections 901 or 903 of the Code. Therefore, in the absence of the treaty, the creditability of this petroleum tax would lack a substantial probability of successful defense if challenged, and Z must disclose this treaty-based return position (see also paragraph (b) (7) of this section).

(b) *Reporting specifically required.* Reporting is required under this section except as expressly waived under paragraph (c) of this section. The following list is not a list of all positions for which reporting is required under this section but is a list of particular positions for which reporting is specifically required. These positions are as follows:

(1) That a nondiscrimination provision of a treaty precludes the application of any otherwise applicable Code provision, other than with respect to the making of or the effect of an election under section 897(i);

(2) That a treaty reduces or modifies the taxation of gain or loss from the disposition of a United States real property interest;

(3) That a treaty exempts a foreign corporation from (or reduces the amount of tax with respect to) the branch profits tax (section 884(a)) or the tax on excess interest (section 884(f)(1)(B));

(4) That, notwithstanding paragraph (c)(1) of this section,

(i) A treaty exempts from tax, or reduces the rate of tax on, interest or dividends paid by a foreign corporation that are from sources within the United States by reason of section 861(a)(2)(B) or section 884(f)(1)(A); or

(ii) A treaty reduces the rate of tax on fixed or determinable annual or periodical income subject to withholding under sections 1441 or 1442 that a foreign person receives from a U.S. person, but only if—

(A) The payment is not properly reported to the Service on a Form 1042S; and

(B) The foreign person is not any of the following:

(*1*) A controlled foreign corporation (as defined in section 957);

(*2*) A foreign corporation that is controlled within the meaning of section 6038 by a U.S. person; or

(*3*) In the case of tax years beginning on or before July 10, 1989, the shareholder of a domestic corporation (or a foreign corporation engaged in a trade or business in the United States) that is controlled within the meaning of section 6038A by a foreign person, or, in the case of tax years beginning after July 10, 1989, is 25-percent foreign-owned within the meaning of section 6038A; or

(5) That, under a treaty—

(i) Income that is effectively connected with a U.S. trade or business of a foreign corporation or a nonresident alien is not attributable to a permanent establishment or a fixed base of operations in the United States and, thus, is not subject to taxation on a net basis, or that

(ii) Expenses are allowable in determining net business income so attributable, notwithstanding an inconsistent provision of the Code;

(6) Except as provided in paragraph (c)(4) of this section, that a treaty alters the source of any item of income or deduction; or

(7) That a treaty grants a credit for a specific foreign tax for which a foreign tax credit would not be allowed by the Code.

(c) *Reporting requirement waived.* Pursuant to the authority contained in section 6114 (b), reporting is waived under this section with respect to any of the following return positions taken by the taxpayer:

(1) Except as provided in paragraph (b)(4) of this section, that a treaty has reduced the rate of withholding tax otherwise applicable to a particular type of fixed or determinable annual or periodical income subject to withholding under section 1441 or 1442, such as dividends, interest, rents, or royalties;

(2) That residency of an individual is determined under a treaty and apart from the Code;

(3) That a treaty reduces or modifies the taxation of income derived from dependent personal services, pensions, annuities, social security and other public pensions, or income derived by artistes, athletes, students, trainees or teachers;

(4) That income of an individual is resourced (for purposes of applying the foreign tax credit limitation) under a treaty provision relating to elimination of double taxation;

(5) That a nondiscrimination provision of a treaty allows the making of an election under section 897(i);

(6) That a Social Security Totalization Agreement or a Diplomatic or Consular Agreement reduces or modifies the taxation of income derived by the taxpayer; or

(7) That a treaty exempts the taxpayer from the excise tax imposed by section 4371, but only if:

(i) Reporting under this section that otherwise would be required to be made on a quarterly basis with a Form 720 is made on an annual basis on the Form 720 for the last quarter of the taxpayer's taxable year,

(ii) A person, other than the taxpayer, who is liable under section 4374 for such excise tax on the same premium properly reports the information required by paragraph (d)(4) of this section, or

(iii) A closing agreement relating to entitlement to the exemption from the excise tax has been entered into with the Service by the foreign insurance company that is the beneficial recipient of the premium that is subject to the excise tax.

Reporting with respect to payments or income items the treatment of which is mandated by the terms of a closing agreement with the Service, and that would otherwise be subject to the reporting requirements of this section, is also waived. In addition, if a partnership, trust, or estate that has the taxpayer as a partner or beneficiary discloses on its information return a position for which reporting is otherwise required by the taxpayer, the taxpayer (partner or beneficiary) is then excused from disclosing that position on a return. Also, this section does not apply to a withholding agent with respect to the performance of its withholding functions.

(d) *Information to be reported.* If reporting is required under this section, the following information must be furnished in accordance with paragraph (a) of this section as an attachment to the return and set forth with the indicated heading and with paragraphs labeled to correspond with the numbers set forth below:

Treaty-Based Return Position Disclosure Under Section 6114

(1) Taxpayer's name, T.I.N. (if any), and address both in the country of residence and in the United States;

(2) Name, T.I.N. (if available to the taxpayer), and address in the United States of the payor of the income (if fixed, determinable, annual, or periodical);

(3) A statement whether the taxpayer (if an individual) is a U.S. citizen or resident or (if a corporation) is incorporated in the United States;

(4) A separate statement of facts relied upon to support each separate position taken, including for each position:

(i) The nature and amount (or a reasonable estimate thereof) of gross receipts, each separate gross payment, each separate gross income item, or other item (as applicable) for which the treaty benefit is claimed,

(ii) An explanation of the position taken with a brief summary of the facts on which it is based,

(iii) The specific treaty provision relied upon,

(iv) The Code provision(s) overruled or modified, and

(v) The provision(s) of the limitation on benefits article (if any) in the treaty which the taxpayer relies upon to prevent application of that article.

For purposes of paragraph (d)(4)(i) of this section, if a taxpayer takes a position that it does not have a permanent establishment or fixed base in the United States and properly discloses that position, it need not separately report its payment of actual or deemed dividends or interest exempt from tax by reason of a treaty (or any liability for tax imposed by reason of section 884). Also, for purposes of paragraph (d)(4)(i) of this section, a taxpayer may treat payments or income items of the same type (*e.g.*, interest items) received from the same ultimate payor (*e.g.*, the obligor on a note) as a single separate payment or income item. For purposes of paragraph (d)(4), if a taxpayer takes the return position that, under a treaty, income that is effectively connected with a U.S. trade or business is not subject to U.S. taxation because it is derived from sources outside of the United States, the taxpayer may treat payments or income items of the same type (*e.g.*, interest items) as a single separate payment or income item. In addition, income from separate sales or services, whether or not made by an agent (independent or dependent), to different U.S. customers on behalf of a foreign corporation not having a permanent establishment in the United States may be treated as a single payment or income item.

(e) *Effective date.* This section is effective for taxable years of the taxpayer for which the due date for filing returns (without extensions) occurs after December 31, 1988. However, if—

(1) A taxpayer has filed a return for such a taxable year, without complying with the reporting requirement of this section, before November 13, 1989, or

(2) A taxpayer is not otherwise than by paragraph (a) of this section required to file a return for a taxable year before November 13, 1989,

Such taxpayer must file (apart from any earlier filed return) the statement required by paragraph (d) of this section before June 12, 1990, by mailing the required statement to the Internal Revenue Service, P.O. Box 21086, Philadelphia, PA 19114. Any such statement filed apart from a return must be dated, signed and sworn to by the taxpayer under the penalties of perjury. In addition, with respect to any return due (without extensions) on or before March 10, 1990, the reporting required by paragraph (a) of this section must be made no later than June 12, 1990. If a taxpayer files or has filed a return on or before November 13, 1989, that provides substantially the same information required by paragraph (d) of this section, no additional submission will be required.

(f) *Cross reference.* For the provisions concerning penalties for failure to disclose a treaty-based return position, see section 6712 and § 301.6712-1.

§ 301.6712-1 Failure to disclose treaty-based return positions.

(a) *Penalty imposed.* A taxpayer who fails in a material way to disclose one or more positions taken for a taxable year, as required by section 6114 and the regulations thereunder, is subject to a separate penalty for each failure to disclose a position taken with respect to each separate payment or separate income item in the amount of—

(1) For a corporation taxable as such under the Code $10,000; or

(2) For all other taxpayers, $1,000.

The penalty imposed by this section may be imposed more than once for a single taxable year if a taxpayer has failed to disclose one or more positions taken with respect to more than one separate payment or separate income

item and may be imposed in addition to any other penalty imposed by law. For this purpose, separate payments or income items of the same type (*e.g.*, interest payments) received from the same ultimate payor (*e.g.*, the obligor on the note) will be treated as separate payments or income items (and not aggregated). However, for purposes of determining the number of separate penalties to be imposed under this section, the District Director shall have the discretion to aggregate separate payments or income items, in whole or in part, in accordance with the rules for aggregation of such items for purposes of reporting, as described in § 301.6114–1(d).

(b) *Penalty waived.* Pursuant to the authority contained in section 6712(b) of the Code, the penalty imposed by paragraph (a) of this section may be waived, in whole or in part, if it is established to the satisfaction of the Assistant Commissioner (International), the District Director or the Director of the Internal Revenue Service Center that the taxpayer's failure to disclose the required information was not due to willful neglect. An affirmative showing of lack of willful neglect must be made in the form of a written statement that sets forth all the facts alleged to show lack of willful neglect and contains a declaration by such person that the statement is made under the penalties of perjury.

(c) *Manner of payment.* The penalty set forth in paragraph (a) of this section shall be paid in the same manner as tax upon the issuance of a notice and demand thereof.

(d) *Effective date.* This section is effective for taxable years of the taxpayer for which the due date for filing returns (without extension) occurs after December 31, 1988.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 4. The authority for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 5. Section 602.101(c) is amended by removing from the table "§ 301.6114–1T * * * 1545–1126 and § 301.6712–1T * * * 1545–1126" and by inserting in the respective appropriate places in the table:

"§ 301.6114–1 * * * 1545–1126."

"§ 301.6712–1 * * * 1545–1126."

Fred T. Goldberg, Jr.,
Commissioner of Internal Revenue.

Approved: February 23, 1990.

Kenneth W. Gideon,
Assistant Secretary of the Treasury.

[FR Doc. 90–5619 Filed 3–13–90; 8:45 am]

BILLING CODE 4830-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-1-FRL-3732-4]

Approval and Promulgation of Air Quality Implementation Plans; Connecticut; Reasonably Available Control Technology for the Heminway & Bartlett Manufacturing Co.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Connecticut. This revision establishes and requires the use of reasonably available control technology (RACT) to control volatile organic compound (VOC) emissions from The Heminway & Bartlett Manufacturing Company in Watertown, Connecticut. The intended effect of this action is to approve the source-specific RACT determination made by the State in accordance with commitments made in its 1982 Ozone Attainment Plan which was approved by EPA on March 21, 1984 (49 FR 10542). This action is being taken in accordance with section 110 of the Clean Air Act.

EFFECTIVE DATES: This action will become effective on May 14, 1990, unless notice is received within 30 days that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Comments may be mailed to Louis F. Gitto, Director, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Building, room 2313, Boston, MA 02203. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Building, room 2313, Boston, MA 02203; Public Information Reference Unit, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; and the Bureau of Air Management, Department of Environmental Protection, State Office Building, 165 Capitol Avenue, Hartford, CT 06106.

FOR FURTHER INFORMATION CONTACT: David B. Conroy, (617) 565–3252; FTS 835–3252.

SUPPLEMENTARY INFORMATION: On January 10, 1990, the State of Connecticut submitted a formal revision to its state implementation plan (SIP). The revision consists of State Order No. 8032 issued by the Connecticut Department of Environmental Protection (DEP) to The Heminway & Bartlett Manufacturing Company in Watertown, Connecticut. This State Order was issued to this facility to control volatile organic compound (VOC) emissions from this facility's VOC-emitting processes. The requirements of State Order No. 8032 constitute reasonably available control technology (RACT) for Heminway & Bartlett as required by subsection 22a–174–20(ee), "Reasonably Available Control Technology for Large Sources," of Connecticut's Regulations for the Abatement of Air Pollution.

Under subsection 22a–174–20(ee), the Connecticut DEP determines and imposes RACT on all stationary sources with the potential to emit one hundred tons per year or more of VOC that are not already subject to RACT under Connecticut's regulations developed pursuant to the control techniques guidelines (CTG) documents. EPA approved this regulation on March 21, 1984 (49 FR 10542) as part of Connecticut's 1982 Ozone Attainment Plan. That approval was granted with the agreement that all source-specific RACT determinations made by the DEP would be submitted to EPA as source-specific SIP revisions.

Summary of RACT Determination

Heminway & Bartlett produces synthetic sewing threads that are used in the manufacture of apparel, furniture, automotive trim, shoes, canvas goods, and other assorted products. The synthetic threads are coated with proprietary formulations that are applied and heat set in specially designed ovens in their bonding department. Bonding and dyeing solutions contain volatile organic compounds, the principal solvent being methanol. Ninteen production lines are available to coat and dye synthetic threads. At any one time, only 8 to 10 lines are operating and any line can be used to coat or dye. The basic production line consists of the supply spools of threads, dip coater 1, primary drying oven (first pass); dip coater 2, primary drying oven (second pass); dip

coater 3, primary drying oven (third pass); dip coater 4, stretch oven; lubrication applicator and the take up spools. In 1985, VOC emissions from coating and dyeing amounted to 384 tons per year (TPY).

On February 26, 1986, the Connecticut DEP issued State Order No. 957 to Heminway & Bartlett requiring it to conduct the necessary research and engineering studies to determine RACT for its VOC-emitting processes. In determining RACT for the VOC-emitting equipment at Heminway & Bartlett, two alternatives were evaluated (i.e., process modifications and the installation of add-on VOC emission controls).

The process modification approach involved replacing solvent-based solutions with water-based solutions. Engineering studies were conducted by a consultant and resulted in four add-on control technologies being initially considered (i.e., absorption, carbon adsorption, catalytic incineration, and thermal incineration). The assessment provided by the consultant indicated that add-on controls may not represent a cost effective option.

Soon after the issuance of State No. 957, Heminway & Bartlett began the exploration of water-based lattices from different suppliers and worked on the technical problems that had to be resolved with the introduction of water-based technology. Extensive market testing was also required to obtain field results on the characteristics and sewability of products using water-based systems. Heminway & Bartlett's efforts have resulted in a proprietary system capable of coating nylon and polyester threads with urethane lattices based on aqueous urethane technology. Heminway & Bartlett reduced the number of coatings being used from eight to three through reformulation to water-based urethane lattices.

Based on the reformulation program Heminway & Bartlett has implemented, the Connecticut DEP has determined RACT to represent a sixty-five percent reduction in daily VOC emissions and a seventy-five percent reduction in annual VOC emissions from the 1985 baseline VOC emission rate of 384 tons of VOC. The State Order the Connecticut DEP has imposed on Heminway & Bartlett requires the following:

1. Daily VOC Emission Cap

Heminway & Bartlett is required to maintain a maximum daily VOC emission rate of 1034 pounds. This daily emission cap is based on sixty-five percent reduction from the 384 tons of VOC emitted in the 1985 baseline year over 260 days.

2. Annual VOC Emissions Cap

Heminway & Bartlett is required to maintain a maximum annual cap on VOC emissions of 96 tons. The VOC emission cap represents a seventy-five percent reduction in VOC emissions from the 1985 baseline year of 384 tons. Compliance with this requirement will be determined using a monthly rolling average. VOC emissions shall be no greater than 96 tons in any period of twelve consecutive calendar months.

3. VOC Limitations in Coatings

The enforceable VOC content limitations for each coating are as follows: (1) Top Thread Coating G–2.9 pounds of VOC per gallon of coating as applied minus water and photochemically nonreactive solvent; (2) Bottom Thread Coating C–6.21 pounds of VOC per gallon of coating as applied minus water and photochemically nonreactive solvent; and (3) Bottom Thread Coating D–6.35 pounds of VOC per gallon of coating as applied minus water and photochemically nonreactive solvent.

Furthermore, any new coatings developed by Heminway & Bartlett in the future cannot exceed a VOC emission rate of 2.9 pounds of VOC per gallon of coating as applied minus water and photochemically nonreactive solvent.

4. Recordkeeping Requirements

In order for the Department to determine compliance with the daily cap, Heminway & Bartlett is required to maintain daily records for each coating during each twenty-four hour period of time (7 a.m. to 7 a.m.). Daily and monthly records are required to be kept on file for three years and made available to the Commissioner or EPA on request.

EPA has reviewed State Order No. 8032 and has determined that the level of control required by this Order represents RACT for Heminway & Bartlett.

EPA is approving this SIP revision without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective 60 days from the date of this Federal Register notice unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted. If such notice is received, this action will be withdrawn before the effective date by simultaneously publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective on May 14, 1990.

Final Action

EPA is approving Connecticut State Order No. 8032 as a revision to the Connecticut SIP. The provisions of State Order No. 8032 define and impose RACT on Heminway & Bartlett as required by subsection 22a–174–20(ee) of Connecticut's regulations.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years.

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 14, 1990. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Note: Incorporation by reference of the State Implementation Plan for the State of Connecticut was approved by the Director of the Federal Register on July 1, 1982.

Dated: February 26, 1990.

Patricia L. Meaney,

Acting Regional Administrator, Region I.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart H—Connecticut

2. Section 52.370 is amended by adding paragraph (c)(55) to read as follows:

§ 52.370 Identification of plan.

* * * * *

(c) * * *

(55) Revision to the State Implementation Plan submitted by the Connecticut Department of Environmental Protection on January 10, 1990.

(i) Incorporation by reference.

(A) Letter from the Connecticut Department of Environmental Protection dated January 10, 1990 submitting a revision to the Connecticut State Implementation Plan.

(B) State Order No. 8032 and attached Compliance Timetable for The Heminway & Bartlett Manufacturing Company in Watertown, Connecticut. State Order No. 8032 was effective on November 29, 1989.

(ii) Additional materials.

(A) Technical Support Document prepared by the Connecticut DEP providing a complete description of the reasonably available control technology determination imposed on The Heminway & Bartlett Manufacturing Company.

[FR Doc. 90–5755 Filed 3–13–90; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 180

[PP9E3767/R1060; FRL–3709–1]

Pesticide Tolerance for Fluazifop-butyl; Technical Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical amendment.

SUMMARY: EPA is removing a geographical restriction for the tolerance for residues of the herbicide fluazifop-butyl in or on the raw agricultural commodity endive. This amendment was requested by the Interregional Research Project No. 4 (IR–4) and will allow geographical expansion of the registration for the tolerance.

DATES: This regulation becomes effective March 14, 1990.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt Jamerson, Emergency Response and Minor Use Section (H7505C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716, CM No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)–557–2310.

SUPPLEMENTARY INFORMATION: A tolerance for residues of the herbicide fluazifop [(R)–2–[4–[[5–(trifluoromethyl)–2–pyridinyl]oxy]phenoxy]propanoic acid], both free and conjugated, and of fluazifop–P–butyl, [(R)–butyl–2–[4[[5–(trifluoromethyl)–2–pyridinyl]oxy]phenoxy]propanoate], all expressed as fluazifop, in or on the raw agricultural commodity endive at 6.0 parts per million (ppm) was established in the **Federal Register** of May 4, 1988 (53 FR 15825). The tolerance was established in support of registration for use of fluazifop on endive in Florida only, based on the geographical representation of the residue data available at the time.

Field residue data from Arkansas and Ohio submitted by IR–4 show that use of fluazifop in other endive production areas is not likely to result in residues in excess of the established tolerance of 6.0 ppm. It is, therefore, no longer necessary for the Agency to restrict registration for use of fluazifop on endive to Florida only. To allow geographical expansion of the registration of fluazifop on endive, the Agency is amending 40 CFR 180.411 by deleting the tolerance for regional registration for the raw agricultural commodity endive from paragraph (d) and by inserting the tolerance for endive in paragraph (c), which contains tolerances for pesticides without geographically restricted registration.

The current action will not affect the Agency's assessment of exposure to residues of fluazifop in the human diet since the original estimate of dietary exposure was made on an assumption of tolerance level residues on 100 percent of the endive crop.

This document is a technical amendment as it merely amends the tolerance for fluazifop on endive by moving the tolerance to a different paragraph of 40 CFR 180.411. Therefore, advance notice and public participation as prerequisites to issuance are not necessary, and this rule is effective upon publication in the **Federal Register**.

List of Subjects in 40 CFR Part 180

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

Dated: March 1, 1990.

Douglas D. Campt,

Director, Office of Pesticide Programs.

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.

2. Section 180.411 is amended by removing the tolerance for regional registration for the raw agricultural commodity endive from paragraph (d) and alphabetically inserting the tolerance for endive in paragraph (c), to read as follows:

§ 180.411 Fluazifop-butyl; tolerances for residues.

* * * * *

(c) * * *

Commodities	Parts per million
* * * *	
Endive	6.0
* * * *	

* * * * *

[FR Doc. 90–5843 Filed 3–13–90; 8:45 am]

BILLING CODE 6560–50–D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

[DA 90–324]

Administrative Practice and Procedure

AGENCY: Federal Communications Commission.

ACTION: Final rule; technical amendment.

SUMMARY: This order amends § 0.461(g) of the Commission's rules to reflect that the second sentence of the rule was inadvertently omitted from the Code of Federal Regulations.

EFFECTIVE DATES: March 14, 1990.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Donna Viert, Office of General Counsel, (202) 632–6990.

SUPPLEMENTARY INFORMATION: This order reinserts language in § 0.461(g) that was inadvertently omitted in the Code of Federal Regulations.

Order

Adopted: March 1, 1990.
Released: March 8, 1990.

By the Managing Director:

1. Section 0.461 of the Commission's rules deals with requests for inspection of materials not routinely available for public inspection. It has come to our attention that the second sentence in § 0.461(g) has been inadvertently omitted in the Code of Federal Regulations. Accordingly, § 0.461(g) of the Commission's rules is hereby amended to correct this omission.

2. Pursuant to sections 4(i) and 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154 (i) and (j) and § 0.231(d) of the Commission's Rules, it is ordered, that § 0.461(g) of the Commission's Rules is amended as set forth in the appendix effective upon publication in the **Federal Register.**[1]

Federal Communications Commission.

Andrew S. Fishel,

Managing Director.

Appendix

Part 0 of title 47 of the CFR is amended as follows:

PART 0—[AMENDED]

1. The authority citation for part 0 continues to read:

Authority: Secs. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155.

2. 47 CFR 0.461(g) introductory text, is revised to read as follows:

§ 0.461 Requests for inspection of materials not routinely available for public inspection.

* * * * *

(g) The custodian of the records will make every effort to act on the request within 10 working days after it is received by the FOIA Control Office. If it is not possible to locate the records and to determine whether they should be made available for inspection within 10 working days, the custodian may, in any of the following circumstances, extend the time for action by up to 10 working days:

* * * * *

[FR Doc. 90-5761 Filed 3-13-90; 8:45 am]

BILLING CODE 6712-01-M

[1] Because this rule change is a matter of agency practice and procedure, a notice and comment proceeding is not required, 5 U.S.C. 553(b)(A), and the rule change may be made effective upon publication in the **Federal Register.** See 5 U.S.C. 553(d).

47 CFR Part 73

[MM Docket No. 88-123; RM-5939]

Radio Broadcasting Services; Grover City, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 297B for Channel 297B1 at Grover City, California, and modifies the Class B1 license of WESTCOM Communications, Inc. for Station KWCD(FM), as requested, to specify operation on the higher power channel, thereby providing a wider coverage area FM service. See 53 FR 12167, April 13, 1988. Coordinates for Channel 297B at Grover City are 35-13-50 and 120-26-34. With this action, the proceeding is terminated.

EFFECTIVE DATE: April 23, 1990.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 88-123, adopted February 22, 1990, and released March 9, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments for California, is amended for Grover City, by removing Channel 297B1 and adding Channel 297B.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-5759 Filed 3-13-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-306; RM-6671]

Radio Broadcasting Services; Elko, Nevada

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Holiday Broadcasting Company of Elko, substitutes Channel 237C for Channel 237A at Elko, Nevada, and modifies its license for Station KRJC accordingly. Channel 237C can be allotted to Elko in compliance with the Commission's minimum distance separation requirements and can be used at the station's licensed transmitter site. The coordinates for Channel 237C at Elko are North Latitude 40-54-35 and West Longitude 115-49-05. With this action, this proceeding is terminated.

EFFECTIVE DATE: April 23, 1990.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-306, adopted February 26, 1990, and released March 9, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments under Nevada is amended by removing Channel 237A and adding Channel 237C at Elko.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-5758 Filed 3-13-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-317; RM-6677]

Radio Broadcasting Services; Taos, New Mexico

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Taos County Radio, substitutes Channel 260C2 for Channel 260A at Taos, New Mexico, and modifies its construction permit for Station KRBJ to specify operation on the higher powered channel. Channel 260C2 can be allotted to Taos in compliance with the Commission's minimum distance separation requirements with a site restriction of 25.8 kilometers (16.0 miles) northeast to accommodate petitioner's desired transmitter site. The coordinates for this allotment are North Latitude 36-32-10 and West Longitude 105-20-10. With this action, this proceeding is terminated.

EFFECTIVE DATE: April 23, 1990.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-317, adopted February 26, 1990, and released March 9, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments under New Mexico is amended by removing Channel 260A and adding Channel 260C2 at Taos.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-5764 Filed 3-13-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-101; RM-6654]

Radio Broadcasting Services; Chateaugay, New York

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Four Seasons Communications, Inc., allots Channel 234A to Chateaugay, New York, as the community's first local FM service. Channel 234A can be allotted to Chateaugay in compliance with the Commission's minimum distance separation requirements with a site restriction of 1.0 kilometers (0.6 miles) south to avoid prohibited interference to Canadian stations and/or allotments at Montreal, Vianney, Trois Riveres and Hull, Quebec, Canada. The coordinates for this allotment are North Latitude 44-54-57 and West Longitude 74-04-50. Canadian concurrence has been received. With this action, this proceeding is terminated.

DATES: Effective April 23, 1990. The window period for filing applications will open on April 24, 1990, and close on May 24, 1990.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-101, adopted February 22, 1990, and released March 9, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments under New York is amended adding Chateaugay, Channel 234A.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-5760 Filed 3-13-90; 8:45 am]

BILLING CODE 2712-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1846 and 1852

Interim changes to NASA FAR Supplement instituting quality and productivity improvement plans.

ACTION: Interim rule with request for comments.

SUMMARY: This rule adds a solicitation provision and a contract clause to the NASA FAR Supplement which implements a program to enhance quality and productivity in contract performance.

DATES: Effective March 12, 1990. Comments are due not later than April 13, 1990.

ADDRESSES: Comments should be addressed to W.A. Greene, Chief, Regulations Development Branch, Procurement Policy Division (Code HP), NASA Headquarters, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: W.A. Greene, Telephone: 202-453-8923.

SUPPLEMENTARY INFORMATION:

Background

As part of NASA's continuing pursuit of enhanced quality and productivity in contractor performance, the Office of Safety, Reliability, Maintainability, and Quality Assurance, has developed quality and productivity improvement (Q/PI) incentives to be used in NASA contracts when appropriate. A clause is included in solicitations requiring offerors to submit Q/PI plans as part of their proposal that, when negotiated and approved by the contracting officer, would create an incentive for the contractor to improve quality and productivity when performing the contract. The various mechanisms used to support Q/PI include the use of value engineering provisions in contracts, "gainsharing", integrated suggestion programs for civil servants and contractor personnel, and industrial modernization programs.

This rule is a part of NASA's sustained effort, carried out both in-house and in cooperation with industry, to enhance and promote the safety and reliability of current shuttle and future space flight operations and to overall

quality and productivity improvement in all of NASA's programs. The importance of obtaining the benefits of this program as quickly as possible constitute compelling and urgent reasons to promulgate these interim rules without prior opportunity for public comment. However, public comment received in response to these interim rules will be considered in formulating the final rules.

Impact

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The proposed regulations fall in this category. NASA certifies that these regulations will not have a significiant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). This rule does not significantly alter any reporting or recordkeeping requirements currently approved under OMB Control Number 2700-0042.

List of Subjects in 48 CFR Parts 1846 and 1852

Government procurement.

S.J. Evans,

Assistant Administrator for Procurement.

1. The authority citation for 48 CFR chapter 18 reads as follows:

Authority: 42 U.S.C. 2473(c)(1).

Part 1846—QUALITY ASSURANCE

2. Section 1846.470 is revised to read as follows:

1846.470 Contract clauses.

(a) The contracting officer may insert a clause substantially as stated at 1852.246-71, Government Contract Quality Assurance Functions, in solicitations and contracts. Insert the items involving quality assurance, the applicable functions (e.g., preliminary inspection, final inspection, acceptance), and the place(s) of performance appropriate for the particular procurement. See FAR 46.401.

(b) The contracting officer shall consider inserting in solicitations and contracts the clause at 1852.246-74, Quality and Productivity Improvement (Q/PI) Plan, when in the judgment of the contracting officer and the program manager, a Q/PI plan would be meaningful and appropriate, and the estimated cost of the contract will be more than $2.5 million, annually. The proposed Q/PI plan shall be evaluated under Other Considerations. Any fee associated with a Q/PI plan shall not be considered as an amount over and above the total fee negotiated for the contract and shall not, when combined with all other price or fee considerations, exceed the limitations prescribed in FAR 15.903(d)(1).

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 1852.246-74 is added to read as follows:

§ 1852.246-74 Quality and productivity improvement plan.

As prescribed in § 1846.470(b), insert the following clause:

Quality and Productivity Improvement Plan (February 1990)

The offeror shall submit with its proposal a Quality and Productivity Improvement (Q/PI) Plan. The plan should address only effort directly related to this solicitation. It should include areas of focus for improvement; Q/PI goals, schedules and assessment techniques; discuss how the offeror will create an environment within its organization conducive to continuous quality improvement; and discuss the offeror's active or proposed involvement, if any, in the Q/PI programs of subcontractors. The offeror shall identify all costs associated with the major elements of the proposed plan. The offeror may propose incentives to reward quality and productivity improvements made under the contract. If proposed as incentives that are distinct from other contract fees or prices, the offeror must be able to demonstrate to the contracting officer's satisfaction that the contractor's performance under the Q/PI plan can be discretely measured and its value is commensurate with the proposed cost or incentive. At the sole discretion of the contracting officer any consideration for the proposed Q/PI plan may be included in the total fee or price of the contract. If the contract will otherwise contain award fee provisions, the offeror shall include in its proposal appropriate award fee criteria designed to encourage and reward the offeror's Q/PI effort. The contractor shall comply with the approved plan during performance of the contract.

(End of clause)

[FR Doc. 90-5778 Filed 3-13-90; 8:45 am]

BILLING CODE 7510-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB31

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the Dwarf Wedge Mussel

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines endangered status for the dwarf wedge mussel (*Alasmidonta heterodon*). This freshwater mussel has declined precipitously over the last one hundred years. Once found in approximately 70 locations in 15 major Atlantic slope drainages from New Brunswick to North Carolina, it is now known from only ten localities. The extant populations occur in the Ashuelot River in Cheshire County, New Hampshire; two reaches of the Connecticut River in Sullivan County, New Hampshire, and Windsor County, Vermont; McIntosh Run in St. Marys County, Maryland; two tributaries of Tuckahoe Creek in Talbot, Queen Annes and Caroline Counties, Maryland; Little River in Johnston County, North Carolina; the Tar River in Granville County, North Carolina; and two Tar River tributaries in Franklin County, North Carolina. All extant populations are small, and probably declining due to continued environmental degradation. Threats include siltation, pollution, agricultural and urban runoff, channelization, land development, road and dam construction. This rule will implement Federal protection provided by the Endangered Species Act of 1973, as amended.

DATES: April 13, 1990.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Annapolis Field Office, U.S. Fish and Wildlife Service, 1825 Virginia Street, Annapolis, Maryland 21401.

FOR FURTHER INFORMATION CONTACT: Mr. G. Andrew Moser at the above address (301/269-5448).

SUPPLEMENTARY INFORMATION:

Background

The dwarf wedge mussel was first described by Lea (1829) as *Unio heterodon;* it was subsequently placed in the genus *Alasmidonta*. The species name *heterodon* refers to the chief distinguishing characteristic of this species, which is the only North American freshwater mussel that consistently has two lateral teeth on the right valve, but only one on the left (Fuller 1977). It is a small mussel whose shell rarely exceeds 1.5 inches in length. The species exhibits strong sexual dimorphism with females showing posterior inflation of the shell to accommodate the marsupial gills.

The dwarf wedge mussel lives on muddy sand, sand, and gravel bottoms in creeks and rivers of varying sizes, in

areas of slow to moderate current and little silt deposition. The most commonly associated freshwater mussels are *Elliptio complanata* and *Alasmidonta undulata*. Other co-occurring mussels include *Strophitus undulatus*, *Anodonta cataracta*, *Elliptio lanceolata*, *Elliptio fisheriana*, and *Lampsilis radiata*.

In the species as a whole, the gravid (egg-laden) females are found from late August to June (Clarke 1981). The host fish, to which the larval mussels attach, has not been determined. *A. heterodon* recently disappeared from New Brunswick waters still supporting a diversity of other mussels, including sensitive species such as *Alasmidonta varicosa*, following construction of a causeway blocking the passage of anadromous fishes. This fact, coupled with the coastal distribution of *A. heterodon*, suggests that the host fish may be an anadromous or catadromous species (Master 1986).

The dwarf wedge mussel was once widely distributed in river systems of the Atlantic slope from New Brunswick, Canada, south to the Neuse River system in North Carolina. It was recorded from 70 localities in 15 drainages in 11 states and one Canadian province (Master 1986). River systems historically inhabited by this species included: the Petitcodiac River system in New Brunswick; the Taunton River, Agawam River, Merrimac River, Connecticut River and Quinnipiac River systems in New England; the Hackensack River, Delaware River, and Susquehanna River systems in the Middle Atlantic states; the Choptank River, Rappahannock River, James River, Tar River and Neuse River systems in the Southeast.

Based on The Nature Conservancy's rangewide status survey (Master 1986) and other recent survey data, *A. heterodon* is now thought to be extirpated from all but ten small sites in five drainages in four states. The extant populations occur in the Ashuelot River in Cheshire County, New Hampshire; two reaches of the Connecticut River in Sullivan County, New Hampshire, and Windsor County, Vermont; McIntosh Run in St. Mary's County, Maryland; two tributaries of Tuckahoe Creek in Talbot, Queen Annes and Caroline Counties, Maryland; Little River in Johnston County, North Carolina; the Tar River in Granville County, North Carolina; and two Tar River tributaries in Franklin County, North Carolina. One population of this mussel occurring in the Fort River in Hampshire County, Massachusetts, considered extant by Master (1986), now appears to be extirpated.

Despite a considerable amount of unionid (freshwater mussel) field work in recent years throughout the range of this species, the few new populations discovered were mostly near previously known populations, attesting both to the coverage of historical field work and to the widespread decline of this species. There may be as few as four viable populations (Ashuelot River, Connecticut River, Tar River and Tuckahoe Creek drainages), each of which occupies a very limited area where they face an uncertain future due to threats of development, pollution, dam and bridge construction, etc. (Master 1986).

In the **Federal Register** of May 22, 1984 (49 FR 21675), the dwarf wedge mussel was included in category 2 of the Service's Review of Invertebrate Wildlife. Category 2 comprises those taxa for which proposed listing is possibly appropriate but for which conclusive data on biological vulnerability are not available to support a proposed rule. Completion of The Nature Conservancy's status survey provided much of the data needed to support a listing proposal. On April 17, 1989, the Service published in the **Federal Register** (54 FR 15236) a proposed rule to list the dwarf wedge mussel as an endangered species.

Summary of Comments and Recommendations

In the April 17, 1989, 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 State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices inviting general public comment were published in The Enterprise (Lexington Park, Maryland), The Times-Record (Denton, Maryland), the News and Observer (Raleigh, North Carolina), the Valley News (White River Junction, Vermont), the Eagle Times (Claremont, New Hampshire), and the Keene Sentinel (Keene, New Hampshire) between April 22 and May 3, 1989. Fifteen comments were received and are discussed below.

Thirteen letters indicating support for the proposal were received from the following sources: Vermont Department of Fish and Wildlife, Massachusetts Division of Fisheries and Wildlife, North Carolina Wildlife Resources Commission, Maryland Forest, Park and Wildlife Service, the Wilmington District of the Army Corps of Engineers, The Nature Conservancy, the Cheshire County Conservation District, the American Fisheries Society, the Concerned Citizens for the Preservation of Little River, researchers at the University of Massachusetts and the Virginia Polytechnic Institute and State University, and one private citizen.

One commentor felt that the dwarf wedge mussel might more appropriately be classified as threatened in light of the number of known populations and the possibility that additional populations may be discovered. The Service agrees that additional small populations of this species may exist. However, the small size of the known populations together with the dramatic decline seen throughout most of this species' range, including the recent population crash in the Ashuelot River, indicate that endangered status is appropriate.

Letters indicating neither support nor opposition to the proposed listing of the dwarf wedge mussel were received from the Director of the Fisheries Research Branch of Canada's Department of Fisheries and Oceans, and the New England Division of the Army Corps of Engineers. Comments supplementing the data presented in the "Background" and "Summary of Factors Affecting the Species" are incorporated in those sections of this final rule.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the dwarf wedge mussel should be classified as an endangered 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 the dwarf wedge mussel (*Alasmidonta heterodon*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Habitat modification has been an important factor in the dramatic reduction in the distribution of this mussel. The damming and channelization of rivers throughout the species' range has resulted in the elimination of much formerly occupied habitat. For example, dams have converted much of the Connecticut River mainstream into a series of impoundments. Immediately upstream from each dam, conditions, including heavy silt deposition and low oxygen

levels, are inimical to mussel species such as the dwarf wedge mussel. Immediately downstream from these dams, daily water level and water temperature fluctuations as a result of intermittent power generation and hypolimnetic discharges are also stressful to mussels. In some areas below dams the river banks have been stabilized and the substrate is no longer suitable for any bivalve species.

Dams may also cause a more subtle influence on this species. The Petitcodiac River in New Brunswick still provides a suitable habitat for other rate, declining, and apparently sensitive mussels such as the brook floater (*Alasmidonta varicosa*), but the dwarf wedge mussel is now absent. In the intervening years since the dwarf wedge mussel was collected in this drainage, a downstream causeway has acted as a dam, blocking access to the dwarf wedge mussel habitat by anadromous fishes. Although the fish host(s) of the dwarf wedge mussel is unknown, the mussel's absence from the Petitcodiac suggests the possible loss of an anadromous or catadromous fish host.

The disappearance of the dwarf wedge mussel from most of its historic sites can best be explained by agricultural, domestic, and industrial pollution of its aquatic habitat. Mussels are known to be sensitive to potassium (a common pollutant associated with paper mills and irrigation return water), zinc, copper, cadmium, and other elements (Havlik and Marking 1987). Pesticides, chlorine, excessive nutrients, and silt carried by agricultural runoff also present a threat to this species.

No mussels survive in several large, undammed sections of the Connecticut and Delaware River drainages where water pollution has exerted a heavy toll on the benthic fauna. Even where water quality has improved, as in the lower Connecticut River, chemicals trapped in the sediments inhabited by mussels may impede the recovery of sensitive species (Master 1986).

One of the largest known remaining populations of the dwarf wedge mussel occurs where the Ashuelot River meanders through a golf course. This population has undergone a dramatic decline over the last five years. The continuing decline of the dwarf wedge mussel at this site, particularly downstream of the golf course, may well be attributed to fungicides, herbicides, insecticides, and fertilizers applied to the golf course and to agricultural runoff from abutting corn fields and pastures (Master 1986).

Pollutants may also affect the mussels indirectly; nitrogen and phosphorus input cause organic enrichment and, if extreme, oxygen depletion. Acid rain may mobilize toxic metals and lead to decreased alkalinity which is inimical to most mussels. Increased acidity appears to have contributed to the recent decline of the dwarf wedge mussel in the Fort River in Massachusetts (D. Smith, Univ. of Massachusetts Museum of Zoology, pers. comm.).

Erosion and siltation resulting from land clearing and grading and construction of bridges, roads, and other structures may be especially damaging to the dwarf wedge mussel's habitat. For instance, in Massachusetts, a dwarf wedge mussel population was decimated in one small stream when "the construction of a small bridge resulted in accelerated sedimentation and erosion which buried and killed many of the bivalves" (Smith 1981).

Paradoxically, some bank erosion control measures such as riprapping may also adversely affect the species. A significant portion of one of the extant Connecticut River populations was eliminated in 1987 by burial under rock riprap placed along the shore of a Vermont state park (F. Brackley, New Hampshire Natural Heritage Inventory, pers. comm.).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Although collection was probably an insignificant factor in the species' decline, it is a serious threat to the few remaining populations. These populations are vulnerable because of their small size and because the entire population may occur in a few hundred years of stream length. Furthermore, because of its rarity and unusual shell anatomy, the species is sought by collectors.

C. *Disease or predation.* Although the dwarf wedge mussel is presumably utilized for food by mammals such as, mink, muskrat, and raccoon, predation is not thought to be a significant factor in the decline of this species.

D. *The inadequacy of existing regulatory mechanisms.* The dwarf wedge mussel is listed as a State endangered species in Maryland, Massachusetts, New Hampshire, and Vermont; North Carolina has included this mussel on their proposed list of endangered and threatened species. Although State listing provide limited protection against taking, in most of these states they provide little or no protection of habitat. They will not be adequate to prevent the species' further decline.

E. *Other natural or manmade factors affecting its continued existence.* The dwarf wedge mussel is threatened by its limited distribution and low numbers. Most of the sites where this species occurs are isolated from each other. This creates isolated gene pools that are vulnerable to loss of genetic variability. Furthermore, because this species, like all freshwater mussels, depends on water currents to transport gametes from one individual to another, its reduced numbers and population densities decrease the likehihood of successful reproduction.

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 the dwarf wedge mussel as an endangered species. This species has been extirpated from most of the localities from which it was known historically. The small size and very limited geographic extent of each of this mussel's remaining populations makes them extremely vulnerable to extirpation. Any of these small populations could be eliminated by a single catastrophic event such as a chemical spill; several face imminent threats from dam construction, bridge construction, or channelization. Threatened status would therefore not be appropriate. Critical habitat is not designated for the reasons given 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 a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for the dwarf wedge mussel at this time. This rare and unusual mussel is sought after by amateur and scientific collectors. Its occurrence in small, localized populations makes this species particularly vulnerable to overcollecting. Because of this, the Service believes a detailed description of the species' habitat, required as part of any critical habitat designation, could increase the species' vulnerability to illegal taking and increase law enforcement problems. Therefore, it would not be prudent to designate critical habitat for this species. Doing so would draw attention to the dwarf wedge mussel and risk depletion of its already limited populations.

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 local governments 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. Such actions are initiated by the Service following listing. Some actions may be initiated prior to listing, circumstances permitting. Recovery actions that may be beneficial to the dwarf wedge mussel include:

(1) Determination of the host fish(es);

(2) Determination of the species' sensitivities to various pollutants and water quality factors;

(3) Controlling pollution and runoff from adjacent and upstream areas of the watersheds inhabited by the mussel;

(4) Monitoring of all remaining populations of the species;

(5) Establishing conservation easements along selected river and stream corridors;

(6) Transplants of the species to unoccupied historical sites having appropriate substrate and water quality conditions.

The protection required of 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)(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.

Federal activities that could impact the dwarf wedge mussel include, but are not limited to the following: Road, bridge and dam construction; stream channelization; permits for effluent discharges and stream alterations; licensing of hydroelectric facilities; and registration of pesticides. One specific project having Federal involvement which could impact the species has been identified. This project involves the construction of a new bridge crossing for Maryland Route 404 over a tributary of Tuckahoe Creek in Maryland. The Service has conferred with the Maryland State Highway Administration regarding methods to minimize impacts of this proposed project on the dwarf wedge mussel.

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, 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 endangered fish or wildlife species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions would 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.

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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Smith, D. 1981. Selected Freshwater Invertebrates Proposed for Special Concern Status in Massachusetts (Mollusca, Annelida, Arthropoda). Massachusetts Department of Environmental Quality Engineering, Division of Water Pollution Control. 26 pp.

Author

The primary author of this rule is G. Andrew Moser, Annapolis Field Office, U.S. Fish and Wildlife Service, 1825 Virginia Street, Annapolis, Maryland 21401 (301/269–5448).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Fish, Marine mammals, Plants (agriculture).

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. 1531–1543; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order under "CLAMS," 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						
CLAMS							
*	*	*	*	*	*		
Mussel, dwarf wedge	*Alasmidonta heterodon*	U.S.A. (CT, DC, DE, MA, MD, NC, NH, NJ, PA, VA, VT), Canada (NB).	NA	E	376	NA	NA
*	*	*	*	*	*		

Dated: February 15, 1990.

Knute Knudson, Jr.,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 90-5833 Filed 3-13-90; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 656

[Docket No. 900246-0065]

Termination of the Federal Moratorium on Striped Bass Fishing in Coastal Waters of New Jersey

AGENCIES: National Marine Fisheries Service (NMFS), NOAA, Commerce, and U.S. Fish and Wildlife Service (FWS), Interior.

ACTION: Final rule.

SUMMARY: The Secretary of Commerce and the Secretary of the Interior (Secretaries), pursuant to the Atlantic Striped Bass Conservation Act, announce termination of the Federal moratorium on striped bass fishing in the coastal waters of New Jersey, effective March 6, 1990. The moratorium ended upon notification to the Secretaries from the Atlantic States Marine Fisheries Commission (Commission) that New Jersey striped bass regulations now comply with the provisions of the Commission's Interstate Fisheries Management Plan for Striped Bass (Plan). New Jersey enacted a 28-inch minimum-size limit and a one fish per angler daily bag limit, effective March 6, 1990. These regulations protect the Atlantic coast stocks of striped bass during their continuing recovery and are consistent with regulations in effect in other coastal States. The Secretaries also announce that the regulations at 50 CFR part 656 are removed; part 656 is reserved for future use.

EFFECTIVE DATE: The moratorium terminated effective March 6, 1990, and part 656 is removed effective March 6, 1990.

FOR FURTHER INFORMATION CONTACT: Richard H. Schaefer, Director, Office of Fisheries Conservation and Management, NOAA/NMFS, 1335 East-West Highway, Silver Spring, MD 20910, telephone (301) 427-2334, or Gary Edwards, Assistant Director—Fisheries, FWS, Interior Building, 18th and C Streets NW., Washington, DC 20240, telephone (202) 343-6934.

SUPPLEMENTARY INFORMATION:

Background

The Atlantic Striped Bass Conservation Act (Act), 16 U.S.C. 1851 note, as amended, was enacted in response to the depleted condition of the Atlantic coastal migratory stocks of striped bass. The major purpose of the Act is to support and encourage the development, implementation, and enforcement of effective interstate action for the conservation and management of Atlantic striped bass.

Section 4(a)(1) of the Act requires the Commission to determine whether each coastal State has adopted all regulatory measures necessary to implement fully the Plan in its coastal waters. Further, section 4(a)(2) requires the Commission to notify the Secretaries immediately of each negative determination made under section 4(a)(1). Section 4(b) of the Act specifies that after notification by the Commission that a coastal State has not taken the actions described in section 4(a)(1), the Secretaries shall determine jointly, within 30 days, whether that State is in compliance. If that State is found not to be in compliance, the Secretaries shall declare jointly a moratorium on fishing for Atlantic striped bass within the coastal waters of that State. In making such a determination, the Secretaries shall carefully consider and review the comments of the Commission and the State in question.

Section 5(a)(2) of the Act provides that a moratorium imposed under section 4(a)(1) ends on the day upon which the Commission notifies the Secretaries that the State has taken appropriate remedial action by implementing regulations that are compatible with the Plan.

Activities Pursuant to the Act

Based on all available information, including State of New Jersey and Commission comments, the Secretaries jointly determined on February 6, 1990, that the State of New Jersey was not in compliance with the Plan. The Secretaries notified the Governor of New Jersey by letter dated February 6, 1990, to implement appropriate regulations. Failing that, the Secretaries gave notice of their intent to declare a moratorium effective March 1, 1990. The Secretaries' determination was published in the **Federal Register** on February 28, 1990 (55 FR 6302).

The New Jersey legislature was unable to enact appropriate legislation by February 28, 1990; thus, on that date, New Jersey remained out of compliance with the Plan. The Secretaries jointly declared a moratorium on striped bass fishing in the coastal waters of the State of New Jersey effective at 0001 local time on March 1, 1990. The Governor of New Jersey was notified of this declaration by letter from the Secretaries dated February 28, 1990; the Secretaries also filed their declaration of the moratorium, and implementing regulations, with the Office of the Federal Register on March 1, 1990. They appeared in the **Federal Register** on March 6, 1990 (55 FR 7900).

Termination of Moratorium

The Commission notified the Secretaries by letter dated March 6, 1990, that New Jersey had enacted by legislation a 28-inch minimum-size limit and a one fish per angler daily bag limit, effective March 6, 1990. Based on these regulations, the letter stated the Commission's determination that New Jersey was in compliance with the Plan. Pursuant to the Act, the moratorium terminated by operation of law on March 6, 1990. Consequently, the regulations at 50 CFR part 656 are

removed and part 656 is reserved for future use.

Classification

The Secretaries have determined that this rule is consistent with the Atlantic Striped Bass Conservation Act and other applicable law.

Section 5(a)(2) of the Act requires that the moratorium period end the day on which the Commission notifies the Secretaries that the State has taken appropriate remedial action. Thus, advance notice and opportunity to comment on whether the moratorium should be terminated are unnecessary, under 5 U.S.C. 553(b)(B). Similarly, and because this rule relieves a restriction under 5 U.S.C. 553(d)(1), it is unnecessary to delay for 30 days the termination date of the moratorium.

The Secretaries have determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management program of New Jersey. This determination has been submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act.

The Act does not permit review of this termination for consistency with the requirements of section 2 of Executive Order 12291.

The Act mandates the termination of a moratorium following the Commission's determination. This mandate takes precedence over the requirements of the National Environmental Policy Act.

This rule does not contain a collection-of-information requirement and, therefore, is not subject to the provisions of the Paperwork Reduction Act.

This rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is issued without opportunity for prior comment.

This rule implements a nondiscretionary action by the Secretaries and, thus, is not subject to the provisions of Executive Order 12612.

List of Subjects in 50 CFR Part 656

Fishing, Fisheries.

Authority: 16 U.S.C. 1851 note.

Dated: March 7, 1990.

Constance B. Harriman,

Assistant Secretary of the Interior for Fish and Wildlife and Parks, Department of the Interior.

Gray Castle,

Deputy Under Secretary for Oceans and Atmosphere, Department of Commerce.

For the reasons set forth in the preamble, 50 CFR chapter VI is amended as follows:

PART 656—[REMOVED AND RESERVED]

Part 656 is removed and reserved.

[FR Doc. 90-5756 Filed 3-13-90; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 55, No. 50
Wednesday, March 14, 1990

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 907 and 908

[FV-89-067 PR]

Navel Oranges Grown in Arizona and Designated Part of California; Valencia Oranges Grown in Arizona and Designated Part of California; Revision of the Administrative Rules and Regulations on By-Product Oranges

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise administrative rules and regulations under the California-Arizona navel and Valencia orange marketing orders which exempt the handling of navel and Valencia oranges for processing into by-products from volume regulations and assessment obligations under these orders. This action was recommended by the Navel and Valencia Orange Administrative Committees (committees), which are responsible for local administration of the orders. The proposal would: Define the term "processing into by-products;" allow approved by-products manufacturers (processors) to sell up to 5 percent of their by-product oranges, other than by-product oranges used for animal feeding, at the retail level; add authority for the committees to perform an initial and periodic inspections of by-products manufacturers' premises; add additional criteria by which a by-products manufacturer could be suspended or removed from the committees' approved lists of by-products manufacturers; and require by-products manufacturers to submit additional information on their operations to the committees. The proposed changes would assist committees' compliance personnel in determining if processor's by-products operations are in accord with the by-products exemption.

DATES: Comments must be received by April 13, 1990.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Marketing Order Administration Branch (MOAB), Fruit and Vegetable Division (F&V), Agricultural Marketing Service (AMS), United States Department of Agriculture (USDA), room 2525-S, P.O. Box 96456, Washington, DC 20090-6456. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Jacquelyn R. Schlatter, Marketing Specialist, MOAB, F&V, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 447-8139.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Order Nos. 907 and 908 (7 CFR parts 907 and 908), as amended, regulating the handling of navel and Valencia oranges grown in Arizona and designated parts of California. These orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

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

There are approximately 123 handlers of navel oranges and 115 handlers of Valencia oranges subject to regulation under their respective orders and approximately 4,065 producers of navel oranges and 3,500 producers of Valencia oranges in California and Arizona. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts for the last three fiscal years of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less then $3,500,000. The majority of California-Arizona navel and Valencia orange producers and handlers may be classified as small entities. In addition, there are approximately 45 by-products manufacturers which would be affected by this rule. The majority of these by-products manufacturers may be classified as small entities.

It is estimated that approximately 30 applicants per week during the navel and Valencia orange marketing seasons would complete the new reporting requirements included in this proposed rule. In addition, it would take approximately 0.33 hour for each respondent to complete the new reporting requirements.

In compliance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the information collection and reporting provisions that are included in this proposed rule have been approved by the Office of Management and Budget (OMB) and assigned OMB Control Nos. 0581-0116 (navel oranges) and 0581-0121 (Valencia oranges).

This proposed rule invites comments on changes to the rules and regulations of the navel and Valencia orange marketing orders. The proposed changes would define the term "processing into by-products;" allow approved by-products manufacturers (processors) to sell up to 5 percent of their by-product oranges, other than by-product oranges used as animal feed, at the retail level; add authority for the committees to perform initial and periodic inspections of by-products manufacturers' premises; add additional bases upon which a by-products manufacturer could be suspended or removed from the committees' approved lists of by-products manufacturers; and require by-products manufacturers to submit additional information on their operations to the committees.

Sections 907.67 and 908.67 of the navel and Valencia orange marketing orders,

respectively, exempt the handling of oranges from certain regulations for specified purposes, including the handling of oranges to commercial processors for processing into products including juice. For example, the handling of such oranges is not subject to volume regulations or assessments. These sections also authorize the committees to review and prescribe, with the approval of the Secretary, rules, regulations, and safeguards they deem necessary to prevent oranges shipped into by-product channels from entering into fresh fruit channels.

Sections 907.131 and 908.131 of the rules and regulations of the orders describe procedures whereby by-products manufacturers may apply for inclusion on the committees' approved lists of by-products manufacturers, the methods whereby the committees approve processors' applications, the terms under which an approved by-products manufacturer could be removed or suspended from the approved lists, and forms used by the by-products manufacturers and handlers to report the quantity of navel or Valencia oranges diverted to by-products and other pertinent information.

Processors wishing to be included on the committees' approved lists of by-products manufacturers supply information on their applications. In order to remain on the committees' approved lists, processors are required to submit information to the committees concerning the source of the navel or Valencia oranges received and the quantity of by-products produced.

Sections 907.131 and 908.131 currently do not contain a definition of what "processing into by-products" includes. This exemption has been applied to fruit which has been subjected to such processes as juicing, freezing, canning, dehydrating, pulping, or heating as well as fruit used for animal feed. However, recent trends in the California-Arizona orange industries have caused some confusion among handlers and processors as to what other activities processing could include.

For example, a change in food service trends has occurred in which oranges are being sliced, diced, or peeled for use in food service industries. Such navel or Valencia oranges in the past have been considered exempt under the by-product exemption; that is, handlers could handle such oranges to processors without paying assessments on the oranges, and there was no limitation on the amount they could handle to a processor.

The committees recommended that the term "processing into by-products" be clearly defined to reflect current industry practices. By-products would thus be defined as products of navel or Valencia oranges which are altered in form through such means as freezing, canning, dehydrating, pulping, slicing, dicing, peeling, juicing, or heating as well as oranges used as animal feed.

The proposed addition of a definition of by-products would also assist the committees' compliance personnel in determining if a processor's by-products operations were in accord with the by-products exemption in the rules and regulations of the navel and Valencia orange marketing orders. Therefore, this proposed rule would revise §§ 907.131(a) and 908.131(a) to include a definition of by-products.

The current procedures for applying for approved by-products manufacturer status and for suspension of such status are found in §§ 907.131 and 908.131 of the rules and regulations. Specifically, paragraph (b)(1) of §§ 907.131 and 908.131 of the rules and regulations of the navel and Valencia orange marketing orders currently require persons applying to be on the committees' approved lists of by-products manufacturers to submit to the committees an application on N.O.A.C./V.O.A.C. Forms No. 14. These forms include the name and address of the applicant; the proposed type of by-product(s) to be made or derived from oranges; the approximate quantity of oranges to be used annually; a description of the by-product(s) to be manufactured, the equipment to be used in manufacturing such by-products and the capacity per hour thereof; the intended disposition of unused components of the oranges; a statement describing the manner in which the by-product(s) will be sold, whether at the wholesale or retail level, or both; a statement whether orange juice will be pasteurized and, if so, a description of the manner in which such pasteurization will be accomplished; the location of the plant(s); a statement that the exempt oranges acquired will be used for by-products manufacturing only and will not be resold or disposed of in fresh fruit channels; and an agreement to submit such report as may be required by the committees.

Paragraph (b)(2) of §§ 907.131 and 908.131 explains the criteria for approving a processor's application. The application is referred to the committees' Compliance Departments for investigation, and the results of the investigation are reported to the committes. The committee approves the application if, in its opinion, the applicant's principal occupation is manufacturing food by-products, including orange by-products, except in the case of those applicants providing oranges or by-products for animal feeding purposes; all orange by-products, incuding juice, will be sold at the wholesale level only or will be used for animal feed; the applicant agrees to submit such reports as may be required by the committees; the oranges obtained under this exemption will not be resold or disposed of in fresh fruit channels; and approval of the application will not be contrary to the purposes of the navel or Valencia orange marketing orders.

Paragraph (b)(3) of §§ 907.131 and 908.131 currently lists four criteria for removing or suspending a by-products manufacturer from the approved lists. These criteria are: Failure to commercially process navel or Valencia oranges into by-products for a period of one year or more; selling or otherwise disposing of any navel or Valencia orange by-product(s) manufactured from navel or Valencia oranges at the retail level other than for animal feeding; selling or otherwise disposing of oranges obtained under this exemption in fresh fruit channels; or failing or refusing to submit reports required by the committees.

The proposed changes in the application for approved by-products manufacturer status and the suspension or removal of such by-products manufacturers from the approved list of by-products manufacturers are as follows.

The committees recommended revising paragraph (b)(1)(vi) of §§ 907.131 and 908.131 of the rules and regulations of the navel and Valencia orange marketing orders, respectively, to require processors to include on their applications a projection of the percentage of by-products which would be sold in each outlet, wholesale or retail. In addition, paragraph (b)(2)(ii) of §§ 907.131 and 908.131 would be revised to include a provision that by-products manufacturers may sell up to 5 percent of their by-products, other than those used for animal feed, at the retail level. These revisions would provide an opportunity for by-products manufacturers to sell by-product oranges at the retail level and still qualify for placement on the committees' approved lists of by-products manufacturers. There would continue to be no limit on the amount of by-products which could be sold at retail for use as animal feed. Further, miscellaneous changes to paragraph (b)(2) of §§ 907.131 and 908.131 are proposed for clarity.

Currently, §§ 907.131 and 908.131 do not provide explicit authority for the

performance of initial and periodic inspections of the by-products manufacturers' facilities. An initial inspection of the processor's facilities is necessary to ensure that the processor has the necessary equipment to process navel or Valencia oranges and that oranges shipped under the by-product exemption are not entering the fresh fruit market. Periodic inspections of the by-product manufacturer's premises would allow the committees to be assured that the processor is operating as an approved by-products manufacturer.

Thus, the committees recommended that authority to perform initial and periodic inspections of by-products manufacturers' premises be added to the requirements for approval as an authorized by-products manufacturer. This addition would aid the committees in ensuring that processors on the committees' approved lists of by-products manufacturers are in compliance with the rules and regulations of the navel and Valencia orange marketing orders.

It is therfore proposed that paragraphs (b)(1), (b)(2) and (b)(3) of §§ 907.131 and 908.131 of the rules and regulations of the navel and Valencia orange marketing orders, respectively, be revised. The revision would add authority for the performance of initial and periodic inspections of the by-product manufacturers's premises immediately upon request at any time during reasonable business hours of the processor.

Paragraph (b)(3) of §§ 907.131 and 908.131 is proposed to be further revised by adding additional bases upon which a processor could be suspended or removed from the list of approved by-products manufacturers. The additional bases would include: Selling or disposing of more than 5 percent of navel or Valencia orange by-products, other than by-products used as animal feed, at the retail level; failing to permit inspection of premises; failing to disclose the origin of all oranges that are acquired by timely submitting copies of new N.O.A.C./V.O.A.C. Forms No. 38 to the appropriate committee; and failing to confirm receipt of navel or Valencia oranges obtained under the by-products exemption by submitting a copy of N.O.A.C./V.O.A.C. Forms No. 15 to the approriate committee. These additional criteria would help the committees determine processors' compliance with the by-products requirements in the rules and regulations of the orders.

Paragraph (c) of §§ 907.131 and 908.131 of the rules and regulations of the navel and Valencia orange marketing orders, respectively, currently require approved by-product manufacturers to submit to the committees, upon request, on or before the tenth day of the month, a report of the navel or Valencia oranges used during the preceding calendar month. The committees have indicated that this procedure does not provide sufficient information to allow the committees to determine whether the by-products manufacturer is in compliance with the orders and their rules and regulations.

Therefore, the proposal would revise paragraph (c) of §§ 907.131 and 908.131 to require processors to submit new N.O.A.C./V.O.A.C. Forms No. 38 to the appropriate committees on a weekly basis no later than 72 hours following the end of the period covered by the report. These forms would be required during each crop year from the date on which oranges are first received for processing through the final date of processing for such crop year. The new report would contain information as to the quantity and source of production area and non-production area navel or Valencia oranges, e.g., California, Arizona, Texas, Florida, received for processing and a list of the different types of by-products manufactured, including the quantity of such whole navel or Valencia oranges used to produce each by-product, and the quantity of by-product produced.

The additional information would aid the committees in ensuring that California-Arizona navel and Valencia oranges exempted under the by-products exemption do not enter the fresh fruit market. Comparison of the total amount of oranges received by processors and the total amount of by-products manufactured would give the committees a method to verify that all oranges received were manufactured into by-products.

Therefore, paragraph (c) of §§ 907.131 and 908.131 would be revised to include the submission of a new report, N.O.A.C./V.O.A.C. Forms No. 38, by processors to the appropriate committee.

Finally, the Department is proposing revisions to §§ 907.131 and 908.131 of the rules and regulations of the navel and Valencia orange marketing orders to provide gender neutral language.

Based on available information, the Administrator of the AMS has determined that issuance of this proposed rule would not have a significant economic impact on a substantial number of small entities.

List of Subjects in

7 CFR Part 907

Marketing agreements, Oranges, and Reporting and recordkeeping requirements.

7 CFR Part 908

Marketing agreements, Oranges, and Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR parts 907 and 908 are proposed to be amended as follows:

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

1. The authority citation for 7 CFR parts 907 and 908 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Subpart—Rules and Regulations

2. Section 907.131 is revised to read as follows:

§ 907.131 By-product oranges.

(a) *Notice to committee.* No person shall handle oranges for commercial processing into by-products unless (1) such oranges are, or have been, handled pursuant to an alloment therefor; or (2) the processor is an approved by-products manufacturer, as prescribed in paragraph (b) of this section. For the purposes of this section, "processing into by-products" means that the orange is altered in form through such means as freezing, canning, dehydrating, pulping, slicing, dicing, peeling, juicing, or heating of the product, or is used for animal feeding purposes.

(b) *Approved by-products manufacturer.* (1) Any person who desires to acquire oranges as an approved by-products manufacturer for commercial processing into by-products exempt from regulation pursuant to § 907.67(b) must first apply to and obtain approval from the committee. Applicants for such exemption shall submit to the committee an application on N.O.A.C. Form No. 14 containing the following information: (i) The name and address of applicant; (ii) the proposed type of by-product(s) to be made or derived from oranges; (iii) the approximate quantity of oranges to be used annually; (iv) a description of the by-product(s) to be manufactured, the equipment to be used in manufacturing such by-products, and the capacity per hour thereof; (v) the intended disposition of unused components of the oranges; (vi) a statement describing the manner in which the by-product(s) will be sold,

whether at wholesale, retail, or both, with a projection of the percentages to be sold in each outlet; (vii) a statement whether orange juice will be pasteurized and, if so, a description of the manner in which such pasteurization will be accomplished; (viii) the location of the plant(s); (ix) a statement that the oranges acquired will be used for by-products manufacturing only and will not be resold or disposed of in fresh fruit channels; (x) an agreement to submit such reports as may be required by the committee; and (xi) an agreement to allow inspection of the by-products manufacturers' facilities immediately upon request during reasonable business hours.

(2) Such applicant shall be referred to the committee's Compliance Department for investigation, which includes an inspection of the by-products manufacturers' facilities, and reported to the committee. The committee shall approve the application if it determines that: (i) The applicant's principal occupation is manufacturing food by-products, including orange by-products, or providing oranges or by-products for animal feeding purposes; (ii) all orange by-products, other than by-products used for animal feeding, will be sold at wholesale except that not more than 5 percent of such by-product sales shall result from retail sales; (iii) the applicant has agreed to submit such reports as may be required by the committee; (iv) the applicant has agreed to permit inspections of all facilities immediately upon request during reasonable business hours; (v) the oranges obtained under this exemption will not be resold or disposed of in fresh fruit channels; and (vi) approval of the application will not be contrary to the purposes of this act. If an application is denied, the committee shall within a reasonable time inform the applicant in writing of the facts and reasons therefor, and afford the applicant an opportunity, either orally or in writing, to present opposing facts and reasons. If the application is approved, the applicant's name shall be placed on the list of approved by-products manufacturers. The applicant shall be informed of the committee's determination in a timely manner.

(3) A commercial processor on the list of approved by-products manufacturers who: (i) Fails to commercially process oranges into by-products for a period of one year or more; (ii) sells or otherwise disposes of more than 5 percent of orange by-products, other than by-products used for animal feeding, at the retail level; (iii) sells or otherwise disposes of oranges obtained under this exemption in fresh fruit channels; (iv) fails to permit inspection of facilities immediately upon request, during reasonable business hours; (v) fails to disclose the origin of all oranges that are acquired by timely submitting N.O.A.C. Form No. 38; (vi) fails to confirm receipt of oranges obtained under this exemption by submitting copies of N.O.A.C. Form No. 15 with the actual net weight or number of cartons received recorded thereon; or (vii) fails or refuses to submit such other reports required by the committee, may be determined by the committee to be ineligible to acquire oranges under this exemption, and the committee may suspend or remove its name from the list of approved by-products manufacturers for such time as the committee deems appropriate under the circumstances. Prior to making such determination, the committee shall give the processor reasonable advance notice in writing of its intention and the facts and reasons therefor and afford the processor an opportunity, either orally or in writing, to present opposing facts and reasons. After a processor's name has been removed from the list of approved by-products manufacturers, it must submit a new application and secure approval of the committee in order to acquire oranges pursuant to § 907.67(b).

(c) *Certification by by-products manufacturers.* During each crop year, from the date on which oranges are first received for processing through the final date of processing for such crop year, each approved by-products manufacturer shall submit, on N.O.A.C. Form No. 38, a report of its operations during the reporting period. Such report shall contain information as to the quantity and source of oranges including any oranges grown outside of the production area received for processing and as to the quantity of each type of by-product produced from such oranges. The report shall be submitted weekly. It shall be submitted to the committee no later than seventy-two (72) hours following the end of the period covered by the report with each reporting period ending on a Thursday. Each report shall contain a certification to the United States Department of Agriculture and to the committee as to the truthfulness of the information therein.

(d) *Orange diversion report.* Each handler shall, with respect to each quantity of oranges diverted for commercial processing into by-products to charitable organizations, or eliminated from the channels of human consumption, report to the committee, on N.O.A.C. Form No. 15: (1) The name and address of the by-products plant or charitable organization to which the oranges were diverted; (2) the district in which the oranges were produced; (3) the respective quantities of oranges in terms of the number of cartons (i) diverted to by-products, (ii) diverted to charitable organizations, and (iii) eliminated; (4) the net weight of such oranges; and (5) if oranges were eliminated, the place and means of elimination. This report shall be prepared in quadruplicate. One copy signed by the handler shall be submitted to the committee promptly upon the diversion or elimination of the oranges covered thereby. One copy may be retained by the handler, and two copies shall be forwarded by the handler to the by-products manufacturer or charitable organization with the understanding that the by-product manufacturer or charitable organization will record, on one copy thereof, the actual net weight or number of cartons of oranges received, and forward such copy to the committee.

PART 908—VALENCIA ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

Subpart—Rules and Regulations

3. Section 908.131 is revised to read as follows:

§ 908.131 By-product oranges.

(a) *Notice to committee.* No person shall handle oranges for commercial processing into by-products unless (1) such oranges are, or have been, handled pursuant to an allotment therefor; or (2) the processor is an approved by-products manufacturer, as prescribed in paragraph (b) of this section. For the purposes of this section, "processing into by-products" means that the orange is altered in form through such means as freezing, canning, dehydrating, pulping, slicing, dicing, peeling, juicing, or heating of the product, or is used for animal feeding purposes.

(b) *Approved by-products manufacturer.* (1) Any person who desires to acquire oranges as an approved by-products manufacturer for commercial processing into by-products exempt from regulation pursuant to § 908.67(b) must first apply to and obtain approval from the committee. Applicants for such exemption shall submit to the committee an application on V.O.A.C. Form No. 14 containing the following information: (i) The name and address of applicant; (ii) the proposed type of by-product(s) to be made or derived from oranges; (iii) the approximate quantity of oranges to be used annually; (iv) a description of the by-product(s) to be manufactured, the

equipment to be used in manufacturing such by-products, and the capacity per hour thereof; (v) the intended disposition of unused components of the orages; (vi) a statement describing the manner in which the by-product(s) will be sold, whether at wholesale, retail, or both, with a projection of the percentages to be sold in each outlet; (vii) a statement whether orange juice will be pasteurized and, if so, a description of the manner in which such pasteurization will be accomplished; (viii) the location of the plant(s); (ix) a statement that the oranges acquired will be used for by-products manufacturing only and will not be resold or disposed of in fresh fruit channels; (x) an agreement to submit such reports as may be required by the committee; and (xi) an agreement to allow inspection of the by-products manufacturers' facilities immediately upon request during reasonable business hours.

(2) Such application shall be referred to the committee's Compliance Department for investigation, which includes an inspection of the by-products manufacturers facilities, and reported to the committee. The committee shall approve the application if it determines that: (i) The applicant's principal occupation is manufacturing food by-products, including orange by-products, or providing oranges or by-products for animal feeding purposes; (ii) all orange by-products, other than by-products used for animal feeding, will be sold at wholesale except that not more than 5 percent of such by-product sales shall result from retail sales; (iii) the applicant has agreed to submit such reports as may be required by the committee; (iv) the applicant has agreed to permit inspections of all facilities immediately upon request during reasonable business hours; (v) the oranges obtained under this exemption will not be resold or disposed of in fresh fruit channels; and (vi) approval of the application will not be contrary to the purposes of this part. If an application is denied, the committee shall within a reasonable time inform the applicant in writing of the facts and reasons therefore, and afford the applicant an opportunity, either orally or in writing, to present opposing facts and reasons. If the application is approved, the applicant's name shall be placed on the list of approved by-products manufacturers. The applicant shall be informed of the committee's determination in a timely manner.

(3) A commercial processor on the list of approved by-products manufacturers who: (i) Fails to commercially process oranges into by-products for a period of one year or more; (ii) sells or otherwise disposes of more than 5 percent of orange by-products, other than by-products used for animal feeding, at the retail level; (iii) sells or therwise disposes of oranges obtained under this exemption in fresh fruit channels; (iv) fails to permit inspection of facilities immediately upon request, during reasonable business hours; (v) fails to disclose the origin of all oranges that are acquired by timely submitting V.O.A.C. Form No. 38; (vi) fails to confirm receipt of oranges obtained under this exemption by submitting copies of V.O.A.C. Form No. 15 with the actual net weight or number of cartons received recorded thereon; or (vii) fails or refuses to submit such other reports required by the committee; may be determined by the committee to be ineligible to acquire oranges under this exemption, and the committee may suspend or remove its name from the list of approved by-products manufacturers for such time as the committee deems appropriate under the circumstances. Prior to making such determination, the committee shall give the processor reasonable advance notice in wirting of its intention and the facts and reasons therefore and afford the processor an opportunity, either orally or in writing, to present opposing facts and reasons. After a processor's name has been removed from the list of approved by-products manufacturers, it must submit a new application and secure approval of the committee in order to acquire oranges pursuant to § 908.67(b).

(c) *Certification by by-products manufacturers.* During each crop year, from the date on which oranges are first received for processing through the final date of processing for such crop year, each approved by-products manufacturer shall submit, on V.O.A.C. Form No. 38, a report of its operations during the reporting period. Such report shall contain information as to the quantity and source of oranges received for processing and as to the quantity of each type of by-product produced. The report shall be submitted weekly. It shall be submitted to the committee no later than seventy-two (72) hours following the end of the period covered by the report with each reporting period ending on a Thursday. Each report shall contain a certification to the United States Department of Agriculture and to the committee as to the truthfulness of the information therein.

(d) *Orange diversion report.* Each handler shall, with respect to each quantity of oranges diverted for commercial processing into by-products to charitable organizations, or eliminated from the channels of human consumption, report to the committee, on V.O.A.C. Form No. 15: (1) The name and address of the by-products plant or charitable organization to which the oranges were diverted; (2) the district in which the oranges were produced; (3) the respective quantities of oranges in terms of the number of cartons (i) diverted to by-products, (ii) diverted to charitable organizations, and (iii) eliminated; (4) the net weight of such oranges; and (5) if oranges were eliminated, the place and means of elimination. This report shall be prepared in quadruplicate. One copy signed by the handler shall be submitted to the committee promptly upon the diversion or elimination of the oranges covered thereby. One copy may be retained by the handler, and two copies shall be forwarded by the handler to the by-products manufacturer or charitable organization with the understanding that the by-product manufacturer or charitable organization will record, on one copy thereof, the actual net weight or number of cartons of oranges received, and forward such copy to the committee.

Dated: March 9, 1990.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 90 5858 Filed 3–13–90; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 981

[AMS-FV-89-118PR]

Almonds Grown in California; Changes to the Administrative Rules and Regulations Concerning Crediting for Marketing Promotion and Paid Advertising Expenditures

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule invites comments on a proposal to revise the administrative rules and regulations established under the Federal marketing order for California almonds. The proposal is to make several changes to rules and regulations which establish conditions under which handlers may receive credit against their assessments for their own brand or generic advertising and promotion activities. The changes would: (1) Allow handlers credit for in-store supermarket advertisements using light emitting diode (LED) signs; (2) relax restrictions

under which handlers may receive credit for in-store supermarket advertisements using fixed position media; (3) require handlers wishing to receive credit for unreimbursed advertising expenditures in foreign markets pursuant to a contract with the Foreign Agriculture Service (FAS) or the California Department of Food and Agriculture (CDFA) to provide the Almond Board of California (Board) with a certification and supporting documentation that such handlers will not be reimbursed for such advertising by one of those organizations; (4) allow handlers credit for brand advertising in all foreign countries where California almonds are sold, when substantiated by applicable rate cards, rather than only in certain specified foreign countries as is currently authorized; and (5) increase the credit for certain mail order promotion costs from $25,000 to 25 percent of a handler's annual creditable obligation or $25,000, whichever is greater. This action is based on a recommendation of the Board, which is responsible for local administration of the order, and other available information.

DATES: Comments must be received by April 13, 1990.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2525-S, P.O. Box 96456, Washington, DC 20090-6456. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Allen Belden, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 475-3923.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under marketing agreement and Order No. 981 (7 CFR part 981), both as amended, hereinafter referred to as the "order," regulating the handling of almonds grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act. This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

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

There are approximately 95 handlers of almonds who are subject to regulation under the almond marketing order and approximately 7,000 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of handlers and producers of California almonds may be classified as small entities.

This action proposes to provide handlers of California almonds with several additional opportunities to receive credit against the creditable portion of their annual assessments under the order. The action would: (1) Allow handlers credit for in-store supermarket advertisements using LED signs; (2) relax restrictions under which handlers may receive credit for in-store supermarket advertisements using fixed position media; (3) allow handlers credit for brand advertising in all foreign countries where California almonds are sold, when substantiated by applicable rate cards, rather than only in certain specified foreign countries as is currently authorized; and (4) increase the credit for certain mail order promotion costs from $25,000 to 25 percent of a handler's annual creditable assessment obligation or $25,000, whichever is greater. It is the view of AMS that these changes would allow almond handlers greater flexibility in the advertising methods for which they may receive credit, while not imposing any additional costs on handlers.

This action also proposes to establish a new provision concerning an existing regulation which prevents handlers from receiving credit for their foreign advertising expenditures which are reimbursed by the FAS or CDFA. This action would require handlers to certify on Board form "ABC Form 31" (also known as "Handler Claim for Advertising Credit") that expenditures pertaining to foreign advertising claims submitted to the Board for credit will not be reimbursed by the FAS or CDFA. This would be accomplished by adding additional language to a certification currently included on "ABC Form 31," whereby handlers certify that the information provided on that form and supporting documents are complete and correct. The action would also require handlers to submit to the Board copies of all claims for reimbursement filed with the FAS or CDFA so that Board staff could cross-check to ensure that credit is not granted under the order in cases where reimbursement by the FAS or CDFA occurs. It is the view of the AMS that adding additional language to the certification on "ABC Form 31" would not impose any additional burden or costs on handlers as all handlers wishing to receive credit for their own marketing promotion and paid advertising activities under the order must currently sign this certification. It is also the view of the AMS that the cost to handlers of providing the Board with copies of all claims for reimbursement filed with the FAS or CDFA would average approximately $3.00 per claim and that the estimated total number of claims which would be filed each year by all handlers is 100.

This action proposes to revise section 981.441 of subpart—Administrative Rules and Regulations and is based on a unanimous recommendation of the Board and other available information.

Section 981.41(c) of the order provides that the Board, with the approval of the Secretary, may allow handlers to receive credit for their direct marketing promotion expenditures, including paid advertising, against the portion of such handlers' assessment obligations which is designated for marketing promotion, including paid advertising. The paragraph also provides that handlers shall not receive credit for allowable expenditures that would exceed the amount of such creditable assessments. Section 981.41(e) further provides that before crediting is undertaken, and after recommendations are received from the Board, the Secretary shall prescribe appropriate rules and regulations as are necessary to effectively administer the order provisions for crediting handler marketing promotion and paid advertising expenditures.

Section 981.441 currently prescribes rules and regulations to regulate crediting for marketing promotion, including paid advertising. This action proposes to revise § 981.441(c)(3), concerning crediting of payments to advertising media in domestic markets; § 981.441(c)(4), concerning crediting of

payments to advertising media in foreign markets; and § 981.441(d)(1), concerning crediting for marketing promotion expenditures.

The proposal to revise § 981.441(c)(3) would change subparagraph (i)(E) in two ways. The first change would allow handlers to receive credit against their creditable assessments for 100 percent of such handlers' payments for in-store supermarket generic or brand advertising using LED signs. This is a new form of in-store supermarket advertising now being offered by advertising firms, which the industry would like to utilize. Currently, handlers may only receive credit for in-store supermarket advertisements using fixed position or video media. Handlers wishing to receive credit for in-store supermarket advertisements using LED signs would be required to show such advertisements on an in-aisle LED screen running specific product messages on a rotating basis.

As with in-store supermarket advertising using fixed position or video media, handlers would have to conduct this type of LED advertising through an advertising firm. The advertising firm or company which specializes in the production of LED advertisements and the placement of those advertisements would pay the retail food store for displaying the advertisement. Therefore, the payment to the retail food store would not come directly from the handler. This procedure would allow the Board to differentiate payments for this type of creditable advertising from other types of payments often made by handlers to retail food stores, such as payments for shelf space, which are not creditable expenditures. This is necessary as both payments for advertising and for shelf space are customarily consolidated under the general heading "advertising" on invoices from retailers to handlers.

The second proposed change to § 981.441(c)(3)(i)(E) would relax a restriction on credit for in-store supermarket advertisements using fixed position media. Section 981.441(c)(3)(i)(E) currently requires that fixed position advertisements for which handlers may receive credit must include two or more of the following: (1) Processed color displays enclosed in plastic frames and mounted on supermarket shopping carts, (2) overhead directories enclosed in frames placed at the end or middle of supermarket aisles, and (3) processed color advertisements enclosed in frames and mounted on a supermarket shelf. The proposes change would allow handlers to receive credit if only one of these three types of fixed position advertisements is conducted. When provisions for crediting fixed position advertisements were first added to the rules and regulations, the Board believed that two of the three types of advertising would be necessary to conduct an effective fixed position advertising campaign. Standard practice in the industry at that time required the use of at least two of the three types of advertising. The Board now reports that standard industry practice has changed, allowing handlers to purchase fixed position advertising utilizing only one of the three types. The Board believes that handlers should be allowed to take advantage of this new opportunity.

Two changes are proposed to § 981.441(c)(4). The first change would revise paragraph (i) of that section. Section 981.441(c)(4)(i) currently allows credit for handler's unreimbursed media expenditures for advertising in any foreign market pursuant to a contract with FAS or CDFA provided that the advertisements meet certain conditions specified elsewhere in § 981.441. The proposed change change would require handlers to certify on "ABC Form 31" that they are not filing claims with the Board for expenditures which have been or will be reimbursed by the FAS or CDFA. The proposed change would also require handlers to submit to the Board copies of all claims filed with the FAS or CDFA for reimbursement so that Board staff could cross-check those claims against claims filed with the Board to ensure that credit is not granted in cases where reimbursement by the FAS or CDFA occurs.

The second proposed change to § 981.441(c)(4) would change paragraph (ii) to allow handlers who advertise in foreign countries without a contract with the FAS or CDFA to receive credit for media expenditures for brand advertising in all foreign countries where California almonds are sold and where payments for such expenditures can be compared to applicable rate cards. Currently, § 981.441(c)(4)(ii) allows handlers to receive credit for such expenditures in 22 specified foreign countries. In the past, the Board recommended additions to the list of specified foreign countries where rate cards were available, so that Board staff could substantiate handler claims for credit as reasonable and appropriate. The Board has recommended that credit be made available in all foreign countries where applicable rate cards are available. Accordingly, the list of specified foreign countries would no longer be necessary. It would be the responsibility of the individual handler to submit the applicable rate card to Board staff.

The proposal to revise § 981.441(d)(1) would revise paragraph (iii)(B) to increase the credit for certain mail order promotion costs from $25,000 per handler per crop year to $25,000 or 25 percent of a handler's creditable assessment obligation per handler per crop year, whichever is greater. Mail order promotion costs for which credit is allowed under the order are expenditures for the purchase of mailing lists and for envelopes and postage to mail promotional materials. The Board believes that the current $25,000 limit is too restrictive and, therefore, should be relaxed.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the new information collection provisison that are included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). They would not become effective until OMB approval has been obtained.

Based on the above, the Administrator of the AMS has determined that the issuance of this proposed rule would not have a significant economic impact of a substantial number of small entities.

List of Subjects in 7 CFR Part 981

Almonds, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 981 is proposed to be amended as follows:

PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 981 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Subpart—Administrative Rules and Regulations

2. Section 981.441 is amended by revising paragraphs (c)(3)(i), (c)(4)(i) (c)(4)(ii), and (d)(1)(iii)(B) to read as follows:

§ 981.441 Crediting for marketing promotion including paid advertising.

* * * * *

(c) * * *

(3) * * *

(i) For 100 percent of a handler's payment to an advertising medium:

(A) For a generic advertisement of California almonds;

(B) For an advertisement of the handler's brand of almonds;

(C) When either of these advertisements includes reference to a complementary commodity or product;

(D) For a trade media advertisement that displays branded food products containing almonds, or announces a handler's future promotion activities, including joint promotions, and the entire expenditure is borne by the handler;

(E) For in-store supermarket advertisements using fixed position, video media, or light emitting diode (LED) signs, when such payments are made through an advertising firm or company which specializes in the production of LED advertisements and the placement of those advertisements:

(*1*) Fixed position advertisements must include one or more of the following:

(*i*) Processed color displays enclosed in plastic frames and mounted on supermarket shopping carts;

(*ii*) Overhead directories enclosed in frames placed at the end or middle of supermarket aisles; or

(*iii*) Processed color advertisements enclosed in frames and mounted on a supermarket shelf;

(*2*) Video advertisements must be shown on a fixed video monitor running television commercials or infomercials for specific products on a rotating basis;

(*3*) LED advertisements must be shown on an in-aisle LED screen running specific product messages on a rotating basis; or

(F) For processed color displays enclosed in frames mounted on fixtures outside and in front of retail food stores when payments are made through an advertising firm.

* * * * *

(4) * * *

(i) For handlers' unreimbursed media expenditures for advertising in any foreign market pursuant to a contract with the Foreign Agricultural Service, U.S. Department of Agriculture, and/or the California Department of Food and Agriculture, provided the advertisements meet the requirements of paragraphs (c) (2) and (3) of this section and the limitations of paragraphs (c)(5) (i) and (ii) of this section. Such advertising in foreign markets shall not be creditable unless the handler certifies on ABC Form 31 that said handler was not and will not be reimbursed for such advertising by the Foreign Agricultural Service or the California Department of Food and Agriculture and submits to the Board copies of all claims for reimbursements filed with the Foreign Agriculture Service and/or the California Department of Food and Agriculture.

(ii) For a handler's media expenditures for brand advertising in any country where California almonds are sold, credit shall be allowed when claims are substantiated by applicable rate cards. The provisions of this section applicable to domestic advertising shall also apply to the crediting of advertising in these markets.

* * * * *

(d) * * *

(1) * * *

(iii) * * *

(B) Credit for mail order promotion shall be limited to a total of $25,000 or 25 percent of a handler's creditable assessment per crop year, whichever is greater.

* * * * *

Dated: March 9, 1990.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 90-5857 Filed 3-13-90; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 946

[Docket No. FV-90-132]

Irish Potatoes Grown in Washington; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate under Marketing Order No. 946 for the 1990-91 fiscal period. Authorization of this budget would permit the State of Washington Potato Committee (committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

DATES: Comments must be received by March 26, 1990.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Robert F. Matthews, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC, 20090-6456, telephone 202-447-2431.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Agreement No. 113 and Order No. 946, both as amended (7 CFR part 946), regulating the handling of Irish potatoes grown in Washington. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under the criteria contained therein.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

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

There are approximately 45 handlers of Washington potatoes under this marketing order, and approximately 475 producers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of Washington potato producers and handlers may be classified as small entities.

The budget of expenses for the 1990-91 fiscal year was prepared by the committee, the agency responsible for local administration of the order, and submitted to the Secretary of Agriculture for approval. The members of the committee are producers and handlers of Washington potatoes. They are familiar with the committee's needs and with the costs of goods and services in their local area and are in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the committee was derived by dividing

anticipated expenses by expected shipments of Washington potatoes. Because that rate is applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the committee's expenses. A recommended budget and rate of assessment is usually acted upon by the committee before the season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so the committee will have funds to pay its expenses.

The committee met February 7, 1990, and unanimously recommended a budget for the 1990–91 fiscal year of $35,000 and an assessment rate of $0.004 per hundredweight of potatoes. Both the proposed budget and assessment rate are the same as last year. Slight increases in committee and salary expenses would be offset by like decreases in compensation and miscellaneous expenses. All other budget categories remain the same.

The 1990–91 recommended assessment rate of $0.004 per hundredweight of potatoes is the same as last year. This rate, when applied to anticipated fresh market shipments of 7 million hundredweight, would yield $28,000 in assessment revenue. This, along with $7,000 from the committee's authorized reserve, would be adequate for budgeted expenses. The projected reserve for the end of the current fiscal period is $19,400, which would be carried over into the next fiscal year. This amount is within the maximum permitted by the order of one fiscal year's expenses.

While this action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the order. Therefore, the Administrator of the AMS has determined that this proposed action would not have a significant economic impact on a substantial number of small entities.

This action should be expedited because the committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1990–91 fiscal period begins in July, and the committee will need to pay expenses from the beginning of this period. Therefore, it is found that a comment period of 10 days is appropriate so that the budget and assessment rate can be made effective in time for the new fiscal period.

List of Subjects in 7 CFR Part 946

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 946 be amended as follows:

PART 946—IRISH POTATOES GROWN IN WASHINGTON

1. The authority citation for 7 CFR part 946 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. A new § 946.243 is added to read as follows:

§ 946.243 Expenses and assessment rate.

Expenses of $35,000 by the State of Washington Potato Committee are authorized, and an assessment rate of $0.004 per hundredweight of assessable potatoes is established for the fiscal period ending June 30, 1991. Unexpended funds may be carried over as a reserve.

Dated: March 9, 1990.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 90–5818 Filed 3–13–90; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[CO-8-90]

RIN 1545-AO44

Consolidated Return Regulations—Modification of Rules Relating to Intercompany Transactions and Distributions of Property

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations relating to deferred intercompany transactions and distributions of property.

DATES: The public hearing will be held on Monday, July 9, 1990, beginning at 10:00 a.m. Outlines of oral comments must be delivered by Monday, June 25, 1990.

ADDRESSES: The public hearing will be held in the Internal Revenue Service Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. The requests to speak and outlines of oral comments should be submitted to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R, (CO–8–90), Room 4429, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Carol Savage of the Regulations Unit, Assistant Chief Counsel (Corporate), 202–343–0232, (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 1502 of the Internal Revenue Code of 1986. The proposed regulations appear in the proposed rules sections of this issue of the **Federal Register.**

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Monday, June 25, 1990, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by the questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be permitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 90–5832 Filed 3–9–90; 2:14 pm]

BILLING CODE 4830-01-M

26 CFR Part 1

[CO-008-90]

RIN 1545-AO44

Consolidated Return Regulations—Modification of Rules Relating to Intercompany Transactions and Distributions of Property

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary and final regulations.

SUMMARY: In the Rules and Regulations portion of this issue of the **Federal Register**, the Internal Revenue Service is issuing temporary and final regulations relating to deferred intercompany transfers and distributions of property among members of an affiliated group filing consolidated returns. As a result of changes to the Internal Revenue Code, literal application of the deferral rules may produce tax consequences to the group that are inconsistent with the tax consequences that would have resulted if an intercompany transfer had not occurred.

The temporary regulations provide rules concerning the creation and restoration of deferred gain nor loss in these transfers. The purpose of the temporary regulations is to confirm the original intent of the deferral mechanism by assuring that intercompany transfers generally do not affect the overall Federal income tax consequences to the group.

The text of the temporary and final regulations also serves as the comment document for this notice of proposed rulemaking.

DATES: The regulations are proposed to be effective for taxable years for which the due date (without extensions) of the Federal income tax return is after March 14, 1990. However, transition rules §§ 1.1502-13T(m)(4)(ii) and 1.1502-14T(c)(3)(ii) apply to certain dispositions outside the group occurring before March 9, 1990. In addition, § 1.1502-13T(n) applies only to deferred intercompany transactions attributable to long term contracts entered into after June 20, 1988.

Written comments must be delivered by May 14, 1990. Outlines for persons wishing to speak at the public hearing scheduled for Monday, July 9, 1990, must be delivered by June 25, 1990. *See* the Notice of Hearing published in the Notice portion of this issue of the **Federal Register**.

ADDRESSES: Send comments and outlines to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R (CC:CO-008-90), Room 4429, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Roy A. Hirschhorn or Jerilynn V. Chapman at telephone (202) 566-3231 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collections of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attention: IRS Reports Clearance Officer, T:FP, Washington, DC, 20224.

The collections of information requirements in these regulations are in § 1.1502.13T and § 1.1502-14T. This information is required by the Internal Revenue Service to comply with section 1502 and the regulations thereunder. This information will be used to determine whether a taxpayer entered into certain transactions prior to the effective date of the regulations. The likely respondents are common parents of affiliated groups of corporations filing consolidated returns.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents may require greater or less time, depending on their particular circumstances.

Estimated total annual reporting burden: 5000 hours.

The estimated burden per respondent varies from 1 hour 30 minutes to 2 hours 30 minutes, depending on individual circumstances, with an estimated average of 2 hours.

Estimated number of respondents: 2500.

Estimated frequency of responses: 1 time.

Background

The temporary and final regulations published in the Rules and Regulations portion of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) under section 1502 of the Internal Revenue Code of 1986. These regulations amend temporary regulations §§ 1.1502-13T and 1.1502-14T and amend and add cross-references to §§ 1.1502-13 and 1.1502-14. The final regulations that are proposed to be based on those temporary regulations would be added to part 1 of title 26 of the Code of Federal Regulations. Those final regulations would provide rules relating to the creation of deferred gain and its restoration when, for example, property on which gain was previously deferred is depreciated by or is disposed of outside an affiliated group filing consolidated Federal income tax returns.

For the text of the new temporary regulations, see T.D. 8295, published in the Rules and Regulations portion of this issue of the **Federal Register**. The preamble to the temporary regulations explains the regulations.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Administrator of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted, consideration will be given to any written comments that are submitted (preferably nine copies) to the Internal Revenue Service. All comments will be available for public inspection and copying. A public hearing is scheduled for Monday, July 9, 1990. Notice of the public hearing is published in the Notice portion of this issue of the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Roy A Hirschhorn of the Office of Assistant Chief Counsel (Corporate), Internal Revenue Service. However, other personnel of the Service and the Treasury Department participated in their development.

Charles H. Brennan,

Acting Commissioner of Internal Revenue.

[FR Doc. 90-5831 Filed 3-9-90; 2:14 pm]

BILLING CODE 4830-01-M

26 CFR Part 1

[CO-78-87]

RIN 1545-AK94

Consolidated Return Regulations—Special Rules Relating to Dispositions and Deconsolidations of Subsidiary Stock

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this issue of the **Federal Register**, the Internal Revenue Service is issuing temporary regulations that implement the repeal of the *General Utilities* doctrine and eliminate loss duplication with respect to a member of an affiliated group filing a consolidated return on a disposition or deconsolidation of stock of a subsidiary of the group. The text of the temporary regulations also serves as the comment document for this notice of proposed rulemaking.

DATES: The regulations in this document are proposed to be effective March 9, 1990. Section 1.337(d)-1T is proposed to apply with respect to dispositions occurring after January 6, 1987, of stock of a corporation that became a member of an affiliated group after January 6, 1987, if the disposition is not subject to § 1.1502-20T. Written comments and requests for a public hearing must be delivered by May 14, 1990.

ADDRESSES: Send comments and requests for a public hearing to: Internal Revenue Service, Attention: CC:CORP:T:R Room 4429, [CC:CO-78-87], P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Mark S. Jennings 202-566-2455 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504 (h)). Comments on the collections of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224.

The collections of information in these proposed regulations are in §§ 1.337(d)-1T (a)(2), 1.1502-20T(b)(4), and 1.1502-20T(f)(5). This information is required by the Internal Revenue Service to comply with sections 337(d) and 1502 and the regulations thereunder. This information will be used to determine that the proper amount of tax was reported by the taxpayer and whether, and to what extent, the taxpayer's return should be audited. The likely respondents are affiliated groups of corporations filing (or required to file) consolidated returns.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents may require greater or less time, depending on their particular circumstances.

Estimated total annual reporting burden: 5000 hours. The estimated burden per respondent varies from 1 hour and 30 minutes to 2 hours and 30 minutes, depending on individual circumstances, with an estimated average of 2 hours.

Estimated number of respondents: 2500.

Estimated frequency of responses: 1 time.

Background

Temporary regulations published in the Rules and Regulations portion of this issue of the **Federal Register** add new §§ 1.1502-20T, 1.1502-1T, and 1.337(d)-1T to Part 1 of Title 26 of the Code of Federal Regulations ("CFR") and add cross-references in §§ 1.1502-12, 1.1502-32, 1.1502-33, and 1.1502-79. The final regulations that are proposed to be based on the temporary regulations would be added to part 1 of title 26 of the CFR. Those final regulations generally will provide that any loss recognized by a member on the disposition of the stock of a subsidiary is disallowed, and the basis of any share of stock of a subsidiary that exceeds its fair market value (other than a share for which a loss is disallowed) is reduced to an amount equal to its fair market value immediately before the stock of the subsidiary is no longer owned by a member of any consolidated group of which the subsidiary is also a member. For the text of the new temporary regulations, see T.D. 8294, published in the Rules and Regulations portion of this issue of the **Federal Register**. The preamble to the temporary regulations explains the proposed regulations.

Special Analysis

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It is hereby certified that the proposed rules will not have a significant impact on a substantial number of small entities. The rule would primarily affect affiliated groups of corporations filing (or required to file) consolidated returns, which tend to be larger businesses. It would not significantly alter the reporting or recordkeeping duties of small entities. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Administrator of the Small Business Administration for comment on their impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted, consideration will be given to any written comments that are submitted (preferably nine copies) to the Internal Revenue Service. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Internal Revenue Service by any person who also submits written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Mark S. Jennings of the Office of Assistant Chief Counsel (Corporate), Internal Revenue Service. However, other personnel of the Internal Revenue Service and Treasury Department participated in their development.

Proposal of Regulations

The temporary regulations, T.D. 8294 published in the Rules and Regulations portion of this issue of the **Federal Register**, are hereby also proposed as final regulations under sections 337(d) and 1502 of the Internal Revenue Code of 1986.

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 90-5848 Filed 3-19-90; 2:19 pm]

BILLING CODE 4830-01-M

26 CFR Part 1

[FI-76-89]

RIN 1545-A017

Treatment of Salvage and Reinsurance Under Section 832(b)

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the rules and regulations portion of this issue of the **Federal Register**, the Internal Revenue Service is issuing temporary regulations relating to the treatment of salvage and reinsurance in determining the paid and unpaid losses of property and casualty insurance companies. The text of the temporary regulations also serves as the comment document for this notice of proposed rulemaking.

DATES: Written comments and requests for a public hearing must be delivered by May 14, 1990. The amendments to § 1.832-4T of the regulations are proposed to be effective for taxable years beginning after December 31, 1989. Section 1.832-7T is proposed to be effective for taxable years beginning before January 1, 1990.

ADDRESSES: Send comments and requests for a public hearing to: Internal Revenue Service, Attn: CC:CORP:T:R (FI-76-89), P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: William L. Blagg of the Office of the Assistant Chief Counsel (Financial Institutions and Products), Branch 4 (CC:FI&P:4), P.O. Box 7604, Ben Franklin Station, Washington, DC 20044, (202) 566-3294 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations published in the Rules and Regulations section of this issue of the **Federal Register** amend temporary regulations § 1.832-4T and § 1.832-7T of part 1 of title 26 of the Code of Federal Regulations. The amended temporary regulations provide rules relating to the treatment of salvage and reinsurance under section 832(b)(5) of the Internal Revenue Code. Accordingly, the text of the amended temporary regulations serves as the comment document for this notice of proposed rulemaking. In addition, the preamble to the temporary regulations provides a discussion of the proposed and temporary rules.

For the text of the temporary regulations, see T.D. 8293 published in the Rules and Regulations section of this issue of the **Federal Register**.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Administrator of the Small Business Administration for comment on their impact on small business.

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Internal Revenue Service by any person who submits written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is William L. Blagg of the Office of the Assistant Chief Counsel (Financial Institutions and Products), Internal Revenue Service. However, other personnel from the Internal Revenue Service and Treasury Department participated in their development.

Fred T. Goldberg, Jr.

Commissioner of Internal Revenue.

[FR Doc. 90-5745 Filed 3-13-90; 8:45 am]

BILLING CODE 4830-01-M

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26 CFR Part 1

[CO-78-87]

RIN 1545-AK94

Consolidated Return Regulations—Special Rules Relating to Dispositions and Deconsolidations of Subsidiary Stock

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of public hearing on proposed regulations implementing the repeal of the *General Utilities* doctrine and eliminating duplication of loss with respect to members of affiliated groups filing consolidated returns. The regulations apply to a disposition or deconsolidation of stock of a subsidiary of the group.

DATES: The public hearing will begin at 10 a.m. Tuesday, October 16, 1990, and continue, if necessary, at the same time on Wednesday, October 17, 1990. Outlines of oral comments must be delivered by Tuesday, October 2, 1990.

ADDRESSES: The public hearing will be held in the Internal Revenue Service Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. The requests to speak and outlines of oral comments should be submitted to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R, (CO-78-87), room 4429, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Bob Boyer of the Regulations Unit, Assistant Chief Counsel (Corporate), 202-566-3935, (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under sections 337(d) and 1502 of the Internal Revenue Code of 1986. The proposed regulations appear in the proposed rules section of this issue of the **Federal Register**.

The rules of code § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Tuesday, October 2, 1990, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by the questions from the panel for the government and answers to these questions.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 90-5849 Filed 3-9-90; 2:19 pm]

BILLING CODE 4830-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD13 90-01]

Regatta; Portland, Oregon, Fox 49 River Grand Prix

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: At the request of River City Events, Inc. of Portland, Oregon, the Coast Guard is considering adopting special local regulations for the Fox 49 River Grand Prix. The temporary regulation would permit the periodic closure of a section of the Willamette River from Mile 13 to Mile 14 between the hours of 9 a.m. p.d.t. and 4:30 p.m. p.d.t. on Friday, Saturday, and Sunday, June 29 and 30, and July 1, 1990. In the event of cancellation of some or all of the racing activities due to inclement weather or other safety factors, the event will be extended through Monday, July 2, 1990. This proposal is designed to promote the safety of life and property on navigable waters during the event.

DATES: Comments must be received on or before April 1, 1990.

ADDRESSES: Comments should be mailed to Commander, U.S. Coast Guard Group Portland, 6767 North Basin Avenue, Portland, Oregon 97217. The comments and other materials referenced in this notice will be available for inspection and copying at U.S. Coast Guard Group Portland, 6767 North Basin Avenue, Portland, Oregon 97217, room 3210, Mt. Adams Building. Normal office hours are between 7:15 a.m. and 3:45 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: BMC F.L. Casanova, Port Management Branch, U.S. Coast Guard Marine Safety Office, 6767 North Basin Avenue, Portland, Oregon 97217, (503) 240-9319/9300.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD13 90-01) and the specific section of the proposal to which their comments apply, and give reasons for each comment. The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this notice are BMC F. L. Casanova, USCG, Project Officer, U.S. Coast Guard Group Portland, Oregon, and LT Deborah Schram, USCG, Project Attorney, Thirteenth Coast Guard District Legal Office.

Discussion of Proposed Regulation

Fox 49 River Grand Prix is a professional water-based motorsport featuring three classes of Outboard Performance Craft (outboard tunnel-hull) power boats in sprint marathon racing competition at speeds from 100 mph to 140 mph, depending on the hull style and engine size. The races will be held on a 1¼ mile bow-tie shaped course between the Hawthorne and Ross Island Bridges on the Willamette River in Portland, Oregon. A minimum of 50 teams from the United States, Europe and Canada are expected to participate. The maximum number of race boats on the water at any given time is limited to 20. All racing activities will be scheduled to allow passage of commercial and pleasure boat traffic between heats at slow and no wake speeds. To ensure effective control of the spectator fleet and commercial traffic around and through the race course during both the preparatory activities and the actual race, the race's sponsor, River City Events, Inc. of Portland, Oregon, is requesting Coast Guard assistance in maintaining traffic control by periodically closing the affected section of the Willamette River, Mile 13 to 14 in Portland, Oregon, between the hours of 9 a.m. p.d.t. and 4:30 p.m. p.d.t. on Friday, Saturday, and Sunday, June 29 and 30, and July 1, 1990. In the event of cancellation of some or all of the racing activities due to inclement weather or other safety factors, the event will be extended through Monday, July 2, 1990. The Coast Guard is proposing to promulgate special local regulations governing the Fox 49 River Grand Prix in Portland, Oregon (33 CFR 100.35).

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and non-significant under Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. These regulations will affect a short section of the Willamette River which experiences light commercial traffic. These regulations will be in effect for only three (3) days, and two of those days are Saturday and Sunday. The Coast Guard Patrol Commander will allow all commercial and non-commercial vessel traffic to transit the area between races. Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Regattas and Marine Parades.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 100 of title 33, Code of Federal Regulations, as follows:

PART 100—[AMENDED]

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

Authority: 33 U.S.C. 1233; 49 CFR 146 and 33 CFR 100.35.

2. A temporary § 100.35-T1301 is added to read as follows:

§ 100.35-T1301 Fox 49 River Grand Prix, Portland, Oregon.

(a) *Regulated Area.* By this regulation, the Coast Guard will restrict general navigation on the waters of the Willamette River from River Mile 13 to River Mile 14 in Portland, Oregon, between the hours of 9 a.m. p.d.t. and 4:30 p.m. p.d.t. on Friday, Saturday, and Sunday, June 29 and 30 and July 1, 1990. The regulation may be extended through 4:30 p.m. p.d.t., Monday July 2, 1990. This restricted area includes all waters between the above mile marks and is approximately one mile long.

(b) *Special Local Regulations.* (1) Persons or vessels (other than official vessels) shall not enter or remain in the regulated area described in paragraph (a) of this section during the hours that this regulation is in effect. The Patrol Commander is empowered to control the movement of vessels in the regulated area described in paragraph (a) of this

section and the adjoining waters during the period this regulation is in effect.

(2) Patrol of the described area will be under the direction of Commander, Coast Guard Group Portland, Oregon, who will designate a Patrol Commander. The Patrol Commander will be embarked on the Coast Guard vessel on scene. The Patrol Commander is empowered to forbid vessels or persons from entering the regulated areas described in paragraph (a) of this section during the hours this regulation is in effect.

(3) A succession of sharp, short signals by whistle, siren, or horn from vessels patrolling the area under the direction of the Patrol Commander shall serve as a signal to stop. Vessels or persons signaled to stop shall comply with the orders of the patrol vessels; failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(c) *Effective Dates.* This regulation becomes effective at 9 a.m. p.d.t., June 29, 1990. It will terminate no later than 4:30 p.m. p.d.t., July 2, 1990, unless terminated earlier by Commander, Coast Guard Group Portland.

Dated: March 5, 1990.

R.E. Kramek,

Commander, Thirteenth Coast Guard District, DOT—U.S. Coast Guard.

[FR Doc. 90-5772 Filed 3-13-90; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 117

CGD7-90-07

Drawbridge Operation Regulations: Atlantic Intracoastal Waterway, South Carolina

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the South Carolina Department of Highways and Public Transportation, the Coast Guard is considering a change to the regulations governing the Limehouse Bridge, mile 479.3 at Johns Island, by permitting the number of openings to be limited during certain periods. This proposal is being made because vehicular traffic has increased. This action should accommodate the needs of vehicular traffic and still provide for the reasonable needs of navigation.

DATES: Comments must be received on or before April 30, 1990.

ADDRESSES: Comments should be mailed to Commander (oan), Seventh Coast Guard District, 909 SE 1st Ave., Miami, FL 33131-3050. The comments and other materials referenced in this notice will be available for inspection and copying at Brickell Plaza Federal Building, room 405, 909 SE 1st Avenue, Miami, FL. Normal office hours are between 7:30 a.m. and 4 p.m., Monday through Friday except federal holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Gary D. Pruitt (305) 536-4103.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with, or any recommended change to, the proposal. The Commander, Seventh Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received.

Drafting information

The drafters of this notice are Mr. Gary D. Pruitt, project officer, and LCDR D. G. Dickman, project attorney.

Discussion of Proposed Regulations

The existing regulations for this bridge, approved in 1986, require the draw to open on signal except that, from 7 a.m. to 9 a.m. and 4 p.m. to 6 p.m., Monday through Friday except federal holidays, the draw need open only on the hour, 20 minutes after the hour and 40 minutes after the hour. After extensive analysis of existing traffic conditions, bridge opening data and vessel holding conditions near the Limehouse Bridge, the Coast Guard has determined that further restrictions to bridge openings may be warranted. Although the number of bridge openings has not increased since the existing regulations were implemented, the substantial increase in highway traffic levels, caused in part by post "HUGO" clean-up operations, necessitates additional restrictions to limit the number of openings. A four-hour closure originally requested by the South Carolina Department of Highways and Public Transportation would be an unreasonable obstruction to navigation in view of the limited 12-foot vertical clearance of the bridge and could cause an unsafe accumulation of vessels holding near the bridge structure. As the best reasonable compromise between both modes of transportation, the Coast Guard proposes to change the existing 20-minute schedule to a 30-minute schedule between 6:30 a.m. and 9 a.m., and between 4 p.m. and 6:30 p.m., Monday through Friday. In order to accommodate the increased vessel traffic during the seasonable migration period, it is proposed that between 9 a.m. and 4 p.m., Monday through Friday except federal holidays, from March 15 to June 15, and from September 15 to November 15, a 20-minute schedule is proposed.

Economic Assessment and Certification

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

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 117 of title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

Authority: 33 USC 499; 49 CFR 1.46; 33 CFR 1.05-1(g) 2. Section 117.911(e) is revised to read as follows:

§ 117.911 Atlantic Intracoastal Waterway, Little River to Savannah River.

* * * * *

(e) *John Limehouse bridge across the Stono River, mile 479.3 at Johns Island.* The draw shall open signal; except that between 6:30 a.m. and 9 a.m., and 4 p.m. and 6:30 p.m., Monday through Friday except federal holidays the draw need open only on the hour and 30 minutes after the hour. Between 9 a.m. and 4 p.m., Monday through Friday except federal holidays, from March 15 to June 15, and from September 15 to November 15, the bridge need not be opened except on the hour, 20 minutes after the hour, and 40 minutes after the hour.

* * * * *

Dated: March 1, 1990.

Martin H. Daniell,

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

[FR Doc. 90-5773 Filed 3-13-90; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-300206; FRL-3667-1]

Captan; Proposed Revocation of Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes the revocation of tolerances in 40 CFR 180.103 for residues of the fungicide captan [N-trichloromethylthio-4-cyclohexene-1,2-dicarboximide] in or on crabapples, cranberries, grapefruit, lemons, limes, oranges, pineapples, quinces, rhubarb, and tangerines. EPA is initiating this action because all uses of captan on these commodities have been cancelled.

DATES: Written comments, identified by the document control number, [OPP-300206], must be received on or before May 14, 1990.

ADDRESSES: By mail, submit comments to: Public Docket and Freedom of Information Section, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 246, 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. 246 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: 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, 703-557-1806.

SUPPLEMENTARY INFORMATION: In the Federal Register of February 24, 1989 (54 FR 8116), EPA issued a Notice of Final Determination for Captan which announced the conclusion of EPA's Special Review and risk/benefit analysis of captan and EPA's intent to cancel registations and to deny registration applications for all pesticide products containing captan as an active ingredient for use on crabapples, cranberries, grapefruit, lemons, limes, oranges, pineapples, quinces, rhubarb, tangerines, and certain other uses. EPA estimated the risks for these crops to be negligible (10^{-11} to $10^{-7}/10^{-6}$) and their benefits to be small due to little or no use. The cancellations became effective 30 days after receipt by the registrants of the February 24, 1989 Notice.

The Notice of Final Determination concluded EPA's administrative Special Review of the risks and benefits of captan which was initiated in a Federal Register notice of August 18, 1980 (45 FR 54938). A proposed decision (PD 2/3) concerning captan was published in the Federal Register of June 21, 1985 (50 FR 25884). A detailed discussion of the Agency's decisionmaking process is presented in PD 2/3 and in the Notice of Final Determination.

Seed treatment uses of captan were not affected by the February 24, 1989 regulatory decision. Therefore, the Agency is not proposing at this time to revoke the tolerance for any crop for which there are registered seed treatment uses, even though other uses on the crop have been cancelled. Tolerances for such commodities will be reconsidered after residue data reflecting seed treatment uses have been evaluated; these data were submitted in June 1989 and are currently under review.

There are no registrations for seed treatment uses for crabapples, cranberries, grapefruit, lemons, limes, oranges, pineapples, quinces, rhubarb, and tangerines; thus, tolerances for these commodities may be considered for revocation without regard to the recently submitted seed treatment data.

In order not to disrupt the marketing of commodities which have been legally treated (i.e., treated prior to February 24, 1990, with permitted existing stocks), the Agency plans to delay publication of the final rule revoking the tolerances until at least February 24, 1991. The Agency believes this will allow a reasonable period of time for treated commodities to have left channels of trade. Commenters who think that the 1991 revocation date would cause them a hardship, or is otherwise inappropriate, are encouraged to submit data in support of their position.

Based on the information presented in this document and in the February 24, 1989 Notice of Final Determination for Captan, EPA now proposes to revoke the tolerances listed in 40 CFR 180.103 for residues of captan in the raw agricultural commodities crabapples, cranberries, grapefruit, lemons, limes, oranges, pineapples, quinces, rhubarb, and tangerines.

Any person who has registered or submitted an application for registration of a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains captan may request within 30 days after publication of this document in the Federal Register that this rulemaking proposal to revoke tolerances for captan be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [OPP-300206]. All written comments filed in response to this document will be available in the Public Docket and Freedom of Information Section, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

In order to satisfy requirements for analysis as specified by Executive Order 12291 and the Regulatory Flexibility Act, the Agency has analyzed the costs and benefits of this proposal. This analysis is available for public inspection in Rm. 246, at the address given above.

Executive Order 12291

Under Executive Order 12291, the Agency must determine whether a proposed regulatory action is "major" and therefore subject to the requirements of a Regulatory Impact Analysis. The Agency has determined that this proposed rule is not a major regulatory action, i.e., it will not have an annual effect on the economy of at least $100 million, will not cause a major increase in prices, and will not have a significant adverse effect on competition or the ability of U.S. enterprises to compete with foreign enterprises.

This proposed rule has been reviewed by the Office of Management and Budget as required by E.O. 12291.

Regulatory Flexibility Act

This proposed rule 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.

This regulatory action is intended to prevent the sale of food commodities containing pesticide residues where the subject pesticide has been used in an unregistered or illegal manner. Revocation of the subject tolerances for captan should aid U.S. enterprises by eliminating any unfair advantage that foreign enterprises may have gained through the continuance of these tolerances.

Because all registrations for use of captan on the food crops listed in this document were cancelled pursuant to the February 24, 1989 Notice of Final Determination, and because this revocation action will not become final for 1 year after the last legal use of captan on the affected crops, the Agency expects that little or no economic impact would occur at any level of business enterprise if and when these tolerances are revoked.

List of Subjects in 40 CFR Part 180

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

Dated: February 26, 1990.

Linda J. Fisher,

Assistant Administrator for Pesticides and Toxic Substances.

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.

§ 180.103 [Amended]

2. By amending § 180.103 *Captan* in paragraph (a) by removing from the table therein the following commodities: crabapples, cranberries, quinces, and rhubarb; and in paragraph (b) by removing from the table therein the following entries for the following commodities: grapefruit, lemons, limes, oranges, pineapples, and tangerines.

[FR Doc. 90–5451 Filed 3–13–90; 8:45 am]

BILLING CODE 6560–50–D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 90–105, RM–7165]

Radio Broadcasting Services; Lonoke, AR and Clarksdale, MS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed on behalf of Dunn Broadcasting Corporation, licensee of Station KWTD(FM), Channel 292A, Lonoke, Arkansas, seeking the substitution of Channel 292C2 for Channel 292A and modification of its license accordingly. Additionally, Channel 229A is proposed as a substitute for Channel 292A at Clarksdale, Mississippi, licensed to Station WAID(FM). An Order to Show Cause is being issued to Radio Cleveland, Incorporated, licensee of Station WAID(FM), Clarksdale, Mississippi. Coordinates for Channel 292C2 at Lonoke, Arkansas, are 34–37–02 and 91–49–22, while those for Channel 229A at Clarksdale, Mississippi, are 34–09–22 and 90–37–52.

DATES: Comments must be filed on or before April 30, 1990, and reply comments on or before May 15, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: David M. Hunsaker, Esq., Putbrese, Hunsaker & Ruddy, 6800 Fleetwood Road, Suite 100, P.O. Box 539, McLean, VA 22101.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commissions's Notice of Proposed Rule Making, MM Docket No. 90–105, adopted February 22, 1990, and released March 9, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–5762 Filed 3–13–90; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 90–104, RM–7166]

Radio Broadcasting Services; Berryville, AR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by KTHS/KSCC, Inc., licensee of Station KSCC(FM), Berryville, Arkansas, seeking the substitution of FM Channel 296C3 for Channel 296A and modification of its license accordingly. Coordinates for this proposal are 36–20–00 and 93–20–00.

DATES: Comments must be filed on or before April 30, 1990, and reply comments on or before May 15, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: A. Thomas Earls, President, KTHS/KSCC, Inc., P.O. Box 191, Berryville, AR 72616.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90–104, adopted February 22, 1990, and released March 9, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International

Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-5763 Filed 3-13-90; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 225

[Docket No. RAR-4, Notice No. 1]

RIN 2130 AA-58

Railroad Accident Reporting; Advance Notice of Proposed Rulemaking

AGENCY: Federal Railroad Administration (FRA), Department of Transportation.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: FRA is soliciting comments and suggestions from the public regarding methods of improving FRA's injury and accident reporting system.

DATES: (1) Written comments must be received no later than May 25, 1990. Comments received after that date will be considered to the extent possible without incurring additional expense or delay.

(2) FRA will hold a public hearing on this proposal at 10 a.m. on Thursday, May 17, 1990, in room 2230 of the Nassif Building, 400 Seventh Street SW., Washington, DC. Any person who desires to make an oral statement at the hearing is requested to notify the Docket Clerk at least five working days prior to the hearing, by phone or in writing.

ADDRESSES: (1) Written comments should be submitted to the Docket Clerk, Office of Chief Counsel, FRA, 400 Seventh Street SW., Washington, DC 20590. Persons desiring to be notified that their written comments have been received by FRA should submit a stamped, self-addressed postcard with their comments. The Docket Clerk will indicate on the postcard the date on which the comments were received and will return the card to the addressee. Written comments will be available for examination, both before and after the closing date for comments, during regular business hours in room 8201 of the Nassif Building at the above address.

(2) The public hearing be held at 10 a.m. on Thursday, May 17, 1990, in room 2230 of the Nassif Building, 400 Seventh Street SW., Washington, DC.

Persons desiring to make oral statements at the hearings should notify the Docket Clerk by telephone (202-366-0628) or by writing to the Docket Clerk at the address above.

FOR FURTHER INFORMATION CONTACT: Bruce Fine, Chief, Office of Safety Analysis, Office of Safety, FRA, 400 Seventh Street SW., Washington, DC 20590, (telephone 202-366-0522), or Mark Tessler, Office of Chief Counsel, FRA, 400 Seventh Street SW., Washington, DC 20590, (telephone 202-366-0628).

SUPPLEMENTARY INFORMATION: FRA's primary function is to promote safety within the railroad industry. In order to protect railroad employees, travelers, and the public at large, FRA must have an accurate picture of the safety situation within the industry. FRA's safety mission can only be effective if its regulatory activities are focused on real problems; thus, accurate safety data is the cornerstone of an effective and efficient rail safety program. To build that data base, various FRA rail safety regulations require that reports be filed with the agency, some on a periodic basis, and others upon the occurrence of a specified event.

The General Accounting Office (GAO) recently studied FRA's railroad injury and accident reporting data and issued a report (GAO/RCED-89-109) in which it found "substantial underreporting and inaccurate reporting of injury and accident data by the railroads it visited." Although GAO stated that the scope of its work was not sufficient to project its results to the entire railroad industry, its findings do raise questions regarding the accuracy of railroad injury and accident data in general and FRA efforts for ensuring the accuracy of that data. We believe that GAO's finding of varying margins of error during 1987 on portions of three major railroads is cause for concern.

Based on underreporting found on those railroads, GAO has recommended that FRA take the following actions: Require railroads to establish injury and accident reporting internal control procedures; include an analysis of railroads' internal control procedures for reporting in FRA's safety record inspections; provide inspectors with the authority to take enforcement actions against railroads with deficient internal control procedures; require railroads to update reports on workdays lost due to injuries; and clarify FRA's requirement for railroads to update accident reports when significant changes occur.

FRA has initiated a Special Safety Inquiry (54 FR 46497, November 3, 1989) to explore whether non-accident related reporting results in accurate data and whether there are methods of improving that process. This Advance Notice of Proposed Rulemaking (ANPRM) addresses only the accident reporting requirements of 49 CFR part 225.

FRA accident reporting regulations at 49 CFR part 225 divide railroad accidents/incidents into three categories: (1) Rail-highway grade crossing accidents/incidents; (2) rail equipment accidents/incidents; and (3) death, jury, and occupational illness accidents/incidents.

Every railroad accident/incident meeting the threshold requirements for each category must be reported to FRA (49 CFR 225.19). Because the reporting requirements and the information needed regarding each category of accident/incident are different, a different reporting form is used for each category. If the circumstances of an accident/incident are such that the threshold reporting requirements of two, or even all three categories are met, then a separate reporting form for each category must be completed by the railroad. For example, if a rail-highway grade crossing accident involves damage to rail equipment over $5,700, a Rail-Highway Grade Crossing Accident/Incident Report (Form 6180-57) and a Rail Equipment Accident/Incident Report (Form 6180-54) must be completed. If appropriate, the monthly Railroad Injury and Illness Summary (Form 6180-55) would also contain information regarding injuries associated with the accident.

FRA is interested in improving all aspects of its accident reporting process, and thus is interested in receiving comments and suggestions regarding reporting of all three accident/incident reporting categories. We encourage interested parties to respond to the following questions and to make any

other comments or suggestions regarding the issues presented.

Rail-Highway Grade Crossing Accident/Incident Reports

In the near future FRA plans to issue a notice of proposed rulemaking addressing in part reporting of rail-highway grade crossing accidents/incidents. Thus, while we are interested in obtaining the public's views regarding this category during this proceeding, we will also be exploring grade crossing reports in the larger context of regulations pertaining to the maintenance, inspection, and testing of grade crossing warning devices.

Death, Injury and Occupational Illness Accident/Incident Reports

(1) How can railroad death, injury and occupation illness accident/incident reporting be improved? Please be as specific as possible. Please discuss the benefits to be gained from the proposed improvement, and any estimate of the costs involved.

(2) Should FRA require railroads to implement specific internal control procedures to assure proper death, injury, occupational illness accident/incident reporting? What should those internal procedures consist of? What additional costs would be incurred? If such specific procedures are required, what effect should the size and structure of a railroad have on the procedures required? Could anything other than general procedures be required given the different sizes and structures of the nation's railroads?

(3) Even if not required by Federal regulations, what internal control procedures would reduce or eliminate inaccurate injury reporting? Are there any now in use that have proven effective? What is their cost?

(4) Instead of specific, prescribed procedures for internal control, would you favor FRA-established, general standards for such procedures? Would such procedures apply regardless of the organizational and size differences among railroads? What level of detail would be appropriate in the various cases?

(5) Should deviations from internal control procedures render the railroads liable for civil penalties?

(6) As an alternative to Federal requirements for specific internal control procedures, should FRA simply establish strict performance standards for injury reporting and hold the ailroads accountable for the accuracy of the data they submit? In other words, should FRA only concern itself with results (accurate and timely data), and leave it to the individual railroad to develop the internal control procedures necessary to achieve acceptable results?

(7) If FRA were to establish strict performance standards, what specific internal control procedures would likely be implemented by the railroads? What would be the costs? Would the chosen procedures differ greatly according to the railroad's size and type of operations?

(8) If FRA were to establish performance standards, what should those standards be based on? What should the standards be? What actions should FRA take to ensure compliance with the standards?

(9) Section 225.13 requires that whenever a railroad discovers that an accident/incident report has been improperly omitted or improperly reported, a report or amendment covering the accident/incident together with a letter of explanation must be immediately submitted to FRA. What procedures or requirements would ensure that updated information is reported to FRA on a timely basis? Would submission of such information by computer magnetic media (floppy disks or magetic tape) assist railroads in making accurate and more timely amendments?

Rail Equipment Accident/Incident Reports

Rail equipment accident/incidents are "collisions, derailments, fires, explosions, acts of God, or other events involving operation of railroad on track equipment (standing or moving) that results in more than $5,700 in damages to railroad on-track equipment, signals, track, track structures, and roadbed, including labor costs and all other costs for repair or replacement in kind." 49 CFR 225.19(c). Because the $5,700 threshold reporting amount for equipment damages is very low in terms of the cost of railroad equipment and labor costs, virtually all incidents involving rail equipment are reported to FRA. This results in a relatively non-serious accident receiving the same reporting attention as an accident of greater magnitude. We are interested in exploring the feasibility of a two-tier rail equipment reporting system in which virtually all accidents/incidents are reported to FRA, as now, but is which those involving a substantially higher damage threshold, for example $50,000 or $100,000, would trigger a different level of detail in the report or would trigger a different reporting schedule. In 1988, 3051 rail equipment accident/incidents were reported to FRA. Of these, 634 were reported to have involved damages in excess of $50,000. Thus 634 accidents would receive more comprehensive attention than less serious accidents. Retaining the lower threshold would still enable FRA to track safety trends within the industry and make it possible to detect problems before they reach more dangerous levels, while at the same time enabling FRA to track more serious accidents as a separate category. This system would not necessarily result in more paperwork burdens on railroads—it could be structured to reduce the reporting burden for less serious accidents rather than increasing the burden for those accidents of a more serious nature.

(10) We solicit comments on amending 49 CFR part 225 to provide for a two-tier reporting system for rail equipment accident/incidents. Injury reporting would not be affected by this proposal. If a two-tier system is established, should a different time schedule for reporting be established?

(11) In what other ways can railroad equipment accident/incident reporting be improved? Please be as specific as possible.

(12) Should FRA require railroads to implement specific internal control procedures to assure proper railroad equipment accident/incident reporting? What should those internal procedures consist of? What additional costs would be incurred? If such specific procedures are required, what effect should the size and structure of a railroad have on the procedures required? Could anything other than general procedures be required given the different sizes and structures of the nation's railroads?

(13) Even if not required by Federal regulations, what internal control procedures would reduce or eliminate inaccurate reporting? What would these internal control procedures cost? What, if any, internal benefits would be achieved by the railroads?

(14) Instead of specific, prescribed procedures for internal control, would you favor FRA-established, general standards for such procedures. Would such procedures apply regardless of the organizational and size differences among railroads? What level of detail would be appropriate in the various cases?

(15) Should deviations from internal control procedures render the railroads liable for civil penalties?

(16) As an alternative to Federal requirements for specific internal control procedures, should FRA simply establish strict performance standards for equipment accident reporting and hold the railroads accountable for the accuracy of the data they submit? In other words, should FRA only concern

itself with results (accurate and timely data), and leave it to the individual railroad to develop the internal control procedures necessary to achieve acceptable results?

(17) If FRA were to establish strict performance standards, what specific internal control procedures would likely be implemented by the railroads? What would be the costs? Would the chosen procedures differ greatly according to the railroad's size and type of operations?

(18) If FRA were to establish performance standards, what should those standards be based on? What should the standards be? What actions should FRA take to ensure compliance with the standards?

(19) Section 225.13 requires that whenever a railroad discovers that an accident/incident report has been improperly omitted or improperly reported, a report or amendment covering the accident/incident together with a letter of explanation must be immediately submitted to FRA. What procedures or requirements would ensure that updated injury information, such as lost workdays, is reported to FRA on a timely basis? Would submission of such information by computer magnetic media (floppy disks or magnetic tape) assist railroads in making accurate and more timely amendments?

(20) Because the amount of property damage is the trigger for railroad equipment accident reporting, should specific procedures for gathering repair cost data be required to assure that all accidents above the threshold amount are reported? What should the procedures consist of?

(21) Should a railroad be required to use actual, rather than estimated repair costs as the basis for determining the reportability of an accident?

Proposed Quarterly Accident Reports

It appears that part of the problem in accurately reporting both equipment accidents and personal injuries is the requirement that railroads submit detailed information on a monthly basis. In some cases, only 30 days have elapsed from the date of the accident/incident until the railroad's certified report is filed with FRA. This does not always provide time for accurate repair costs and lost workday statistics to be gathered.

FRA's annual Accident/Incident Bulletin summarizes all reportable railroad accidents/incidents that occur in the United States during the previous calendar year. The detailed monthly reports filed by the railroads provide that data for the annual bulletin. However, because monthly reports are, to some extent, estimates rather than actual figures, the annual Accident/Incident Bulletin thereby also reflects estimated data. In addition to these monthly estimates, FRA requires that the railroads provide an annual report of actual lost workdays during the past year. 49 CFR 225.21(f). Because the monthly reports are esitmates, and the annual report reflects actual lost workdays, the report data pertaining to injuries is not consistent.

To remedy this and to ensure more consistently accurate statistics, FRA is considering requiring quarterly accident reports covering the previous quarter's occurrences. This would provide at least 90 days (and up to 180 days depending on when the accident occurred within the quarter) during which the railroad can obtain actual repair data and lost workday information. This should result in data more accurate than that contained in the monthly report, and would result in a more accurate annual Accident/Incident Bulletin.

Absent an amendment to the Accident Reports Act (45 U.S.C. 38), a monthly accident report would still be required even if quarterly reported were required. However, FRA could reduce required information to that sufficient to give us a picture of what is happening in the industry. The bulk of information now required monthly could be transferred to the quarterly report to prevent undue administrative burden on railroads. We encourage comments on this proposal in addition to specific answers to the following questions.

(22) Would a quarterly report result in more accurate accident data being filed with FRA? If not, would another time frame be more appropriate?

Reporting Methods

(23) Could the method of reporting accident data to the FRA be improved? How?

(24) What is your view as to the advisability of submitting information to FRA by use of computer magnetic media (floppy disks or magnetic tape)? Would there be compatibility problems, and if so, how could they be overcome? How would such data transfer affect the speed and accuracy of a railroad's reporting? What would be the short and long term effect of electronic transfers on the costs required to fulfill the reporting requirements?

(25) Would such data transfer method affect the ability of FRA to determine compliance with the reporting requirement?

This list of issues and questions is not intended to be universal; the purpose of this proceeding has been previously described and we solicit comments on all issues relevant to that stated purpose.

Regulatory Impact

This rule has been evaluated in accordance with existing policies and procedures, and is considered to be non-major under Executive Order 12291 but significant under DOT policies and procedures (44 FR 11034, February 26, 1979).

This rule's economic impact cannot be accurately quantified with the information now known to FRA. An analysis of economic impact, including the impact on small entities pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), will be made after evaluating the data submitted in response to this Advance Notice of Proposed Rulemaking and the findings of that analysis will be published as part of any rulemaking made in this matter.

A rule issued in this proceeding would impose information collection requirements, the extent and impact of which can only be evaluated with the data FRA expects to develop as a result of this Advance Notice of Proposed Rulemaking. If requirements meeting federal thresholds are imposed, they will be submitted to the Office of Management and Budget for approval under the Paperwork Reduction Act of 1980. No new record keeping requirements will be mandatory until such approval has been obtained.

A rule issued in this proceeding should not have substantial 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. Thus, in accordance with Executive Order 12612, preparation of a Federalism Assessment is not warranted.

Issued in Washington, DC, on March 6, 1990.

Gilbert E. Carmichael,

Administrator.

[FR Doc. 90-5741 Filed 3-13-90; 8:45 am]

BILLING CODE 4910-06-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB38

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Spigelia Gentianoides

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine *Spigelia gentianoides* (gentian pinkroot), a plant belonging to the logania family, to be an endangered species pursuant to the Endangered Species Act of 1973 (Act), as amended. Three populations of this plant are presently known from Jackson and Calhoun Counties in northwestern Florida. Historically, it was found in several adjacent counties. Proximity to recreational activities threatens one population, and habitat alteration by forestry practices threatens the others. This proposal, if made final, would implement the protection and recovery provisions afforded by the Act for gentian pinkroot. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by May 14, 1990. Public hearing requests must be received by April 30, 1990.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, Jacksonville Field Office, U.S. Fish and Wildlife Service, 3100 University Boulevard South, Suite 120, Jacksonville, Florida 32216. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: David J. Wesley, Field Supervisor, at the above address (telephone: 904/791-2580 or FTS 946-2580).

SUPPLEMENTARY INFORMATION:

Background

Spigelia gentianoides (gentian pinkroot) is a perennial herb belonging to the plant family Loganiaceae (logania or strychnine family). Dr. Alvan (sic) Wentworth Chapman of Apalachicola, Florida discovered the plant in May 1837 during a trip to perform an amputation. He distributed herbarium specimens of the plant under the name *Spigelia floridana*, but later settled on *Spigelia gentianoides*, the name that Alphonse de Candolle (1845) published for Chapman. The holotype specimen (which passed from Chapman to Asa Gray to Edmond Boissier to de Candolle) is in the herbarium at Geneva, Switzerland (K. Wurdack, Beltsville, Maryland, *in litt.* 1988).

Spigelia gentianoides has a single, erect, sharply ridged stem approximately 10-30 centimeters (4-12 inches) tall. The leaves are opposite and sessile, 3-5 centimeters (1-2 inches) long, with the largest at the top of the stem. Flowers are borne in a short, few-flowered, terminal, spikelike raceme. The flowers, mounted on very short stalks, point upward. Sepals are 4-6 millimeters long. The corolla is 2.5-3.0 centimeters long, consisting of a narrow tube about 1 centimeter long, broadening to a wider tube with five lobes, each 5-6 millimeters long. The corolla is pale pink, slightly darker at the margins of the lobes. The stamens stay inserted within the flower (Kral 1983). The corolla lobes tend to stay nearly closed, with five slits opening between the lobes. Rogers (1988b) suspected that "a moth effects pollination when it inserts its proboscis into the slits probing for nectar." Recently he observed flowers that were completely open (George Rogers, Missouri Botanical Garden, pers. comm. 1989). The flower resembles those of gentians, which is the reason for the plant's name. Flowering is in May and June.

The closest relative of *Spigelia gentianoides* is pinkroot. *Spigelia marilandica*, which grows in clumps rather than as single stems and has brighter flowers (Kral 1983). In the nineteenth century, pinkroot, a widespread species, was a popular folk cure for worms in the southern states, although it has been blamed for killing patients (Rogers 1986). *Spigelia gentianoides* has not been tested for potential drug uses.

Wurdack (*in litt.* 1988) has seen nine of Chapman's collections of *Spigelia gentianoides*. The type collection is from the west side of the Apalachicola River, probably in Jackson County. One specimen is labeled "Quincy. 1836, not seen since.," but the date is incorrect, so the locality is unreliable. Ferdinand Rugel collected the plant near Mount Vernon (now Chattahoochee, Gadsden County) in 1843 (K. Wurdack, *in litt.* 1988).

Kral (1983) thought that *Spigelia gentianoides* had been observed only twice since Chapman, in Jackson County. He was apparently unaware of three specimens at the University of Florida that have been verified by Rogers (pers. comm. 1989), two from Chipley, Washington County (collected by C.E. Pleas, 1940 and 1941), and one from 8 miles north of Wewahitchka, Calhoun County (collected by E.S. Ford, 1954). Harry Ahles and David Boufford found one locality in Jackson County in 1973 (Wunderlin et al. 1980). A specimen from Gulf Hammock (Levy County), labelled by its collectors as *Spigelia gentianoides*, has been determined to be *S. loganioides* (R. Wunderlin, University of South Florida, pers. comm. 1988). Godfrey (1979) included Liberty County, Florida in the distribution of this plant.

Recently, Gary Knight, Robert Kral, Angus Gholson, Jr., Wilson Baker, and Kenneth Wurdack relocated one population and found two more (Rogers 1988a, 1988b; Gholson, pers. comm. 1989). Rogers and others revisited the populations in 1989. One population, in Jackson County, had about 30 plants in 1988, one fifth as many as it had 12 years earlier. The second, near the Jackson-Bay County line, has no more than 10 plants (Rogers, pers. comm. 1988). The third and largest, in Calhoun County south of Blountstown, is in a pineland with wiregrass, somewhat drier than flatwoods. The site's trees were cut in 1988 and the landowner will plant pines in 1989. The plants flowered in 1989, indicating that, at least in the short term, they tolerate full sun (Rogers, pers. comm. 1989).

The two sites where Kral (1983) found *Spigelia gentianoides* were in light to heavy shade of oak-pine woods containing mixed loblolly and longleaf pines, water oaks, laurel oaks, southern red oaks and blackgum, and an understory that included flowering dogwood and blueberries. Neither site showed any sign of having been cultivated, and Kral could not find the plant in clearcut areas adjacent to the populations. Angus Gholson now suspects that one currently known site may have been cultivated. Thorough searches woudl probably find additional populations of *Spigelia gentianoides* in the five counties with records of the species, but the paucity of specimens collected since 1837 and the few sites found recently by experienced field botanists strongly indicates that the plant was never widespread and that it is extremely rare today.

Section 12 of the Endangered Species Act of 1973 directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94-51, was presented to the 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 as a petition in the context of section 4(c)(2) (now section 4(b)(3)) of the Act, as amended,

and of its intention to review the status of the plant taxa contained within. On June 16, 1976, the Service published a proposed rule (41 FR 24524) to determine some 1,700 U.S. vascular plant species recommended by the Smithsonian report to be endangered species pursuant to Section 4 of the Act. This proposal was withdrawn in 1979 (44 FR 12382). *Spigelia gentianoides* was included in the Smithsonian Report; the July 1, 1975 notice; the June 16, 1976 proposal; and the 1979 withdrawal.

On December 15, 1980, the Service published a notice of review for plants (45 FR 82480), which included *Spigelia gentianoides* as a category 1 candidate (a taxon for which data in the Service's possession indicates listing is warranted). A supplement to the notice of review published on November 28, 1983 (48 FR 53640) changed the *Spigelia gentianoides* to a category 2 candidate (a taxon for which data in the Service's possession indicate listing is possibly appropriate). No one had seen this species in the field since 1973, and confirmation was needed that it was extant. An updated notice of review published September 27, 1985 (50 FR 39526) retained *Spigelia gentianoides* as a category 2 candidate. In 1985, Gary Knight, then a graduate student at Florida State University, discovered a population of the plant. Subsequent field work by several botanists confirms that the plant persists in the wild (Rogers 1988a, 1988b; Rogers, pers. comm. 1988; A. Gholson, Chattahoochee, Florida, pers. comm. 1989).

Section 4(b)(3)(B) of the Act, as amended in 1982, requires the Secretary to make findings on certain pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 Amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *Spigelia gentianoides* because the Service had accepted the 1975 Smithsonian report as a petition. In each October of 1983 through 1989, the Service found that the petitioned listing of this species was warranted but precluded by other listing actions of a higher priority, and that additional data on vulnerability and threats were still being gathered. Publication of this proposal constitutes the final petition finding required for *Spigelia gentianoides*.

Summary of Factors Affecting the Species

Section 4(a)(1) of the 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 endangered or threatened due to one or more of the five factors described in Section 4(a)(1). These factors and their application to *Spigelia gentianoides* Chapm. ex A. DC. (gentian pinkroot) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The currently known populations of *Spigelia gentianoides* occur in mixed upland pine-oak forest, and in an upland pineland where the species is part of a fire-maintained understory dominated by wiregrass (*Aristida stricta* and other grasses). Kral's (1983) appraisal that "certainly the *Spigelia* would not survive mechanical site preapreation * * * involved with pine monoculture" was based on his inability to find *Spigelia* in clearcut areas adjacent to a population on an area with no history of cultivation. Kral's views may need to be modified because the largest known *Spigelia gentianoides* population appears to be surviving cutting and replanting, but in this case, the landowner was aware of the presence of the rare plant, had the cutting done with relatively little site disturbance, and is having replanting done by hand (Gholson, pers. comm. 1989). Gholson suspects that the site of one population may have been cultivated at one time, although the site is adjacent to land that would never have been cultivated. *Spigelia gentianoides* was probably extirpated from some areas by cultivation in the nineteenth and early twentieth centuries; conversion of much of the upland forest land in these counties to pulpwood plantations had possibly extirpated more populations.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Other species of the genus have been in demand for their medicinal and/or poisonous properties. "Collecting for medicines has reduced *Spigelia* populations substantially, particularly the striking *S. marilandica*, or pinkroot" (Rogers 1988a). Collecting by botanists or those interested in medicinal plants could easily destroy the very small known populations (Robert Kral, Vanderbilt University, Pers. comm., 1989).

C. *Disease or predation.* None apparent.

D. *The inadequacy of existing regulatory mechanisms. Spigelia gentianoides* is listed as endangered by the Preservation of Native Flora of Florida Act (Section 581.185–187, Florida Statutes), which regulates taking, transport, and sale of plants but does not provide habitat protection. The Endangered Species Act will add Federal penalties to violations of Florida law, will add additional sanctions against taking of plants from Federal land, and will offer additional protection against taking through Sections 7 and 9, and through recovery planning.

E. *Other natural or manmade factors affecting its continued existence.* The one population on publicly owned land is easily accessible and is vulnerable to inadvertent or deliberate damage by human activities. Another population declined from about 150 plants to 30 in twelve years, for unknown reasons (Rogers 1988a, 1988b). The rarity of *Spigelia gentianoides*, its limited geographic range, and extensive alteration of its habitat, exacerbate the risks posed by the preceding four factors, making it likely that the species could become extinct throughout its entire range in the absence of organized conservation efforts.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by *Spigelia gentianoides* in determining to propose this rule. Based on this evaluation, the preferred action is to list *Spigelia gentianoides* as endangered. Its limited geographic range, alteration of its known and potential habitat, the small sizes of the three known populations, and the possibility that the largest known population will be adversely affected by site preparation for pine planting indicate that the species is in danger of extinction throughout its range, and therefore fits the Act's definition of endangered.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species that is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for *Spigelia gentianoides* at this time. Federal agencies, particularly the agency that owns the site of one population, can be alerted to the presence of this species without the publication of critical habitat descriptions and maps. Because of the small sizes of the known populations and the potential for collectors to exterminate this plant, publication of critical habitat maps would increase the threat from taking or vandalism.

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 Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking 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 critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of 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 Environmental Protection Agency (EPA) is establishing a national system to prevent the use of herbicides (including herbicides used in forestry) from jeopardizing endangered and threatened species; the State of Florida's Department of Agriculture and Consumer Services is establishing its own herbicide regulatory system that is expected to be approved by the EPA. Herbicide restrictions, if they are adopted to protect gentian pinkroot, may affect private landowners in this area. The population of gentian pinkroot on land owned by the U.S. Army Corps of Engineers and managed by the Florida Department of Natural Resources would require attention from those agencies to ensure that the management and use of the site does not jeopardize the continued existence of the species. These agencies are aware of the presence of the plant.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export any endangered plant, transport it in interstate or foreign commerce in the course of a commercial activity, sell or offer to sell it in interstate or foreign commerce, or remove it from areas under Federal jurisdiction and reduce it to possession. In addition, for endangered plants, the 1988 amendments to the Act (Pub. L. 100–478) prohibit their malicious damage or destruction on Federal lands, and their removal, cutting, digging up, or damaging or destroying in knowing violation any State law or regulation, including State criminal trespass law. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. The Service anticipates few requests for permits because there is currently no commercial trade in *Spigelia gentianoides*. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, P.O. Box 3507, Arlington, Virginia 22203–3507 (703/358–2104).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, any comments or suggestions from the public or other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposal are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Spigelia gentianoides*;

(2) The location of any additional populations of this 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 and distribution of this species; and

(4) Current or planned activities in the range and habitat of this species and their possible impacts on it.

Final promulgation of the regulation on *Spigelia gentianoides* will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Field Supervisor, U.S. Fish and Wildlife Service, 3100 University Boulevard South, Suite 120, Jacksonville, Florida 32216.

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

de Candolle, Alphonse. 1845. Prodromus systematis naturalis regni vegetabilis 9:5.

Godfrey, R.K. 1979. Pink-root. *Spigelia loganiodes, in* Ward, D.B., ed., Rare and endangered biota of Florida. Vol. 5. Plants. Univ. Presses of Fla., Gainseville. xxxix + 175 pp.

Kral, R. 1983. A report on some rare, threatened, or endangered forest-related vascular plants of the South. USDA Forest Service, Technical Publication R8–TP 2. × + 1305 pp.

Rogers. G.K. 1986. The genera of Loganiaceae in the Southeastern United States. Jour. Arnold Arboretum 67:143–185.

Rogers, G.K. 1988a *Spigelia gentianoides*—a species on the brink of extinction. Plant Conservation 3(3):1,8.

Rogers, G.K. 1988b. Gardening at the Garden: A species that nearly disappeared. Missouri Bot. Gard. Bull. 76(5):7.

Wunderlin, R.P., D. Richardson, and B. Hansen. 1980. Status report on *Spigelia gentianoides*. Unpublished report submitted to U.S. Fish and Wildlife Service, Jacksonsville, Florida. 13 pp.

Author

The primary author of this proposed rule is David Martin (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1543; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under the family Loganiaceae to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

SPECIES		Historic range	Status	When listed	Critical haitat	Special rules
Scientific name	Common name					
*	*	*	*	*	*	
Loganiaceae—Logania family:						
Spigelia gentianoides	Gentian pinkroot	U.S.A. (FL)	E		NA	NA
*	*	*	*	*	*	

Dated: February 1, 1990.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 90–5835 Filed 3–13–90; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 55, No. 50
Wednesday, March 14, 1990

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Adjudication and Committee on Regulation; Public Meetings

Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92–463), notice is hereby given of meetings of the Committee on Adjudication and the Committee on Regulation of the Administrative Conference of the United States.

Committee on Adjudication

Date: Wednesday, March 28, 1990.
Time: 1:30 p.m.
Location: Administrative Conference, 2120 L Street, NW., Suite 500, Washington, DC (Library, 5th floor).
Agenda: The committee will meet to discuss a report on Social Security disability appeals, prepared by Professor Frank Bloch of Vanderbilt University. The Committee will be focusing on proposed recommendations derived from that study, including recommendations on when the record should be closed in SSA proceedings.
Contact: Nancy Miller, 202–254–7020.

Committee on Regulation

Date: Thursday, March 29, 1990.
Time: 1:00 p.m.–4:00 p.m.
Location: Administrative Conference, 2120 L Street, NW., Suite 500, Washington, DC (Library, 5th floor).
Contact: David M. Pritzker, 202–254–7065.
Agenda: The committee will meet to discuss a study of the drug approval process of the Food and Drug Administration for AIDS drugs, conducted by James T. O'Reilly, Esq.

Public Participation

Attendance at the committee meetings is open to the public, but limited to the space available. Persons wishing to attend should notify the contact person at least one day in advance of the meeting. The committee chairman may permit members of the public to present oral statements at meetings. Any member of the public may file a written statement with a committee before, during, or after a meeting. Minutes of the meetings will be available on request. The contact person's mailing address is: Administrative Conference of the United States, 2120 L Street, NW., Suite 500, Washington, DC 20037.

Dated: March 12, 1990.

Jeffrey S. Lubbers,
Research Director.

[FR Doc. 90–5992 Filed 3–13–90; 8:45 am]

BILLING CODE 6110–01–M

DEPARTMENT OF AGRICULTURE

Forest Service

Newspapers Used for Publication of Legal Notice of Appealable Decisions for Pacific Northwest Region, Oregon and Washington

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: This notice lists the newspapers that will be used by all ranger districts, forests, and the Regional Office of the Pacific Northwest Region to publish legal notice of all decisions subject to appeal under 36 CFR Part 217. This action is necessary to implement the Secretary of Agriculture's interim rule amending the Forest Service administrative appeal procedures, which was signed on February 26, 1990 and was published in the **Federal Register** on March 6, 1990. The intended effect of this action is to inform interested members of the public which newspapers will be used to publish legal notices of decisions, thereby allowing them to receive constructive notice of a decision, to provide clear evidence of timely notice, and to achieve consistency in administering the appeals process.

DATES: Publication of legal notices in the listed newspapers will begin with decisions subject to appeal that are made on or after April 5, 1990. The list of newspapers will remain in effect until October 1990 when another notice will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Elton Thomas, Regional Appeals Coordinator, Pacific Northwest Region, PO Box 3623, Portland, OR 97208–3623, phone: (503) 326–2322.

SUPPLEMENTARY INFORMATION: On February 26, 1990 the Secretary of Agriculture signed an interim rule amending the administrative appeal procedures 36 CFR Part 217 of the Forest Service to require publication of legal notice in a newspaper of general circulation of all decisions subject to appeal. This newspaper publication of notices of decisions is in addition to direct notice to those who have requested notice in writing and to those known to be interested and affected by a specific decision.

The legal notice is to identify: the decision by title and subject matter; the date of the decision; the name and title of the official making the decision; and how to obtain copies of the decision. In addition, the notice is to state the date the appeal period begins is the day following publication of the notice.

In addition to the principal newspaper listed for each unit, some forest supervisors and district rangers have listed newspapers providing additional notice of their decisions. The timeframe for appeal shall be based on the date of publication of the notice in the first (principal) newspaper listed for each unit.

The newspapers to be used are as follows:

Pacific Northwest Regional Office

Pacific Northwest Regional Forester decisions on Oregon National Forests:
The Oregonian, Portland, Oregon
Pacific Northwest Regional Forester decisions on Washington National Forests:
The Seattle Post-Intelligencer, Seattle, Washington
Columbia Gorge National Scenic Area Manager decisions:
The Oregonian, Portland, Oregon

Oregon National Forests

Deschutes National Forest

Deschutes Forest Supervisors decisions:
The Bulletin, Bend, Oregon
Bend District Ranger decisions:
The Bulletin, Bend, Oregon
Crescent District Ranger decisions:
The Bulletin, Bend, Oregon
Fort Rock District Ranger decisions:
The Bulletin, Bend, Oregon
Sister District Ranger decisions:
Sisters Nugget, Sisters, Oregon
Bend Pine Nursery Managers decisions:
The Bulletin, Bend, Oregon
Redmond Air Center Managers decisions:

The Bulletin, Bend, Oregon

Fremont National Forest

Fremont Forest Supervisor decisions:
Herald and News, Klamath Falls, Oregon
Newspapers providing additional notice for Fremont Forest Supervisor decisions:
Lake County Examiner, Lakeview, Oregon
The Bulletin, Bend, Oregon
Bly District Ranger decisions:
Herald and News, Klamath Falls, Oregon
Lakeview District Ranger decisions:
Lake County Examiner, Lakeview, Oregon
Paisley District Ranger decisions:
Lake County Examiner, Lakeview, Oregon
Silver Lake District Ranger decisions:
Herald and News, Klamath Falls, Oregon
Newspaper providing additional notice of Silver Lake decisions:
The Bulletin, Bend, Oregon

Malheur National Forest

Malheur Forest Supervisor decisions:
Blue Mountain Eagle, John Day, Oregon
Bear Valley District Ranger decisions:
Blue Mountain Eagle, John Day, Oregon
Burns District Ranger decisions:
Blue Mountain Eagle, John Day, Oregon
Long Creek District Ranger decisions:
Blue Mountain Eagle, John Day, Oregon
Prairie City District Ranger decisions:
Blue Mountain Eagle, John Day, Oregon

Mt Hood National Forest

Mt Hood Forest Supervisor decisions:
The Oregonian, Portland, Oregon
Barlow District Ranger decisions:
The Oregonian, Portland, Oregon
Bear Springs District Ranger decisions:
The Oregonian, Portland, Oregon
Clackamas District Ranger decisions:
The Oregonian, Portland, Oregon
Columbia Gorge District Ranger decisions:
The Oregonian, Portland, Oregon
Estacada District Ranger decisions:
The Oregonian, Portland, Oregon
Hood River District Ranger decisions:
The Oregonian, Portland, Oregon
Zigzag District Ranger decisions:
The Oregonian, Portland, Oregon

Ochoco National Forest

Ochoco Forest Supervisor decisions:
The Bulletin, Bend, Oregon
Newspaper providing additional notice of Ochoco Forest Supervisor decisions:
Burns Times/Herald, Burns, Oregon
Big Summit District Ranger decisions:
The Bulletin, Bend, Oregon
Crooked River National Grassland District Ranger decisions:
Madras Pioneer, Madras, Oregon
Newspaper providing additional notice of Grassland decisions:
Central Oregonian, Prineville, Oregon
Paulina District Ranger decisions:
The Bulletin, Bend, Oregon
Newspaper providing additional notice of Paulina decisions:
Blue Mountain Eagle, John Day, Oregon
Prineville District Ranger decisions:
Central Oregonian, Prineville, Oregon
Snow Mountain District Ranger decisions:
Burns Times/Herald, Burns, Oregon
Newspaper providing additional notice of Snow Mountain decisions:
Blue Mountain Eagle, John Day, Oregon
Central Oregonian, Prineville, Oregon
The Bulletin, Bend, Oregon

Rogue River National Forest

Rogue River Forest Supervisor decisions:
Mail Tribune, Medford, Oregon
Appleage District Ranger decisions:
Mail Tribune, Medford, Oregon
Ashland District Ranger decisions:
Mail Tribune, Medford, Oregon
Butte Falls District Ranger decisions:
Mail Tribune, Medford, Oregon
J. Herbert Stone Nursery Managers decisions:
Mail Tribune, Medford, Oregon
Prospect District Ranger decisions:
Mail Tribune, Medford, Oregon

Siskiyou National Forest

Sisikiyou Forest Supervisor decisions:
Grants Pass Courier, Grants Pass, Oregon
Chetco District Ranger decisions:
Curry Coastal Pilot, Brookings, Oregon
Galice District Ranger decisions:
Grants Pass Courier, Grants Pass, Oregon
Gold Beach District Ranger decisions:
Curry County Reporter, Gold Beach, Oregon
Illinois Valley District Ranger decisions:
Grants Pass Courier, Grants Pass, Oregon
Powers District Ranger decisions:
The World, Coos Bay, Oregon
Newspapers providing additional notice of Power decisions:
Curry County Reporter, Gold Beach, Oregon

Siuslaw National Forest

Siuslaw Forest Supervisor decisions:
Corvallis Gazette-Times, Corvallis, Oregon
Alsea District Ranger decisions:
Corvallis Gazette-Times, Corvallis, Oregon
Hebo District Ranger decisions:
Headlight Herald, Tillamook, Oregon
Mapleton District Ranger decisions:
Siuslaw News, Florence, Oregon
Oregon Dunes National Recreation Area Manager decisions:
The World, Coos Bay, Oregon
Waldport District Ranger decisions:
Newport News Times, Newport, Oregon

Umatilla National Forest

Umatilla Forest Supervisor decisions:
East Oregonian, Pendleton, Oregon
Heppner District Ranger decisions:
East Oregonian, Pendleton, Oregon
North Fork John Day District Ranger decisions:
East Oregonian, Pendleton, Oregon
Pomeroy District Ranger decisions:
East Oregonian, Pendleton, Oregon
Walla Walla District Ranger decisions:
East Oregonian, Pendleton, Oregon

Umpqua National Forest

Umpqua Forest Supervisor decisions:
The News-Review, Roseburg, Oregon
Cottage Grove District Ranger decisions:
The News-Review, Roseburg, Oregon
Diamond Lake District Ranger decisions:
The News-Review, Roseburg, Oregon
North Umpqua District Ranger decisions:
The News-Review, Roseburg, Oregon
Tiller District Ranger decisions:
The News-Review, Roseburg, Oregon
Dorena Tree Improvement Center Manager decisions:
The News-Review, Roseburg, Oregon

Wallowa-Whitman National Forest

Wallowa-Whitman Forest Supervisor decisions:
Democrat Herald, Baker City, Oregon
Newspapers providing additional notice for Wallowa-Whitman Forest Supervisor decisions:
The Observer, La Grande, Oregon
Wallowa County Chieftain, Enterprise, Oregan
Baker District Ranger decisions:
Democrat Herald, Baker City, Oregon
Eagle Cap District Ranger decisions:
Wallowa County Chieftain, Enterprise, Oregon
Hells Canyon National Recreation Area Ranger decisions:
Wallowa County Chieftain, Enterprise, Oregon
Newspapers providing additional notice for Hells Canyon decisions:
Lewiston Morning Tribune, Lewiston, ID
La Grande District Ranger decisions:
The Observer, La Grande, Oregon
Pine District Ranger decisions:
Democrat Herald, Baker City, Oregon
Unity District Ranger decisions:
Democrat Herald, Baker City, Oregon
Wallowa Valley District Ranger decisions:
Wallowa County Chieftain, Enterprise, Oregon

Willamette National Forest

Willamette Forest Supervisor decisions:
Register-Guard, Eugene, Oregon
Newspapers providing additional notice of Willamette Forest Supervisor decisions:
Salem Stateman Herald, Salem, Oregon
Albany Democrat Herald, Albany, Oregon
Blue River District Ranger decisions:
Register-Guard, Eugene, Oregon
Newspapers providing additional notice of Blue River decisions:
Salem Stateman Herald, Salem, Oregon
Albany Democrat Herald, Albany, Oregon
Detroit District Ranger decisions:
Register-Guard, Eugene, Oregon
Newspapers providing additional notice of Detroit decisions:
Salem Stateman Herald, Salem, Oregon
Albany Democrat Herald, Albany, Oregon
Lowell District Ranger decisions:
Register-Guard, Eugene, Oregon
Newspapers providing additional notice of Lowell decisions:
Salem Statesman Herald, Salem, Oregon
Albany Democrat Herald, Albany, Oregon
McKenzie District Ranger decisions:
Register-Guard, Eugene, Oregon
Newspaper providing additional notice of McKenzie decisions:
Salem Stateman Herald, Salem, Oregon
Albany Democrat Herald, Albany, Oregon
Oakridge District Ranger decisions:
Register-Guard, Eugene, Oregon
Newspapers providing additional notice of Oakridge decisions:
Salem Stateman Herald, Salem, Oregon
Albany Democrat Herald, Albany, Oregon
Rigdon District Ranger decisions:
Register-Guard, Eugene, Oregon
Newspapers providing additional notice of Rigdon decisions:
Salem Stateman Herald, Salem, Oregon
Albany Democrat Herald, Albany, Oregon

Sweet Home District Ranger decisions:
Register-Guard, Eugene, Oregon
Newspapers providing additional notice of Sweet Home decisions:
Salem Stateman Herald, Salem, Oregon
Albany Democrat Herald, Albany, Oregon

Winema National Forest

Winema Forest Supervisor decisions:
Herald and News, Klamath Falls, Oregon
Chemult District Ranger decisions:
Herald and News, Klamath Falls, Oregon
Chiloquin District Ranger decisions:
Herald and News, Klamath Falls, Oregon
Klamath District Ranger decisions:
Herald and News, Klamath Falls, Oregon

Washington National Forests

Colville National Forest

Colville Forest Supervisor decisions:
Statesman-Examiner, Colville, WA
Colville District Ranger decisions:
Statesman-Examiner, Colville, WA
Kettle Falls District Ranger decisions:
Statesman-Examiner, Colville, WA
Newport District Ranger decisions:
Newport Miner, Newport, WA
Republic District Ranger decisions:
Republic News Miner, Republic, WA
Sullivan Lake District Ranger decisions:
Newport Miner, Newport, WA

Gifford Pinchot National Forest

Gifford Pinchot Forest Supervisor decisions:
Columbian, Vancouver, Washington
Mt Saint Helens National Monument Manager decisions:
Columbian, Vancouver, Washington
Mt. Adams District Ranger decisions:
Enterprise, White Salmon, Washington
Packwood District Ranger decisions:
Chronicle, Chehalis, Washington
Randle District Ranger decisions:
Columbian, Vancouver, Washington
Wind River District Ranger decisions:
Columbian, Vancouver, Washington

Mt. Baker-Snoqualmie National Forest

Mt. Baker-Snoqualmie Forest Supervisor decisions:
Seattle Post-Intelligencer, Seattle, Washington
Darrington District Ranger decisions:
Everett Herald, Everett, Washington
Mt. Baker District Ranger decisions:
Skagit Valley Herald, Mt. Vernon, Washington
North Bend District Ranger decisions:
Valley Record, North Bend, Washington
Skykomish District Ranger decisions:
Everett Herald, Everett, Washington
White River District Ranger decisions:
Enumclaw Courier Herald, Enumclaw, Washington

Okanagon National Forest

Okanagon Forest Supervisor decisions:
Omak Chronicle, Omak, Washington
Tonasket District Ranger decisions:
The Gazette-Tribune, Oroville, Washington
Twisp District Ranger decisions:
Methow Valley News, Twisp, Washington
Winthrop District Ranger decisions:
Methow Valley News, Twisp, Washington

Olympic National Forest

Olympic Forest Supervisor decisions:
Daily Olympian, Olympia, Washington
Newspapers providing additional notice for Olympic Forest Supervisor decisions:
Mason County Journal, Shelton, Washington
Daily World, Aberdeen, Washington
Peninsula Daily News, Port Angeles, Washington
Bremerton Sun, Bremerton, Washington
Hood Canal District Ranger decisions:
Mason County Journal, Shelton, Washington
Quilicene District Ranger decisions:
Peninsula Daily News, Port Angeles, Washington
Newspaper providing additional notice for Quilicene decisions:
Bremerton Sun, Bremerton, Washington
Quinault District Ranger decisions:
The Daily World, Aberdeen, Washington
Soleduck District Ranger decisions:
The Forks Forum, Forks, Washington

Wenatchee National Forest

Wenatchee Forest Supervisor decisions:
The Wenatchee World, Wenatchee, Washington
Newspaper providing additional notice for Wenatchee Forest Supervisor decisions:
The Yakima Herald-Republic, Yakima, Washington
Chelan District Ranger decisions:
The Wenatchee World, Wenatchee, Washington
Newspaper providing additional notice for Chelan decisions:
The Yakima Herald-Republic, Yakima, Washington
Cle Elum District Ranger decisions:
The Wenatchee World, Wenatchee, Washington
Newspaper providing additional notice for Cle Elum decisions:
The Yakima Herald-Republic, Yakima, Washington
Entiat District Ranger decisions:
The Wenatchee World, Wenatchee, Washington
Newspaper providing additional notice for Entiat decisions:
The Yakima Herald-Republic, Yakima, Washington
Lake Wenatchee District Ranger decisions:
The Wenatchee World, Wenatchee, Washington
Newspaper providing additional notice for Lake Wenatchee decisions:
The Yakima Herald-Republic, Yakima, Washington
Leavenworth Distict Ranger decisions:
The Wenatchee World, Wenatchee, Washington
Newspaper providing additional notice for Leavenworth decisions:
The Yakima Herald-Republic, Yakima, Washington
Naches District Ranger decisions:
The Wenatchee World, Wenatchee, Washington
Newspaper providing additional notice for Naches decisions:
The Yakima Herald-Republic, Yakima, Washington

Dated: March 7, 1990.

Richard A. Ferraro,

Deputy Regional Forester.

[FR Doc. 90-5781 Filed 3-13-90; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-588-019]

Cyanuric Acid and Its Chlorinated Derivatives From Japan; Amendment to Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of amendment to final results of antidumping duty administrative review.

SUMMARY: On January 18, 1990, the Department of Commerce published the final results of its administrative review of the antidumpting duty orders on cyanuric acid and its chlorinated derivatives from Japan. The review covered the period April 1, 1985 through March 31, 1987.

In those results of review, the Department determined that there was no evidence of a fictitious market for granular sales of trichloro isocyanuric acid and dichloro isocyanurates in the home market. After publication of our final results, we received comments from one of the parties to the proceeding alleging ministerial errors in the analysis memorandum on the fictitious market issue. Based on a review of that information and the correction of those errors, we still find no evidence of a fictitious market on granular sales.

EFFECTIVE DATE: March 14, 1990.

FOR FURTHER INFORMATION CONTACT: Susan Silver or Robert J. Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5255.

SUPPLEMENTARY INFORMATION:

Background

On January 18, 1990, the Department of Commerce ("the Department") published in the **Federal Register** (55 FR 1690) the final results of its administrative review on the antidumping orders on cyanuric acid and its chlorinated derivatives from Japan (49 FR 18148, April 27, 1984). After publication of our final results, we received comments from one of the parties to the proceeding alleging

ministerial errors. We have corrected the ministerial errors and determine that those changes do not affect our determination in the final results of review.

Section 1333 of the Omnibus Trade and Competitiveness Act of 1988 which amended section 735 of the Tariff Act of 1930 ("the Act") authorizes the Department to establish procedures for the correction of ministerial errors in final determinations. On February 26, 1988 (53 FR 5813) and October 24, 1988 (53 FR 41617), the Department published these procedures in the **Federal Register**. Congress has defined the term "ministerial error" to specifically include errors in addition, subtraction, or other arithmetic function, clerical errors resulting from inaccurate copying, duplication, or the like. Accordingly, pursuant to the Department's regulations and section 735(e) of the Act, we are amending the final results of administrative review to correct these ministerial errors.

Ministerial Errors

We have corrected the following ministerial errors in the analysis memorandum on the fictitious market issue. Certain numbers were incorrectly copied to the charts used to graph price movements and quantities of Shikoku Chemical Corporation's home market sales of trichloro isocyanuric acid ("TCA") and dichloro isocyanurates ("DCA") in different forms.

Shikoku Chemicals Corporation claimed errors were made by:

1. Copying the wrong quarterly unit prices for one tablet form of DCA for the period April 1984 through March 1987.

2. Copying the wrong quantities for granular, powder and tablet forms of TCA and DCA for the period April 1984 through March 1987.

3. Mislabeling the headings for tablet products.

Amended Final Results of Review

Based on our analysis of this information and the correction of these ministerial errors, we still found no evidence of a fictitious market for Shikoku's home market granular sales of TCA and DCA, and the final results of review are unchanged.

Dated: March 7, 1990.

Eric I Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 90-5801 Filed 3-13-90; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

South Atlantic Fishery Management Council; Public Hearings

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of public hearings and request for comments.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a series of public hearings and provide a comment period to solicit public input into the proposed Atlantic Coast Red Drum Fishery Management Plan (FMP).

DATES: See "**SUPPMENTARY INFORMATION**" for dates and locations of the hearings. All hearings will begin at 7 p.m. Written comments will be accepted until April 11, 1990.

ADDRESSES: All written comments should be sent to Robert K. Mahood, Executive Director, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407-4699.

FOR FURTHER INFORMATION CONTACT: Carrie R.F. Knight, Public Information Officer, South Atlantic Fishery Management Council, 803-571-4366.

SUPPLEMENTARY INFORMATION: The proposed FMP will result in management of red drum, *Sciaenops ocellatus*, along the U.S. Atlantic coast from the east coast of Florida to the New Jersey/New York line. The problems in the fishery include:

(1) Intense fishing mortality on the juvenile red drum population can result, or has resulted, in decreased recruitent to the spawning stock. In addition, the potential exists for development of a fishery in the exclusive economic zone (EEZ) that could result in rapid reduction of the spawning stock. High juvenile mortality, alone or in combination with the development of a directed EEZ fishery, could eventually contribute to recruitment failure.

(2) Lack of Federal regulations, in addition to incompatibility and inconsistency among state regulations, makes enforcement difficult and may result in inadequate protection of the red drum resources; and

(3) There is a need for additional biological, economic, and sociological data to effectively monitor and assess the status of the resources and management efforts.

Objectives of the proposed FMP are:

(1) To maintain a spawning stock biomass sufficient to prevent recruitment failure by cooperatively working with the states to provide a level of escapement of juvenile red drum (40 percent) to the spawning stock and to control fishing mortality to achieve at least a 40 percent spawning stock biomass per recruit level;

(2) To provide a flexible management system to address incompatibility and inconsistency among state and Federal regulations that minimizes regulatory delay while retaining substantial Council and public input into management decisions and that can adapt to changes in resource abundance, new scientific information, and changes in fishing patterns among user groups or by area; and

(3) To promote cooperative collection of biological, economic, and sociological data required to effectively monitor and assess the status of the red drum resource and evaluate management efforts.

Optimum yield for the Atlantic Coast red drum fishery is the amount of harvest that can be taken by U.S. fishermen while maintaining the spawning stock biomass per recruit level at or above 40 percent of the level for an unfished stock (at a fishing mortality rate of F=0). Management measures proposed include: (1) A fishing year of January 1-December 31; (2) a procedure for specifying total allowable catch (TAC) and allocations in the EEZ by FMP amendment; and (3) closure of the EEZ to all harvest of red drum until a spawning stock biomass per recruit level of 30 percent is attained and until such time as a TAX that provides for harvest is specified by FMP amendment. In addition, the Council, utilizing the data and conclusions indicating the current mortality and disappearance rates of juveniles from state waters, recommends that states adopt a 40 percent level of escapement of juveniles needed to achieve the level of at least 40 percent spawning stock biomass per recruit. States are requested, through adoption of an amended FMP, to achieve the target level of escapement of juvenile fish to the adult stock by reducing the rate of fishing mortality through such actions as gear restrictions, closed seasons, quotas, size limits, and bag limits.

The hearings are scheduled as follows:

1. March 29, 1990—South Carolina Wildlife & Marine Resources Center, Fort Johnson Road, Charleston, South Carolina.

2. April 2, 1990—North Carolina Division of Marine Fisheries, Conference Room, 3411 Arendell Street, Morehead City, North Carolina.

3. April 3, 1990—North Carolina Aquarium Auditorium, Airport Road, Manteo, North Carolina.

4. April 4, 1990—Quality Inn—Lake Wright, 6280 North Hampton Boulevard, Norfolk, Virginia.

5. April 5, 1990—Holiday Inn—Midtown, 7100 Abercorn Street, Savannah, Georgia.

6. April 6, 1990—Holiday Inn—Palm Bay, 1881 Palm Bay Road, Palm Bay, Florida.

Dated: March 8, 1990.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90-5820 Filed 3-13-90; 8:45 am]

BILLING CODE 3510-22-M

[Docket No. 900248-0048]

Financial Assistance for Research and Development Projects to Provide Information for the Full and Wise Use and Enhancement of Fishery Resources in the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of availability of financial assistance.

SUMMARY: For fiscal year 1990, Marine Fisheries Initiative (MARFIN) funds are available to assist persons in carrying out research and development projects that optimize the use of U.S. Gulf of Mexico fisheries involving the U.S. fishing industry (recreational and commercial), including, but not limited to, harvesting methods, economic analyses, processing, fish stock assessment, and fish stock enhancement. NMFS issues this notice describing the conditions under which applications will be accepted and how NMFS will determine which applications will be funded.

DATES: Applications for funding under this program will be accepted between March 14, 1990 and 6 p.m. e.s.t. on April 30, 1990. Applications received after that time will not be considered for funding.

Applications may be inspected at the NMFS Southeast Regional Office (see **ADDRESSES**) from April 30, 1990 to May 7, 1990.

Selection of successful applications generally will be provided by June 12, 1990.

ADDRESSES: Send applications to: Regional Director, Attn: D. Ekberg, Southeast Regional Office, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, FL 33702.

Questions of an administrative nature should be referred to: Grants Management Division, Attn: Jean West, Chief, Grants Management Branch, National Central Administration Support Center (NCASC) NOAA, room 116, 11420 Rockville Pike, Rockville, MD 20852, telephone 202-443-0538.

Send comments on the collection of information to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Dr. Donald R. Ekberg, 813-893-3720.

SUPPLEMENTARY INFORMATION:

Classification

NMFS reviewed this solicitation in accordance with Executive Order (E.O.) 12291 and the Department of Commerce guidelines implementing that Order. This solicitation is not "major" because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. This notice does not contain policies with sufficient federalism implications to warrant preparation of a federalism assessment under E.O. 12612. Prior notice and an opportunity for public comments are not required by the Administrative Procedure Act or any other law for this notice concerning grants, benefits, and contracts. Therefore, a regulatory flexibility analysis is not required for purposes of the Regulatory Flexibility Act.

Information collection requirements contained in this notice have been approved by the Office of Management and Budget (OMB Clearance No. 0648-0171) under the provisions of the Paperwork Reduction Act. Public reporting burden for Agency-specific collection of information elements, exclusive of requirements specified under applicable OMB circulars, is estimated to average 4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Regional Director and to OMB (see **ADDRESSES**).

This program is subject to the provisions of E.O. 12372.

I. Introduction

The Fish and Wildlife Act of 1956, at 16 U.S.C. 753a, and section 304(e) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1854(e)) authorize the Secretary of Commerce (Secretary) to conduct research to enhance U.S. fisheries. The Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriation Act of 1990 makes funds available to the Secretary for fiscal year 1990. This solicitation makes available approximately $2.0 million (including $726 thousand for continuing projects) for financial assistance under the MARFIN program to manage and enhance the use of fishery resources in the Gulf of Mexico. There is no guarantee that sufficient funds will be available to make awards for all approved projects. U.S. fisheries [1] include any fishery that is or may be engaged in by U.S. citizens. The phrase "fishing industry" includes both the commercial and recreational sectors of U.S. fisheries. The "MARFIN Board" consists of individuals from (1) NMFS, (2) Gulf of Mexico Fishery Management Council, (3) Gulf and South Atlantic Fisheries Development Foundation, (4) Southeast Sea Grant Universities, (5) Gulf States Marine Fisheries Commission, (6) recreational fisheries, (7) commercial fisheries, and (8) the Gulf States.

II. Funding Priorities

A. Fishery research and development proposals should be related to one or more of the priority areas listed below (in no rank order):

1. *Shrimp.* (a) Development of improved gear efficiency, onboard handling, grading, sorting and preservation methods, and methods to reduce catch of non-target species; (b) evaluation of alternative harvesting (other than otter trawls), handling and processing systems; (c) characterization (catch, effort, size, etc.) and determination of impacts of the bait shrimping industry; (d) characterization (catch, effort, size, etc.) and determination of impacts of recreational shrimping; and (e) methods to reduce conflicts between shrimp trawlers and other marine resource user-groups.

2. *Menhaden.* (a) Economic enhancement of products (e.g., surimi, oil, and meal) for human consumption; and (b) prey-predator relationships.

3. *Coastal Pelagics.* (a) Determination of recruitment indices for king and Spanish mackerel, cobia, and dolphin

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[1] For purposes of this notice, a fishery is defined as one or more stocks of fish, including tuna, and shellfish which are identified as a unit based on geographic, scientific, technical, recreational and economic characteristics, and any and all phases of fishing for such stocks. Examples of a fishery are Gulf of Mexico shrimp, groundfish, menhaden, etc.

(fish); and (b) stock assessment for and economic analysis of fishing strategies for harvest of blue runners, little tunny, and related species.

4. *Reef Fish.* (a) Determination of socioeconomic impacts of recreational and commercial fishing; (b) determination of recruitment processes for shallow and deep-water reef fish; (c) identification of reef fish management units; (d) development of methods to solve problems of competition between recreational and commercial fishermen; (e) determination of trends in fishing effort for inshore and offshore fisheries; (f) determination of size composition by species for inshore and offshore fisheries; (g) determination of the role of artificial reefs and reef site location in productivity; (h) stock assessment information on target species, such as triggerfish, amberjack, etc.; (i) analysis of biological and economic impacts of bottom longline, depth-specific management strategies; (j) compilation of existing data on location and areal extent of reef fish habitats; and (k) development of rearing techniques for early life history stages of red snapper.

5. *Coastal Herrings.* (a) Handling and processing, shoreside methods, and product development; (b) resource surveys and gear development; (c) economic analysis of harvesting, handling, and processing systems; (d) assessment of predator-prey relationships, particularly with respect to recreational and commercial impacts; and (e) analysis of impacts of localized stock harvest and/or environmental perturbations on predator populations.

6. *Ocean Pelagics.* (a) Development of species-selective fishing gear, including longline methods; (b) determination of social and economic impacts of alternative fishing methods; (c) development of methods to determine recreational fishing participation; and (d) characterization of the Gulf of Mexico longline fishery (including fish caught, participants, and landings).

7. *Sharks.* (a) Biological profiles of principal species; and (b) characterization of Gulf of Mexico shark fishery, including catch and effort statistics, participants, and landings.

8. *Marine Mollusks.* (a) Development of methods for onshore and offshore oyster depuration systems; (b) development of guidelines for oyster reef expansion, rehabilitation, and management; (c) development of improved culture methods, and technology transfer; and (d) determination of baseline information for a quahog fishery.

9. *Crabs and Lobsters.* (a) Development of methods to quantify the recreational blue crab fishery; (b) determination of conflicts and methods of resolution among blue crab user-groups; and (c) development of information for population assessment of blue crab stocks.

10. *Bottomfish.* (a) Assessment of impact of shrimp trawling on bottomfish stocks; (b) determination of life history of Gulf of Mexico butterfish; (c) development of methods to reduce incidental trawl catch of bottomfish; (d) assessment of biological, social, and economic impacts of incidental catch reduction; and (e) evaluation of product development options for Gulf of Mexico butterfish and harvestfish.

11. *Marine Mammals and Endangered Species.* Assessment of non-shrimping mortality of sea turtles.

12. *Estuarine Fish.* (a) Improving estimates of age structures of red drum, black drum, and sheepshead; (b) measurement and analysis to improve understanding of escapement dynamics of juvenile red and black drum to offshore stocks; and (c) enhancing knowledge of recruitment of early juvenile stages of economically important species, including habitat requirements.

13. *General.* (a) Performance of economic research applicable to each Gulf of Mexico fishery, including cost and return analyses; (b) estimation of supply and demand functions for important recreational and commercial fisheries; (c) description of the economic linkage among recreational or commercial multi-species fisheries; (d) analysis of the economic and political boundaries affecting the foreign trade of Gulf of Mexico fisheries; (e) description of the economic structure, conduct, and performance of the inshore recreational guide boat sector; (f) description of the economic structure, conduct, and performance of the support sector (e.g., bait/tackle shops) for the recreational fishing industry; (g) description of procedures to implement limited entry for existing or developing commercial or recreational fisheries, such as reef fish, shark, stone crab, or butterfish; and (h) development of alternative methods to handle or use by-products generated from seafood processing common to the Gulf of Mexico.

B. MARFIN financial assistance for projects started in fiscal year 1986. For fiscal years 1986, 1987, 1988, and 1989, awards totaled $6.490 million. Funding by fisheries was as follows:

	Dollars, thousands	Percent of total
1. Shrimp (includes TED technology transfer)	1,189.4	18.3
2. Menhaden	40.9	0.6
3. Coastal pelagics	834.7	12.9
4. Reef fish	349.7	5.4
5. Coastal herrings	327.1	5.0
6. Ocean pelagics	293.7	4.5
7. Marine mollusks	326.1	5.0
8. Crabs and lobsters	506.1	7.8
9. Bottomfish	89.1	1.4
10. Marine mammal and endangered species	288.1	4.4
11. Estuarine fish	2,146.3	33.8
12. General	116.7	1.8

C. Priority in program emphasis will be placed upon funding projects that have the greatest probability of recovering, maintaining, improving, or developing fisheries, improving our understanding of factors affecting recruitment success, generating increased values from fisheries, and generating increased recreational opportunity and harvest potential. Projects will be evaluated as to the likelihood of achieving these benefits through both short-term and long-term research projects with consideration of the magnitude of the eventual economic benefit that may be realized. Both short-term projects that may yield more immediate benefits and long-term projects yielding greater benefits will receive equal emphasis.

D. Further information on current programs that address the above listed priorities may be obtained from the NMFS Southeast Regional Office (see **ADDRESSES**).

III. How to Apply

A. Eligible Applicants

1. Applications for grants or cooperative agreements for MARFIN projects may be made, in accordance with the procedures set forth in this notice, by:

a. Any individual who is a citizen or national of the United States;

b. Any corporation, partnership, or other entity, nonprofit or otherwise, if such entity is a citizen of the United States within the meaning of Section 2 of the Shipping Act, 1916, as amended (46 U.S.C. 802).[2]

[2] To quaify as a citizen of the United States within the meaning of this statute, citizens or nationals of the United States or citizens of the Northern Mariana Islands (NMI) must own not less than 75 percent of the interest in the entity or, in the case of a non-profit entity, exercise control of the entity that is determined by the Secretary to be equivalent to such ownership; and in the case of a corporation, the president or other chief executive officer and the chairman of the board of directors must be citizens of the United States. No more of its board of directors than a minority of the number necessary to constitute a quorum may be non-

Continued

2. NOAA will consider not awarding a grant or cooperative agreement to any individual or organization who is delinquent on a debt to the Federal Government until payment is made or satisfactory arrangements are made with the agency to whom the debt is owed. Any first time applicant for Federal grant funds is subject to a preaward accounting survey prior to execution of the award. Women and minority individuals and groups are encouraged to submit applications. NOAA employees, including full-time, part-time, and intermittent personnel (or their immediate families), and NOAA offices or centers are not eligible to submit an application under this solicitation, or aid in the preparation of an application, except to provide information about the MARFIN program and the priorities and procedures included in this solicitation. However, NOAA employees are permitted to provide information about ongoing and planned NOAA programs and activities that may have implication for an application. Potential applicants are encouraged to contact NOAA organizations engaged in fisheries research in the Gulf of Mexico, or Dr. Donald R. Ekberg at the NMFS Southeast Regional Office (see **ADDRESSES**) for information on NOAA programs.

B. Amount and Duration of Funds

Under this solicitation for fiscal year 1990, an estimated $2.0 million will be available to fund fishery research and development projects ($1.27 million for new projects and $726 thousand for continuing projects). Grants or cooperative agreements may be awarded for a period of up to 3 years. Once awarded, multi-year projects will not compete for funding in subsequent years. Funding for multi-year projects beyond the first year is contingent upon the availability of program funds in subsequent fiscal years, and the extent to which project objectives and reporting requirements are met during the prior year. Publication of this announcement does not obligate NMFS to award any specific grant or to obligate all or any part of the available funds. Awards generally will be made no later than 90 days after the funding selection is determined and negotiations are completed. Under no circumstances should a successful applicant proceed with the proposed project until such time that he/she has received a signed notice of award from the Grants Officer.

C. Cost-Sharing Requirements

Applications must reflect the total budget necessary to accomplish the project, including contributions and/or donations. Cost-sharing is not required for the MARFIN program. However, cost-sharing is encouraged, and in case of a tie in considering proposals for funding, cost-sharing may affect the final decision. The appropriateness of all cost-sharing will be determined on the basis of guidance provided in OMB circulars. Appropriate documentation must exist to support in-kind services or property used to fulfill cost-sharing requirements.

D. Format

1. Applications for project funding must be complete. They must identify the pincipal participants and include copies of any agreements describing the specific tasks to be performed by participants. Project applications should give a clear presentation of the proposed work, the methods for carrying out the project, its relevance to managing and enhancing the use of Gulf of Mexico fishery resources, and cost estimates as they relate to specific aspects of the project. Budgets will include a detailed breakdown by category of expenditure with appropriate justification for both the Federal and non-Federal share. Applicants may submit up to three related projects under one proposal, but must identify project costs, including administrative costs, separately for each individual project. Applicants should not assume prior knowledge on the part of NMFS as to the relative merits of the project described in the application.

2. Applications must be submitted in the following format:

a. *Cover Sheet.* An applicant must use OMB Standard Form 424 (revised 4/88) as the cover sheet for each project or group of consolidated projects. Applicants may obtain copies of the form from the NMFS Southeast Regional Office, or Department of Commerce's National Central Administrative Support Center (see **ADDRESSES**).

b. *Project Summary.* Each project must contain a summary of not more than one page that provides the following information:

i. Project title.

ii. Project status (new or continuing). If continuing, show previous financial assistance award number and beginning/ending date.

iii. Project duration (beginning and ending dates).

iv. Name, address, and telephone number of applicant.

v. Principal Investigator(s).

vi. Project objectives.

vii. Summary of work to be performed. For continuing projects, the applicant must briefly describe progress to date, in addition to any changes to the statement of work previously submitted.

viii. Total Federal funds requested (for multi-year projects, identify each year's requested funding).

ix. Cost-sharing to be provided from non-Federal sources (for multi-year projects, identify each year's cost-sharing). Specify whether contributions are project related cash or in-kind.

x. Total project cost.

c. *Project Description.* Each project must be completely and accurately described. Each project description may be up to 15 pages in length. NMFS will make all portions of the project description available to the public and members of the fishing industry for review and comment; therefore, NMFS cannot guarantee the confidentiality of any information submitted as part of any project, nor will NMFS accept for consideration any project requesting confidentiality of any part of the project.

Each project must be described as follows:

i. *Identification of Problem(s).* Describe how existing conditions prevent the full use of Gulf of Mexico fishery resources. In this description, identify: (a) The fisheries involved, (b) the specific problems(s) that the fishing industry has encountered, (c) the sectors of the fishing industry that are affected, and (d) how the problem(s) prevent the fishing industry from using the fishery resources.

ii. *Project Goals and Objectives.* State what the proposed project will accomplish and describe how this will eliminate or reduce the problem(s) described above. For multi-year projects, describe the ultimate objective of the project and how the individual tasks contribute to reaching the

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citizens; and the corporation itself must be organized under the laws of the United States, or of a State, including the District of Columbia, Commonwealth of Puerto Rico, American Samoa, the Virgin Islands of the United States, Guam, the NMI or any other Commonwealth, territory, or possession of the United States. Seventy-five percent of the interest in a corporation shall not be deemed to be owned by citizens of the NMI, if: (1) The title to 75 percent of its stock is not vested in such citizens or nationals of the United States or citizens of the NMI free from any trust or fiduciary obligation in favor of any person not a citizen or national of the United States or citizens of the NMI; (2) 75 percent of the voting power in such corporation is not vested in citizens or nationals of the United States or citizens of the NMI; (3) through any contract or understanding it is arranged that more than 25 percent of the voting power in such corporation may be exercised, directly or indirectly in behalf of any person who is not a citizen or national of the United States or a citizen of the NMI; or (4) by any means whatsoever, control of any interest in the corporation is conferred upon or permitted to be exercised by any person who is not a citizen or national or the United States.

objective. Describe the time frame in which tasks would be conducted.

iii. *Need for Government Financial Assistance.* Explain why other fund sources cannot fund all the proposed work. List all other sources of funding that are or have been sought for the project.

iv. *Participation by Persons or Groups Other Than the Applicant.* Describe the level of participation required in the project(s) by NOAA or other government and non-government entities. Specific NOAA employees should not be named in the proposal, even though the applicant may wish to acknowledge government expertise in an allied area.

v. *Federal, State, and Local Government Activities.* List any programs (Federal, State, or local government or activities, including State Coastal Zone Management Programs, Sea Grant, Southeast Area Monitoring and Assessment Program, Pub.L. 99-659 and Cooperative Statistics) this project would affect and describe the relationship between the project and those plans or activities.

vi. *Project Outline.* Describe the work to be performed during the project, starting with the first month's work and continuing to the last month. Identify specific milestones that can be used to track project progress. For multi-year projects, major project tasks and milestones for future years must also be identified. If the work described in this section does not contain sufficient detail to allow for proper technical evaluation, NMFS will not consider the application for funding and will return it to the applicant.

vii. *Project Management.* Describe how the project will be organized and manged. Include resumes of principal investigators. List all persons directly employed by the applicant who will be involved in the project, their qualifications, and their level of involvement in the project.

viii. *Monitoring of Project Performance.* Identify who will participate in monitoring the project.

ix. *Project Impacts.* Describe the impact of the project in terms of anticipated increased landings, production, sales, exports, product quality, safety, or any other measurable factors. Describe the specific products or services that will be produced by this project. Describe how these products or services will be made available to the fishing industry.

x. *Evaluation of Project.* The applicant is required to provide an evaluation of project accomplishments in the final report. The application must describe the methodology or procedures to be followed to determine technical or economic feasibility, to evaluate consumer acceptability, or to quantify the results of the project in promoting increased landings, production, sales, exports, product quality, safety, or other measurable factors.

xi. *Total Project Costs.* Total project costs is the amount of funds required to accomplish the proposed statement of work (SOW), and includes contributions and donations. All costs must be shown in a detailed budget. Cost-sharing shall not come from another Federal source. Costs must be allocated to the Federal share and non-Federal share provided by the applicant or other sources. Non-Federal costs are to be divided into cash and in-kind contributions. A standard budget form (ED-357 NG; Rev. 3-80) is available from the offices listed (see **ADDRESSES**). A separate budget must be submitted for each project. An applicant submitting a multi-year project must submit two budgets—one covering total project costs (including individual costs per year) and one covering the initial funding request for the project. The initial funding request must cover funds required during the first 12-month period. NMFS will not consider fees or profits as allowable costs for grantees. To support its budget, the applicant must describe briefly the basis for estimating the value of the non-Federal funds derived from in-kind contributions. Costs for the following categories must be detailed in the budget as follows:

(a) *Personnel*—(i) *Salaries.* Identify salaries by position and percentage of time and annual/hourly salary of each individual dedicated to the project.

(ii) *Fringe Benefits.* Indicate benefits associated with personnel working on the project. This entry should be the proportionate cost of fringe benefits paid for the amount of time spent in the project. For example, if an employee spends 20 percent of his/her time on the project, 20 percent of his/her fringe benefits should be charged to the project.

(b) *Consultants and Contract Services.* Identify all consultant and/or contractual service costs by specific task in relation to the project. If a commitment has been made prior to application to contract with a particular organization, explain how the organization was selected. Describe the type of contract, budget, deliverables expected, and time frame. A detailed budget must be submitted (with supporting documentation) for the total amount of funding requested for a subcontractor/consultant. All contracts must meet the standards established in OMB circulars.

(c) *Travel and Transportation.* Identify number of trips to be taken, purpose, and number of people to travel. Itemize estimated costs to include approximate cost of transportation, *per diem,* and miscellaneous expenses.

(d) *Equipment, Space or Rental Costs.* Identify equipment purchases or rental costs with the intended use. Equipment purchases greater than $500.00 are discouraged, since experienced investigators are expected to have sufficient capital equipment on hand. Use of lease to purchase (LTOP) or similar leases are prohibited. Identify space or rental costs with specific uses.

(e) *Other Costs—(i) Supplies.* Identify specific supplies necessary for the accomplishment of the project. Consumable office supplies must be included under Indirect Costs unless purchased in a large quantity to be used specifically for the project.

(ii) *Postage and Shipping.* Include postage for correspondence and other project related material, as well as air freight, truck or rail shipping of bulk materials.

(iii) *Printing Costs.* Include costs associated with producing materials in conjunction with the project.

(iv) *Long Distance Telephone and Telegraph.* Identify estimated monthly bills.

(v) *Utilities.* These costs should be included under Indirect Costs unless purchased in a large quantity to be specifically identified to the project. Identify costs of utilities and percentage of use in conjunction with performance of project.

(vi) *Indirect Costs.* This entry should be based on the applicant's established indirect cost agreement rate with the Federal Government. A copy of the current approved negotiated Indirect Cost Agreement must be included. It is the policy of the Department of Commerce that indirect costs shall not exceed direct costs.

(vii) *Additional Costs.* Indicate any additional costs associated with the project that are allowable under OBM Circulars A-21, A-87, and A-122.

d. *Supporting Documentation.* This section should include any required documents and any additional information necessary or useful to the description of the project. The amount of information given in this section will depend on the type of project proposed. The applicant should present any information that would emphasize the value of the project in terms of the significance of the problems addressed. Without such information, the merits of the project may not be fully understood, or the value of the project to fisheries

use my be underestimated. The absence of adequate supporting documentation may cause reviewers to question assertions made in describing the project and may result in a lower ranking of the project. Information presented in this section should be clearly referenced in the project description.

E. Application Submission and Deadline

1. *Deadline.* (see **DATES**)

2. *Submission of Applications to NMFS.* Applications are not to be bound in any manner and should be one-sided. All incomplete applications will be returned to the applicant. Applicants must submit one signed original and two (2) copies of the complete application to the NMFS Southeast Regional Office (see **ADDRESSES**). Questions of an administrative nature should be referred to the Grants and Management Division, NCASC (see **ADDRESSES**).

IV. Review Process and Criteria

A. Evaluation and Ranking of Proposed Projects

1. For applications meeting the requirements of this solicitation, NMFS will conduct a technical evaluation of each project prior to any other review. This review normally will involve experts from non-NOAA organizations. If an application contains two or more projects, NMFS will evaluate the projects separately. All comments submitted to NMFS will be taken into consideration in the technical evaluation of projects. NMFS will provide point scores on proposals based on the following evaluation criteria:

a. Adequacy of research/development/demonstration for managing or enhancing Gulf of Mexico marine fishery resources, addressing especially the possibilities of securing productive results (30 points).

b. Soundness of design/technical approach for enhancing or managing the use of Gulf of Mexico marine fishery resources (25 points).

c. Organization and management of the project, including qualifications and previous related experiene of the applicant's management team and other project personnel involved (20 points).

d. Effectiveness of proposed methods for monitoring and evaluating the project (15 points).

e. Justification and allocation of the budget in terms of the work to be performed (10 points).

2. Applications will be ranked by NMFS into three groups: (a) Highly recommended, (b) recommended, and (c) not recommended; for presentation to MARFIN Board members. The Board members individually will consider the significance of the problem addressed in the project, along with the technical evaluation and need for funding. The Board members' individual evaluations will aid NMFS in determining the appropriate level of recommended funding for each project.

B. Consultation with Others

NMFS will make project descriptions available for review as follows:

1. *Public Review and Comment.* Applications may be inspected at the NMFS Southeast Regional Office (see **ADDRESSES** and **DATES**).

2. *Consultation with Members of the Fishing Industry.* NMFS shall, at the discretion, request comments from members of the fishing and associated industries who have knowledge in the subject matter of a project or who would be affected by a project.

3. *Consultation with Government Agencies.* Applications will be reviewed in consultation with the NMFS Southeast Science and Research Director and appropriate laboratory personnel, NCASC Grants Officer and, as appropriate, Department of Commerce bureaus and other federal agencies, for elimination of duplicate funding. The Regional Fishery Management Councils (Councils) may be asked to review projects and advise of any real or potential conflicts with Council activities.

C. Funding Decision

After projects have been evaluated, MARFIN Board members individually will submit funding recommendations to the Director of the NMFS Southeast Regional Office (Regional Director). The Regional Director will ascertain that the projects do not substantially duplicate other projects that are currently funded by NOAA/NMFS or are approved for funding by other Federal offices, determine the projects to be funded, and determine the amount of funds available for the program. The exact amount of funds awarded to each project will be determined in preaward negotiations between the applicant, the Grants Office, and the NMFS program staff. The Department of Commerce will review all projects recommended for funding before an award is executed by the Grants Officer. The funding instrument will be determined by the Grants Officer. Projects shall not be initiated by a recipient until a notice of award is received from the Grants Officer. For multi-year projects, funds will be provided when specified tasks are satisfactorily completed and after NMFS has received MARFIN funds for subsequent fiscal years.

V. Administrative Requirements

A. Obligations of the Applicant

An applicant must:

1. Meet all application requirements and provide all information necessary for the evaluation of the project.

2. Be available, upon request, in person or by designated representative, to respond to questions during the review and evaluation of the project(s).

3. If a project is awarded, manage the day-to-day operations of the project, be responsible for the performance of all activities for which funds are awarded, and be responsible for the satisfactory completion of all administrative and managerial conditions required by the award. This includes adherence to procurement standards set forth in the award and referenced OMB Circulars and Department of Commerce regulations.

4. If a project is awarded, keep records sufficient to document any costs incurred under the award, and allow access to records for audit and examination by the Secretary, the Comptroller of the United States, or their authorized representatives.

5. Fishery data collected during the course of a project that could be pertinent to fishery management needs must be available to NMFS on request, subject to pertinent confidentiality requirements.

6. If a project is awarded, quarterly project status reports on the use of funds, and progress of the project must be submitted to NMFS within 30 days after the end of each calendar quarter. The content of these reports will include, at a minimum:

a. A summary of work conducted, which includes a description of specific accomplishments and milestones achieved;

b. The degree to which goals or objectives were achieved as originally projected;

c. Where necessary, the reasons why goals or objectives are not being met; and

d. Any proposed changes in plans or redirection of resources or activities and the reason therefor.

7. If a project is funded, submit an original and two copies of a final report to NMFS within 90 days after completion of each project. The report must describe the accomplishments of the project and include an evaluation of the work performed and the results and benefits of the work in sufficient detail to enable NMFS to assess the success of the completed project. Results must be described in relation to the project objectives of resolving specific

impediments to managing or enhancing fisheries, and be quantified to the extent possible. Potential uses of project results by private industry or fishery management agencies should be specified. Any conditions or requirements necessary to make productive use of project results should be identified.

8. Present completed project results at the annual MARFIN conference and submit an abstract 15 days prior to the conference (September 1990). Travel funds for the Principal Investigator to attend this meeting will be provided by NMFS.

9. Each recipient of MARFIN funding must comply with applicable OMB circulars, Department of Commerce policies and regulations, and NOAA policies and guidelines. The Drug-Free Workplace Act of 1988 requires that all grantees receiving Federal financial assistance must maintain a drug-free workplace. Each award contains standard terms and conditions and any special conditions which must be met by the recipient.

10. For each project funded, three copies of all publications or reports printed with grant funds must be submitted to the Program Officer. Any publication printed with grant funds must identify the NOAA MARFIN program as the funding source along with the grant award number. Grant recipients are also requested to submit to the Program Officer three copies of all publications resulting wholly or in part from MARFIN-funded projects, to indicate in such publications the role of the MARFIN program in accomplishing the research and, where another Federally-funded program provides data sources used in the research, to so indicate.

B. Obligations of the National Marine Fisheries Service

The NMFS Southeast Region will:

1. Provide programmatic information necessary for the proper submission of applications.

2. Provide advice to inform applicants of NMFS fishery management and development policies and goals.

3. Monitor all projects after award to ascertain their effectiveness in achieving project objectives and in producing measurable results. Actual accomplishments of a project will be compared with stated objectives.

4. Refer questions regarding grant management policy and administration from applicants/recipients to the Grants Officer.

C. NCASC Grants Officer Responsibility

The NCASC Grants Officer is responsible for the execution of NOAA Federal Assistance Awards. The Grants Officer is responsible for the business management aspects of the awards, and serves as the counterpart to the Business Officer of the recipient. The Grants Officer works closely with the Program Officer, who is responsible for the scientific, technical, and programmatic aspects of the project. The official grant file will be maintained by the Grants Officer.

D. Legal Requirements

The applicant will be required to satisfy the requirements of applicable local, state, and Federal laws.

Section 319 of Public Law 101–121 generally prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative branches of the Federal Government in connection with a specific contract, grant, or loan. A "Certification for Contracts, Grants, Loans, and Cooperative Agreements" and the SF–LLL form, "Disclosure of Lobbying Activities" (if applicable), are required to be submitted with the application.

A false statement on the application may be grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment.

Authority: 16 U.S.C. 753a and 16 U.S.C. 1854(e).

Dated: March 8, 1990.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 90–5821 Filed 3–13–90; 8:45 am]

BILLING CODE 3510-22-M

Caribbean Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Caribbean Fishery Management Council will hold a public meeting of its Large Pelagics Committee on March 22, 1990, at 10:00 a.m., at the Travelodge of Puerto Rico, Peace Talk Room, Isla Verde, San Juan, Puerto Rico. The Committee will discuss Amendment #1 to the Swordfish Fishery Management Plan (FMP), and the Shark FMP.

FOR MORE INFORMATION CONTACT: Miguel A. Rolon, Executive Director, Caribbean Fishery Management Council, Banco de Ponce Building, Suite 1108, Hato Rey, Puerto Rico 00918–2577; telephone: (809) 766–5926.

Dated: March 8, 1990.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90–5834 Filed 3–13–90; 8:45 am]

BILLING CODE 3510-22-M

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket 90-C0008]

Buddha's Inc., a Domestic Corporation, and S. Trinity, Individually and as an Officer of the Corporation; Provisional Acceptance of a Settlement Agreement

AGENCY: Consumer Product Safety Commission.

ACTION: Provisional acceptance of a Settlement Agreement under the Flammable Fabrics Act.

SUMMARY: Under requirements of 16 CFR part 1605.13, the Commission must publish in the **Federal Register** consent agreements which it provisionally accepts under the Flammable Fabrics Act. Published below is a provisionally-accepted Settlement Agreement with Buddha's Inc., a domestic corporation and S. Trinity individually and as an officer of the corporation.

DATES: Any interested person may ask the Commission not to accept this agreement by filing a written request with the Office of the Secretary by March 29, 1990.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Earl A. Gershenow, Trial Attorney, Directorate for Compliance and Administrative Litigation, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 492–6626.

SUPPLEMENTARY INFORMATION: (attached)

Dated: March 8, 1990.

Sheldon D. Butts,

Deputy Secretary.

Consumer Product Safety Commission

Consent Order Agreement

Buddha's Inc. and S. Trinity, the president of that corporation (hereinafter, "Respondents"), enter into this Consent Order Agreement (hereinafter, "Agreement") with the staff

(hereinafter, the "staff") of the Consumer Product Safety Commission (Commission) pursuant to the procedure for Consent Order Agreements contained in § 1605.13 of the Commission's Procedures for Investigations, Inspections, and Inquiries under the Flammable Fabrics Act (FFA), 16 CFR part 1605.

This Agreement and Order are for the sole purpose of settling allegations of the staff that Respondents sold futon mattresses that are subject to the Flammable Fabrics Act and the Standard for Flammability of Mattresses and Mattress Pads (FF 4–72, amended) (hereinafter, the "Mattress Standard"); and that those futon mattresses failed to comply with those Acts and the Mattress Standard issued thereunder, as more fully set forth in the complaint accompanying this Agreement.

Respondent and the Staff Agree

1. The Consumer Product Safety Commission has jurisdiction in this matter under the following acts: Consumer Product Safety Act (15 U.S.C. 2051 *et seq.*), Flammable Fabrics Act (15 U.S.C. 1191 *et seq.*), and Federal Trade Commission Act (15 U.S.C. 41 *et seq.*).

2. Respondent Buddha's Inc. is a corporation organized and existing under the laws of the State of Florida with its principal place of business located at Route 2, Box 203A, Trenton, Florida 32693.

3. Respondent S. Trinity is the president of Respondent Buddha's Inc.; and in that capacity, is responsible for the acts, practices, and policies of the respondent corporation.

4. Respondents are now and have been engaged in one or more of the following: The manufacture for sale, the sale, or the offering for sale, in commerce, or the importation, delivery for introduction, transportation in commerce, or the sale or delivery after sale or shipment in commerce, of a product, fabric, or related material which is subject to the requirements of the Flammable Fabrics Act, 15 U.S.C. 1191 *et seq.*, and the Standard for the Flammability of Mattresses and Mattress Pads (FF 4–72, amended), 16 CFR part 1632.

5. This Agreement is for settlement purposes only, does not constitute an admission by Respondents that either of them have violated the law, and becomes effective only upon its final acceptance by the Commission and service of the incorporated Order upon Respondents.

6. Respondents waive (a) all requirements for findings of fact and conclusions of law in the disposition of this matter, and (b) administrative and judicial review of the facts and proceedings.

7. The requirements of this Order are in addition to, and not to the exclusion of, other remedies such as criminal penalties which may be pursued under section 7 of the FFA, 15 U.S.C. 1196.

8. Violation of the provisions of the Order may subject Respondents to a civil penalty for each such violation, as prescribed by law.

9. The Commission may disclose the terms of this Consent Order Agreement.

10. This Agreement and the Complaint accompanying the agreement may be used in interpreting the Order.

11. No agreement, understanding, representation or interpretation not contained in this Agreement or Order may be used to vary or contradict the terms of the Order.

Upon acceptance of this Agreement, the Commission shall issue the following Order:

Order

I

It is hereby ordered, That Respondents, and their successors and assigns, agents, representatives, and employees of the Respondents, directly or through any corporation, subsidiary, division, or other business entity, or through any agency, device or instrumentality, do forthwith cease and desist from selling, or offering for sale, in commerce, or manufacturing for sale, in commerce, or importing into the United States or introducing, delivering for introduction, transporting or causing to be transported, in commerce, or selling or delivering after sale or shipment in commerce, any product, fabric or related material which fails to conform to the Standard for the Flammability of Mattresses and Mattress Pads (FF 4–72, amended), 16 CFR part 1632.

II

It is further ordered, That Respondents conduct prototype testing for each futon mattress design, prior to production, in accordance with applicable provisions of the Standard for the Flammability of Mattresses and Mattress Pads (FF 4–72, amended), 16 CFR part 1632.

III

It is further ordered, That Respondents prepare and maintain written records of the prototype testing specified in paragraph II of this Order for each futon mattress design, including photographs of the tested futon mattresses, in accordance with applicable provisions of the Standard for the Flammability of Mattresses and Mattress Pads (FF 4–72, amended), 16 CFR part 1632.

IV

It is further ordered, That Respondents prepare and maintain a written record of the manufacturing specifications of each futon mattress prototype in accordance with applicable provisions of the Standard for the Flammability of Mattresses and Mattress Pads (FF 4–72, amended), 16 CFR part 1632.

V

It is further ordered, That Respondents conduct prototype testing or, if appropriate, obtain supplier certification to support any substitution of materials after prototype testing, in accordance with all applicable provisions of the Standard for the Flammability of Mattresses and Mattress Pads (FF 4–72, amended), 16 CFR part 1632.

VI

It is further ordered, That Respondents prepare and maintain a written record of the manufacturing specifications of any new ticking or tape edge material substituted for those used in the original prototype testing, in accordance with applicable provisions of the Standard for the Flammability of Mattresses and Mattress Pads (FF 4–72, amended), 16 CFR part 1632.

VII

It is further ordered, That Respondents prepare and maintain all other records required by the Standard for the Flammability of Mattresses and Mattress Pads (FF 4–72, amended), 16 CFR part 1632, including:

(a) Records to support any determination that a particular material other than ticking or tape edge material did not influence ignition resistance;

(b) Ticking classification test results or a certification from the ticking supplier;

(c) Tape edge substitution test results;

(d) Photographs of any futon mattress tested for purposes of making a tape edge substitution; and

(e) Records describing the disposition of all failing or rejected prototype futon mattresses.

VIII

It is further ordered, That Respondents shall forthwith distribute a copy of this Order to each of its operating divisions.

IX

It is further ordered, That Respondents shall within sixty (60) days after service upon them of this Order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

X

It is further ordered, That for a period of ten (10) years from the date this Order becomes final within the meaning of the Federal Trade Commission Act, Respondents notify the Commission at least thirty (30) days prior to any proposed change in the way Respondents do business which may affect their compliance obligations arising out of this Order.

XI

It is further ordered, That the Consent Order Agreement is provisionally accepted pursuant to 16 CFR 1605.13, and shall be placed on the public record, and the Commission shall announce provisional acceptance of the Consent Order Agreement in the Commission's Public Calendar and in the **Federal Register.**

Any agreement, understanding, representation, or interpretation that is not contained in this Agreement and in the incorporated Order may not be used to vary or contradict the terms of the Order subsequently issued by the Commission.

Signed this 16th day of November, 1989.

by:

S. Trinity, President,

Budda's Inc., Route 2, Box 203A, Trenton, Florida 32693.

by:

S. Trinity, Individually,

Budda's Inc., Route 2, Box 203A, Trenton, Florida 32693.

David Schmeltzer,

Associate Executive Director, Directorate for Compliance and Administrative Litigation.

Alan H. Schoem, Director,

Division of Administrative Litigation.

by:

Earl A. Gershenow,

Trial Attorney, Division of Administrative Litigation, Counsel for the Commission staff, Consumer Product Safety Commission, Washington, DC 20207.

By direction of the Commission, this Consent Order Agreement is provisionally accepted pursuant to 16 CFR 1605.13, and shall be placed on the public record, and the Commission shall announce provisional acceptance of the Consent Order Agreement in the Commission's Public Calendar and in the **Federal Register.**

So ordered by the Commission, this 15th day of February, 1990.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 90-5850 Filed 3-13-90; 8:45 am]

BILLING CODE 6355-01-M

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

[Recommendation 90-2]

DOE High Priority Defense Nuclear Facilities; Design, Construction, Operation and Decommissioning Standards

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Notice; proposed recommendation.

SUMMARY: The Defense Nuclear Facilities Safety Board has made recommendations to the Secretary of Energy pursuant to 42 U.S.C. 2286a. that DOE identify the specific standards applicable to the design, construction, operation and decommissioning of defense nuclear facilities of the DOE at: The K, L, and P Reactors, Savannah River Site, SC; Buildings 371, 374, 559, 707, 771, 774, 776, 777, 779, Rocky Flats Plant, CO; Plutonium Finishing Plant; Purex Facility, together with associated waste processing and storage facilities, N-Reactor (including decommissioning), and K-Reactor Storage Basins, Hanford Site, WA; and the Waste Isolation Pilot Plant, NM. DOE's views on the adequacy of these standards for protecting the public health and safety are to be provided and determination made of the extent to which these standards have been implemented. The Board requests public comments on these recommendations.

DATES: Comments, data, views, or arguments concerning the recommendations are due on or before April 14, 1990.

ADDRESSES: Send comments, data, views, or arguments concerning the recommendations to: Defense Nuclear Facilities Safety Board, 600 E Street NW., Suite 675, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Pusateri, at the address above or telephone 202/356-5083, (FTS) 356-5083.

Dated: March 9, 1990.

Kenneth M. Pusateri,

Acting Executive Director.

DOE High Priority Defense Nuclear Facilities; Design, Construction, Operation and Decommissioning Standards

Dated: March 8, 1990.

As required by the Atomic Energy Act, the Defense Nuclear Facilities Safety Board has begun a review and evaluation of the content and implementation of standards relating to the design, construction, operation and decommissioning of defense nuclear facilities of the Department of Energy (DOE). In its initial phases, the Board has concentrated its efforts on evaluating the adequacy of DOE Orders and Draft DOE Orders as they apply to health and safety aspects of defense nuclear activities at the Savannah River Site and associated Orders which have been issued by DOE's Savannah River Operations Office. To date, the Board's review has preliminarily addressed the content of these Orders. The review has not yet extended to implementation. Also, the Board is not certain that it has seen all applicable DOE standards as they apply to health and safety at the Savannah River Site.

The results of the Board's review to date indicate a large degree of variability in the level of detail specified by such Orders and, in general, a level of specificity much less than is found in Nuclear Regulatory Commission requirements applied to commercial nuclear facilities. The Board has found further that there is a lack of uniformity among such Orders as to whether they are mandatory, non-mandatory, or referenced for information. In addition, the review also has disclosed that a number of DOE Orders embodying safety requirements are in draft form, with substantial uncertainty as to when or in what form they will be issued.

In view of the foregoing and other information relating to DOE Orders provided by the Department, the Board recommends the following:

• That the Department identify the specific standards which it considers apply to the design, construction, operation and decommissioning of defense nuclear facilities of the Department of Energy (including all applicable Department Orders, regulations, and requirements) at the following defense nuclear facilities as follows:

—Savannah River Site: K, L, and P Reactors,
—Rocky Flats Plant: Buildings, 371, 374, 559, 707, 771, 774, 776, 777 and 779,
—Hanford Site: Plutonium Finishing Plant; Purex Facility, together with associated waste processing and storage facilities; N-Reactor (including decommissioning); and K-Reactor Storage Basins,
—Waste Isolation Pilot Plant.

• That the Department provide its views on the adequacy of the standards identified in the above process for protecting public health and safety at the defense nuclear facilities referred to, and determine the extent to which the standards have been implemented at these facilities.

We believe it is necessary for the Department eventually to accomplish the above for each defense nuclear facility under its jurisdiction. The facilities enumerated in these recommendations are those which the Board understands to be among those which have high priority within the Department and on which the Board has focused its attention.

John T. Conway,

Chairman.

March 8, 1990.

Honorable James D. Watkins,

Secretary of Energy, Washington, DC 20585.

Dear Mr. Secretary: On March 8, 1990, the Defense Nuclear Facilities Safety Board, in accordance with section 312(5) of Public Law 100-456, approved a number of recommendations which are enclosed for your consideration.

Section 315(A) of Public Law 100-456 requires the Board, after receipt by you, to promptly make these recommendations available to the public in the Department of Energy's regional public reading rooms. Please arrange to have these recommendations placed on file in your regional public reading rooms as soon as possible.

The Board will publish these recommendations in the Federal Register.

Sincerely,

John T. Conway,

Chairman.

[FR Doc. 90-5841 Filed 3-13-90; 8:45 am]

BILLING CODE 6820-KD-M

DEPARTMENT OF DEFENSE

Department of the Army

Intent (NOI)—To Prepare an Environmental Impact Statement (EIS) for the Proposed Development of the Fort Belvoir Engineer Proving Ground (EPG), Fairfax County, VA

AGENCY: DOD, Headquarters, Department of the Army, DOD.

SUMMARY: The Department of the Army currently leases approximately three million square feet of private office space in the Washington, DC, area at a direct lease cost of about $43 million per year. In addition, future expansion at Fort Belvoir will put added pressure on the Army's local requirements for space, and will further intensify the Army's need for a low-cost alternative to competing for lease space within the private market.

The Army has stated that their office needs include 580,000 square feet by December 1993 and 200,000 additional square feet by April 1994 for an initial increment of 780,000 square feet. Ultimately, the Army may require as much as 3,100,000 square feet. Accordingly, the Department of the Army, pursuant to Public Law 101-189, section 2821, is investigating development of an 820-acre parcel of government-owned land at the Engineer Proving Ground (EPG) in Fairfax County, Virginia, in cooperation with the private development community.

Alternatives: Alternatives to be considered in the EIS will include:

a. No action.

b. Several development alternatives, each with a different mix of residential, commercial offices, retail, and other uses.

The EIS process will be conducted in accordance with the National Environmental Policy Act (NEPA), the implementing Army Regulation 200-2, and the provisions of the Council on Environmental Quality, 40 CFR part 1500. The purpose of this EIS will be to identify and determine to extent of environmental impacts and any required mitigation measures.

An EIS for relocation of other Army activities to the Fort Belvior area under the Base Closure and Realignment Act of 1988, Public Law 100-526, section 201 *et. seq.*, is currently in progress. The Army has already held a scoping meeting for this EIS.

Scoping: The Army will conduct scoping meetings to aid in determining the significant issues that need to be addressed in the EIS. The public, as well as Federal, State, and local, agencies are encouraged to participate in the scoping process by submitting comments and identifying relevant issues to be addressed in the EIS.

The Army anticipants initation of the scoping meeting during March 1990. Advance public notice of the scoping meetings will be announced in the local media in the near future. Questions and comments regarding the scope mailing list should be forwarded to: Mr. Gerald Boggs, USAED, Baltimore, Attn: CENAB-RE, P.O. Box 1715, Baltimore, Maryland 21203-1715.

Comments and suggestions should be received not later than 15 days following the public scoping meeting to be considered for incorporation in the Draft Environmental Impact Statement.

Lewis D. Walker,

Deputy Assistant Secretary of the Army (Environmental, Safety and Occupational Health), OASA (I,L&E).

[FR Doc. 90-5751 Filed 3-13-90; 8:45 am]

BILLING CODE 3710-08-M

Military Traffic Management; Personal Property Carrier Review Board Procedures

AGENCY: Military Traffic Management Command, (MTMC), Department of the Army, Department of Defense.

ACTION: Notice of invitation to comment on a proposed revision to Chapter 2, Section E, Paragraph 1.o, (page 2-51) of DOD 4500.34-R, the Personal Property Traffic Management Regulation, to allow MTMC area commanders and field offices to hold Personal Property Carrier Review Board hearings and request for public comment.

SUMMARY: Beginning September 1, 1990, the Military Traffic Management Command (MTMC) proposes to revise the Personal Property Carrier Review Board procedures by allowing the area commands and field offices authority to hold hearings related to the proposed disqualification of a carrier at an installation. The actions of the field offices/area commands will be coordinated with the local or servicing staff Judge Advocate's office for legal advise. This action will serve to alleviate some of the administrative burden on carriers and afford expeditious handling of the hearing. Since this change will directly involve the carrier industry, MTMC requests public comment on the proposed revision.

DATES: Comments must be submitted on or before April 13, 1990.

ADDRESSES: Comments on the proposed revision should be addressed to: Directorate of Personal Property, Headquarters, Military Traffic Management Command, ATTN: MTPPQ, 5611 Columbia Pike, Room 423, Falls Church, VA 22041-5050.

FOR FURTHER INFORMATION CONTACT: Francis A. Galluzzo (Acting Director, MTPP), (703) 756-1140, or Mary E. Sullivan (Traffic Management Specialist), (703) 756-1784.

SUPPLEMENTARY INFORMATION: Headquarters MTMC personnel will continue to handle disqualification hearings involving more than one installation. By allowing the MTMC components the authority to handle some Carrier Review Board actions, hearings can be expeditiously processed.

Pursuant to requirements codified at 41 U.S.C. 418b, MTMC is providing notice of this proposed revision and offering a 30-day period for receiving and considering the views of all interested parties. Timely written comments will be reviewed and considered for incorporation prior to publication of the final change.

Kenneth L. Denton,

Alternate Army Liaison Officer With the Federal Register.

[FR Doc. 90-5823 Filed 3-13-90; 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 April 13, 1990.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, 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 George P. Sotos, Department of Education, 400 Maryland Avenue SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: George P. Sotos, (202) 732-2174.

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, Office of Information Resources Management, 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 George Sotos at the address specified above.

Dated: March 8, 1990.

George P. Sotos,

Acting Director for Office of Information Resources Management.

Office of Elementary and Secondary Education

Type of Review: Revision.
Title: Chapter 1—Migrant Education Program—Application for Grant.
Frequency: Annually.
Affected Public: State and local governments.
Reporting Burden:
Responses: 2,156.
Burden Hours: 69,780.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: This form will be used by applicants to apply for funding under the chapter 1—Migrant Education Program. The Department uses the information to make grant awards.

[FR Doc. 90-5790 Filed 3-13-90; 8:45 am]
BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Mr. John R. Loewenthal; Intent To Grant Patent License

AGENCY: Office of the General Counsel, DOE, Department of Energy.

ACTION: Notice of intent to grant exclusive patent license.

SUMMARY: Notice is hereby given of an intent to grant to Mr. John R. Loewenthal of Austin TX, an exclusive license to practice the invention described in U.S. Patent No. 4,722,201 entitled "Acoustic Cooling Engine." The patent is owned by the United States of America, as represented by the Department of Energy (DOE).

DOE intends to grant the license, upon a final determination in accordance with 35 U.S.C. 209 (c), unless within 60 days of this notice the Assistant General Counsel for Patents, Department of Energy, Washington, DC 20585, receives in writing any of the following, together with supporting documents:

(1) A statement from any person setting forth reasons why it would not be in the best interests of the United States to grant the proposed license; or

(ii) An application for a nonexclusive license to the invention in the United States, in which applicant states that he already has brought the invention to practical application or is likely to bring the invention to practical application expeditiously.

DATES: Written comments or nonexclusive license applications are to be received at the address listed below no later than May 14, 1990.

ADDRESSES: Office of Assistant General Counsel for Patents, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Robert J. Marchick, Office of the Assistant General Counsel for Patents, U.S. Department of Energy, Forrestal Building, Room 6F-067, 1000 Independence Avenue, 20585; Telephone (202) 586-4792.

SUPPLEMENTARY INFORMATION: 35 U.S.C. 209(c) provides the Department with authority to grant exclusive licenses in Department-owned inventions, where a determination can be made, among other things, that the desired practical application of the invention has not been achieved, or is not likely expeditiously to be achieved, under a nonexclusive license. The statute and implementing regulations (37 CFR part 404) require that the necessary determinations be made after public notice and opportunity for filing written objections.

Mr. John R. Loewenthal of Austin TX, has applied for an exclusive license to practice the invention embodied in U.S. Patent No. 4,722,201, entitled "Acoustic Cooling Engine." Applicant has plans for commercialization of the invention, contingent on obtaining exclusivity. The proposed license will be exclusive, subject to a license and other rights retained by the U.S. Government, and will be subject to a negotiated royalty. The Department will review all timely written responses to this notice, and will grant the license if, after expiration of the 60-day notice period, and after consideration of written responses to this notice, a determination is made, in accordance with 35 U.S.C. 209(c), that the license grant is in the public interest.

Issued in Washington, DC, on March 7, 1990.

Stephen A. Wakefield,

General Counsel.

[FR Doc. 90-5837 Filed 3-13-90; 8:45 am]
BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ST90-1284-000 through ST90-1699-000]

Northern Natural Gas Company, et al.; Self-Implementing Transactions

March 7, 1990.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to part 284 of the Commission's regulations, sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA) and section 5 of the Outer Continental Shelf Lands Act.[1]

The "Recipient" column in the following table indicates the entity receiving or purchasing the natural gas in each transaction.

The "part 284 subpart" column in the following table indicates the type of transaction.

A "B" indicates transportation by an interstate pipeline on behalf of an intrastate pipeline or a local distribution company pursuant to § 284.102 of the Commission's regulations and section 311(a)(1) of the NGPA.

A "C" indicates transportation by an intrastate pipeline on behalf of an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.122 of the Commission's regulations and section 311(a)(2) of the NGPA. In those cases where Commission approval of a transportation rate is sought pursuant to § 284.123(b)(2), the table lists the proposed rate and the expiration date of the 150-day period for staff action. Any person seeking to participate in the proceeding to approve a rate listed in the table should file a motion to intervene with the Secretary of the Commission on or before March 28, 1990.

A "D" indicates a sale by an intrastate pipeline to an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.142 of the Commission's Regulations and section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to § 284.147(d) of the Commission's Regulations.

An "E" indicates an assignment by an intrastate pipeline to any interstate pipeline or local distribution company pursuant to § 284.163 of the Commission's regulations and section 312 of the NGPA.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.222 and a blanket certificate issued under § 284.221 of the Commission's regulations.

A "G-S" indicates transportation by interstate pipelines on behalf of shippers other than interstate pipelines pursuant to § 284.223 and a blanket certificate issued under § 284.221 of the Commission's regulations.

A "G-LT" or "G-LS" indicates transportation, sales or assignments by a local distribution company on behalf of or to an interstate pipeline or local distribution company pursuant to a blanket certificate issued under § 284.224 of the Commission's regulations.

A "G-HT" or "G-HS" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under § 284.224 of the Commission's regulations.

A "K" indicates transportation of natural gas on the Outer Continental Shelf by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.303 of the Commission's regulations.

A "K-S" indicates transportation of natural gas on the Outer Continental Shelf by an interstate pipeline on behalf of shippers other than interstate pipelines pursuant to § 284.303 of the Commission's regulations.

Lois D. Cashell,

Secretary.

Docket No.[1]	Transporter/seller	Recipient	Part 284 subpart	Date filed	Est. max. daily quantity [2]
ST90-1284	Northern Natural Gas Co	Peoples Natural Gas Co	B	01-02-90	10,000
ST90-1285	Delhi Gas Pipeline Co	Southern California Gas Co	C	01-02-90	20,000
ST90-1286	Tennessee Gas Pipeline Co	Northern Penn Gas Co	B	01-02-90	3,200,000
ST90-1287	Questar Pipeline Co	Chevron U.S.A., Inc	G-S	01-02-90	30,000
ST90-1288	Valero Transmission, L.P	El Paso Natural Gas Co	C	01-02-90	100,000
ST90-1289	Valero Transmission, L.P	El Paso Natural Gas Co	C	01-02-90	2,500
ST90-1290	Northern Border Pipeline Co	Northern Natural Gas Co	G	01-02-90	100,000
ST90-1291	Northern Border Pipeline Co	Northern Natural Gas Co	G	01-02-90	300,000
ST90-1292	Texas Eastern Transmission Corp	Elf Aquitaine, Inc	G-S	01-02-90	50,000
ST90-1293	Texas Eastern Transmission Corp	Transco Energy Marketing Co	G-S	12-02-90	2,855,000
ST90-1294	United Gas Pipe Line Co	Associated Intrastate Pipeline Co	B	01-02-90	4,120
ST90-1295	Panhandle Eastern Pipe Line Co	Home Petroleum Corp	G-S	01-02-90	4,000
ST90-1296	Panhandle Eastern Pipe Line Co	Central Illinois Light Co	B	01-02-90	900
ST90-1297	Panhandle Eastern Pipe Line Co	Indiana Gas Co	B	01-02-90	800
ST90-1298	Panhandle Eastern Pipe Line Co	Missouri Pipeline	B	01-02-90	35,000
ST90-1299	Mississippi River Transmission Corp	Olin Corp	G-S	01-02-90	6,150
ST90-1300	Mississippi River Transmission Corp	Union Electric Co	G-S	01-02-90	80,000
ST90-1301	Mississippi River Transmission Corp	Gaf Chemical Corp	G-S	01-02-90	2,550
ST90-1302	Mississippi River Transmission Corp	PPG Industries, Inc	G-S	01-02-90	9,180
ST90-1303	Mississippi River Transmission Corp	Union Electric Co	B	01-02-90	15,000
ST90-1304	Mississippi River Transmission Corp	Cerro Copper Products Co	G-S	01-02-90	4,590
ST90-1305	Mississippi River Transmission Corp	National Steel Corp	G-S	01-02-90	45,000
ST90-1306	Mississippi River Transmission Corp	Louisiana Intrastate Gas Corp	B	01-02-90	55,000
ST90-1307	Mississippi River Transmission Corp	Pfizer Pigments, Inc	G-S	01-02-90	8,000
ST90-1308	Mississippi River Transmission Corp	General Chemical Corp	G-S	01-02-90	1,030
ST90-1309	Mississippi River Transmission Corp	The Doe Run Co	G-S	01-02-90	3,117
ST90-1310	Valero Transmission, L.P	Northern Natural Gas Co	C	01-03-90	40,000
ST90-1311	Natural Gas Pipeline Co. of America	Mega Natural Gas Co	G-S	01-03-90	50,000
ST90-1312	Natural Gas Pipeline Co. of America	Seagull Marketing Services, Inc	G-S	01-03-90	125,000
ST90-1313	United Gas Pipe Line Co	Enermark Gas Gathering Corp	G-S	01-03-90	103,000
ST90-1314	K N Energy, Inc	AEC Gas Co	B	01-04-90	3,000
ST90-1315	El Paso Natural gas Co	Sunrise Energy Co	G-S	01-04-90	51,500

[1] Notice of a transaction does not constitute a determination that the terms and conditions of the proposed service will be approved or that the noticed filing is in compliance with the Commission's regulations.

Docket No.[1]	Transporter/seller	Recipient	Part 284 subpart	Date filed	Est. max. daily quantity [2]
ST90-1316	Valero Transmission, L.P	Transcontinental Gas Pipe Line Corp	C	01-04-90	5,000
ST90-1317	ANR Pipeline Co	Country Fresh Dairy	G-S	01-04-90	112
ST90-1318	ANR Pipeline Co	Apache Transmission Corp	B	01-04-90	100,000
ST90-1319	ANR Pipeline Co	Coastal Gas Marketing Co	G-S	01-04-90	619,000
ST90-1320	ANR Pipeline Co	Centran Corp	G-S	01-04-90	1,000
ST90-1321	ANR Pipeline Co	Michigan Consolidated Gas Co	B	01-04-90	750
ST90-1322	ANR Pipeline Co	PSI, Inc	G-S	01-04-90	100,000
ST90-1323	Northwest Pipeline Corp	Bonneville Fuels Corp	G-S	01-04-90	2,500
ST90-1324	Transcontinental Gas Pipe Line Corp	Citizens Gas Supply Corp	G-S	01-04-90	300,000
ST90-1325	Transcontinental Gas Pipe Line Corp	Cincinnati Gas and Electric Co	B	01-04-90	50,000
ST90-1326	Transcontinental Gas Pipe Line Corp	Columbia Gas Transmission Corp	G	01-04-90	2,500
ST90-1327	Inland Gas Co., Inc. (The)	Salyersville Gas Co., Inc	G-S	01-04-90	500
ST90-1328	Inland Gas Co., Inc. (The)	Centran Corp	G-2	01-04-90	17,000
ST90-1329	Enogex Inc	Phillips Gas Pipeline Co	C	01-05-90	1,500
ST90-1330	Northwest Pipeline Corp	City of Enumclaw	B	01-05-90	1,222
ST90-1331	Northwest Pipeline Corp	Robert L. Bayless	G-S	01-05-90	8,000
ST90-1333	Tennessee Gas Pipeline Co	Louisiana Gas System, Inc	B	01-05-90	696,488
ST90-1334	Midwestern Gas Transmission Co	Neches Gas Distribution System	B	01-05-90	200,000
ST90-1335	Northern Natural Gas Co	Terre International, Inc	G-S	01-05-90	8,000
ST90-1336	Northern Natural Gas Co	Western Gas Utilities	B	01-05-90	800
ST90-1337	Northern Natural Gas Co	Elf Aquitaine, Inc.	G-S	01-05-90	10,000
ST90-1338	Northern Natural Gas. Co	Arco Oil & Co	G-S	01-05-90	20,000
ST90-1339	Delhi Gas Pipeline Corp	Natural Gas Pipeline Co. of America	C	01-08-90	7,000
ST90-1340	Delhi Gas Pipeline Corp	Southern Natural Gas Co	C	01-08-90	20,000
ST90-1341	Delhi Gas Pipeline Corp	Natural Gas Pipeline Co. of America	C	01-08-90	15,000
ST90-1342	CNG Transmission Corp	Hope Gas, Inc	B	01-05-90	1,000
ST90-1343	Trunkline Gas Co	American Central Gas Marketing Co	G-S	01-08-90	100,000
ST90-1344	Trunkline Gas Co	Panhandle Eastern Pipe line Co	G	01-08-90	200,000
ST90-1345	Trunkline Gas Co	American Central Gas Marketing Co	G-S	01-08-90	50,000
ST90-1346	Trunkline Gas Co	Nicor Exploration Co	G-S	01-08-90	4,000
ST90-1347	Trunkline Gas Co	Enron Industrial Natural Gas Co	B	01-08-90	50,000
ST90-1348	Trunkline Gas Co	Texas Eastern Transmission Corp	G	01-08-90	20,000
ST90-1349	Trunkline Gas Co	Texas Eastern Transmission Corp	G	01-08-90	55,000
ST90-1350	Algonquin Gas Transmission Co	South County Gas Co	G-S	01-08-90	248
ST90-1351	Algonquin Gas Transmission Co	PSI, Inc	G-3	01-08-90	30,000
ST90-1352	Algonquin Gas Transmission Co	PSI, Inc	G-S	01-08-90	30,000
ST90-1353	Transcontinental Gas Pipe Line Corp	Elf Aquitaine, Inc	G-S	01-08-90	1,460,000
ST90-1354	Transcontinental Gas Pipe Line Corp	Valero Transmission Co	B	01-08-90	400,000
ST90-1355	Transcontinental Gas Pipe Line Corp	Houston Pipe Line Co	B	01-08-90	125,000
ST90-1356	Northwest Pipeline Corp	Enron Gas Marekting	G-S	01-08-90	4,000
ST90-1357	Northwest Pipeline Corp	Jerome P. McHugh and Associates	G-S	01-08-90	20,000
ST90-1358	Northwest Pipeline Corp	Schalk Development Co	G-S	01-08-90	1,250
ST90-1359	Tennessee Gas Pipeline Co	Nashville Gas Co	B	01-08-90	3,200,000
ST90-1360	Northwest Pipeline Corp	Western Natural Gas and Transmission Corp	G-S	01-08-90	1,000
ST90-1361	United Gas Pipe Line Co	Graham Energy Marketing Co	G-S	01-08-90	123,600
ST90-1362	Columbia Gulf Transmission Co	Diamond Shamrock Offshore Partners LTD	G-S	01-08-90	7,000
ST90-1363	Texas Gas Transmission Corp	United Cities Gas Co	B	01-08-90	40,000
ST90-1364	Texas Gas Transmission Corp	Columbia Gas Transmission Corp	G	01-08-90	162,856
ST90-1365	Texas Gas Transmission, Corp	Chevron U.S.A., Inc	G-S	01-08-90	25,000
ST90-1366	Northern Natural Gas Co	Western Gas Utilities	B	01-09-90	200
ST90-1367	Transwestern Pipeline Co	NGC Transportation, Inc	G-S	01-09-90	40,000
ST90-1368	ONG Transmission Co	Oklahoma Natural Gas Co	C	01-09-90	100,000
ST90-1369	Enogex Inc	Panhandle Eastern Pipe Line Co	C	01-09-90	60,000
ST90-1370	Midwestern Gas Transmission Co	Colony Pipeline Corp	B	01-10-90	100,000
ST90-1371	Midwestern Gas Transmission Co.	Northern Indiana Public Service Co	B	01-10-90	100,000
ST90-1372	Tennessee Gas Pipeline Co	Energy North, Inc	B	01-10-90	8,000
ST90-1373	Tennessee Gas Pipeline Co	Westfield Gas & Electric Light Dept	B	01-10-90	4,500
ST90-1374	Columbia Gulf Transmission Co	Dayton Power and Light Co	B	01-09-90	10,000
ST90-1375	Columbia Gulf Transmission Co	Florida Gas Transmission Co	G	01-09-90	20,000
ST90-1376	Columbia Gulf Transmission Co	Coastal Gas Marketing Co	G-S	01-09-90	30,000
ST90-1377	Lone Star Gas Co	El Paso Natural Gas Co	C	01-10-90	25,000
ST90-1378	ANR Pipeline Co	Wisconsin Natural Gas Co	B	01-09-90	56,000
ST90-1379	ANR Pipeline Co	PSI, Inc	G-S	01-09-90	50,000
ST90-1380	ANR Pipeline Co	Northern Illinois Gas Co	B	01-09-90	100,000
ST90-1381	ANR Pipeline Co	Houston Gas Exchange Corp	G-S	01-09-90	80,000
ST90-1382	ANR Pipeline Co	NGC Intrastate Pipeline Co	B	01-09-90	25,000
ST90-1383	ANR Pipeline Co	Northern Indiana Public Service Co	B	01-09-90	120,000
ST90-1384	CNG Transmission Corp	Entrade Corp	G-S	01-10-90	50,000
ST90-1385	CNG Transmission Corp	Empire Natural Gas Corp	G-S	01-10-90	1,000
ST90-1386	CNG Transmission Corp	Transco Energy Marketing Co	G-S	01-10-90	50,000
ST90-1387	CNG Transmission Corp	Entrade Corp	G-S	01-10-90	25,000
ST90-1388	CNG Transmission Corp	Cranberry Pipeline Corp	B	01-10-90	45,000
ST90-1389	Transcontinental Gas Pipe Line Corp	Sabine Gas Transmission Co	B	01-10-90	1,550,000
ST90-1390	Superior Offshore Pipeline Co	Chevron U.S.C., Inc	G-S	01-10-90	10,000
ST90-1391	Columbia Gas Transmission Corp	JDS Energy	G-S	01-10-90	15,000
ST90-1392	Panhandle Eastern Pipe Line Co	Anadarko Trading Co	G-S	01-11-90	100,000
ST90-1393	Transwestern Pipeline Co	Bridgegas U.S.A. Inc	G-S	01-11-90	100,000
ST90-1394	Pacific Gas Transmission Co	Pacific Gas and Electric Co	B	01-11-90	200,000
ST90-1395	Delhi Gas Pipeline Corp	Panhandle Eastern Pipe Line Co	C	01-11-90	3,000
ST90-1396	Delhi Gas Pipeline Corp	Natural Gas Pipeline Co. of America	C	01-11-90	3,000

Docket No.[1]	Transporter/seller	Recipient	Part 284 subpart	Date filed	Est. max. daily quantity [2]
ST90-1397	Natural Gas Pipeline Co. of America	Delhi Gas Pipeline Corp	B	01-11-90	50,000
ST90-1398	Paiute Pipeline Co	Cyanco Co	G-S	01-11-90	10,000
ST90-1399	Midwestern Gas Transmission Co	Peoples Gas Light & Coke Co	B	01-11-90	50,000
ST90-1400	Valero Transmission, L.P	Northern Natural Gas Co	C	01-11-90	40,000
ST90-1401	Columbia Gas Transmission Corp	Phoenix Diversified Ventures, Inc	G-S	01-10-90	75,000
ST90-1402	Columbia Gulf Transmission Co	Bridgeline Gas Distribution Co	B	01-10-90	20,000
ST90-1403	El Paso Natural Gas Co	Marathon Oil Co	G-S	01-11-90	10,300
ST90-1404	El Paso Natural Gas Co	Phillips 66 Natural Gas Co	G-S	01-11-90	140,131
ST90-1405	Texas Eastern Transmission Corp	Columbia Gas of Ohio, Inc	B	01-11-90	3,000
ST90-1406	Texas Eastern Transmission Corp	Trinity Pipeline Co	B	01-11-90	50,000
ST90-1407	Texas Eastern Transmission Corp	Columbia Gas Transmission Corp	G	01-11-90	75,000
ST90-1408	Northern Natural Gas Co	Kimball Resources, Inc	G-S	01-11-90	30,000
ST90-1409	Taft Pipeline Co	Northern Natural Gas Co	C	01-11-90	100,000
ST90-1410	Northern Natural Gas Co	Peoples Natural Gas Co	B	01-11-90	50
ST90-1411	Northwest Pipeline Corp	Brymore Energy Inc	G-S	01-11-90	7,000
ST90-1412	Northwest Pipeline Corp	Enron Gas Marketing	G-S	01-11-90	4,000
ST90-1413	Northwest Pipeline Corp	Enron Oil & Gas Co	G-S	01-11-90	4,000
ST90-1414	Delhi Gas Pipeline Corp	Transwestern Pipeline Co	C	01-12-90	33,000
ST90-1415	Northern Border Pipeline Co	Minnegasco, Inc	B	01-12-90	75,000
ST90-1416	Trunkline Gas Co	Northern Illinois Gas Co	B	01-12-90	15,000
ST90-1417	Mississippi River Transmission Corp	Laclede Steel Co	G-S	01-12-90	20,600
ST90-1418	Mississippi River Transmission Corp	Arkla Energy Resources	G	01-12-90	20,000
ST90-1419	Mississippi River Transmission Corp	Laclede Gas Co	B	01-12-90	675,000
ST90-1420	Williams Natural Gas Co	AG Processing, Inc	G-S	01-12-90	325
ST90-1421	Williams Natural Gas Co	Rangeline Corp	G-S	01-12-90	30,000
ST90-1422	Williams Natural Gas Co	Rangeline Corp	G-S	01-12-90	165
ST90-1423	Williams Natural Gas Co	Reliance Gas Pipeline Co	B	01-12-90	1,935
ST90-1424	Williams Natural Gas Co	Reliance Gas Pipeline Co	B	01-12-90	500
ST90-1425	Williams Natural Gas Co	Vesta Energy Co	G-S	01-12-90	865
ST90-1426	Williams Natural Gas Co	Golden Gas Energies, Inc	B	01-12-90	628
ST90-1427	Williams Natural Gas Co	Vesta Energy Co	G-S	01-12-90	1,170
ST90-1428	Williams Natural Gas Co	Rangeline Corp	G-S	01-12-90	550
ST90-1429	Williams Natural Gas Co	Texpar Energy, Inc	G-S	01-12-90	10,000
ST90-1430	Northwest Pipeline Corp	Marathon Oil Co	G-S	01-12-90	4,000
ST90-1431	Texas Gas Transmission Corp	Tenngasco Corp	G-S	01-12-90	60,000
ST90-1432	Texas Gas Transmission Corp	Catamount Natural Gas, Inc	G-S	01-12-90	100,000
ST90-1433	Transok, Inc	Williams Natural Gas Co	C	01-12-90	50,000
ST90-1434	Transok, Inc	Northern Natural Gas Co	C	01-12-90	60,000
ST90-1435	Williams Natural Gas Co	Rangeline Corp	G-S	01-12-90	440
ST90-1436	Columbia Gulf Transmission Co	American Central Gas Marketing Co	G-S	01-12-90	20,000
ST90-1437	Columbia Gas Transmission Corp	Delmarva Power and Light Co	G-S	01-12-90	10,000
ST90-1438	Columbia Gulf Transmission Co	Delmarva Power and Light Co	G-S	01-12-90	10,270
ST90-1439	Williams Natural Gas Co	Enron Gas Marketing	G-S	01-16-90	350
ST90-1440	Williams Natural Gas Co	Atchison Pipeline Co., L.P	B	01-16-90	885
ST90-1441	Transcontinental Gas Pipe Line Corp	N.E. Randolph County Utility Board	B	01-16-90	621
ST90-1442	Transcontinental Gas Pipe Line Corp	Transco Energy Marketing Co	G-S	01-16-90	120,000
ST90-1443	Transcontinental Gas Pipe Line Corp	ANR Pipeline Co	G	01-16-90	100,000
ST90-1444	Transcontinental Gas Pipe Line Corp	City of Bessemer City	B	01-16-90	1,449
ST90-1445	Transcontinental Gas Pipe Line Corp	Pontchartrain Natural Gas System	B	01-16-90	380,000
ST90-1446	Delhi Gas Pipeline Corp	Natural Gas Pipeline Co. of America	C	01-16-90	11,000
ST90-1447	Delhi Gas Pipeline Corp	K N Energy, Inc	C	01-16-90	60,000
ST90-1448	Tennessee Gas Pipeline Co	Cincinnati Gas and Electric Co	B	01-16-90	100,000
ST90-1449	Northern Border Pipeline Co	Northern Natural Gas Co	G	01-16-90	200,000
ST90-1450	Transwestern Pipeline Co	Amarillo Natural Gas, Inc	B	01-16-90	2,000
ST90-1451	Natural Gas Pipeline Co. of America	Tennessee Gas Pipeline Co	G	01-16-90	47,000
ST90-1452	Southern Natural Gas Co	Transworld Oil USA, Inc	G-S	01-16-90	100,000
ST90-1453	Southern Natural Gas Co	Marathon Oil Co	G-S	01-16-90	180,000
ST90-1454	Southern Natural Gas Co	Bishop Pipeline Corp	G-S	01-16-90	20,000
ST90-1455	Southern Natural Gas Co	South Carolina Pipeline Corp	B	01-16-90	5,000
ST90-1456	Northern Natural Gas Co	Northwestern Public Service Co	B	01-16-90	100,000
ST90-1457	Northern Natural Gas Co	Peoples Natural Gas Co	B	01-16-90	9,495
ST90-1458	Northern Natural Gas Co	Midwest Natural Gas Co., Inc	B	01-16-90	1,250
ST90-1459	Northern Natural Gas Co	Superior Water, Light and Power Co	B	01-16-90	3,000
ST90-1460	Northern Natural Gas Co	Midwest Gas Co	B	01-16-90	2,500
ST90-1461	Northern Natural Gas Co	Bridgegas U.S.A. Inc	G-S	01-16-90	250,000
ST90-1462	Delhi Gas Pipeline Corp	Texas Eastern Transmission Corp	C	01-17-90	11,000
ST90-1463	Columbia Gulf Transmission Co	Cincinnati Gas and Electric Co	B	01-16-90	25,000
ST90-1464	Columbia Gulf Transmission Co	Centran Corp	G-S	01-16-90	35,000
ST90-1465	Columbia Gulf Transmission Co	Public Service Electric and Gas Co	B	01-16-90	57,000
ST90-1466	Columbia Gulf Transmission Co	Northern Illinois Gas Co	B	01-16-90	10,000
ST90-1467	Sabine Pipe Line Co	Longhorn Pipeline Co	B	01-17-90	50,000
ST90-1468	Sabine Pipe Line Co	Columbia Gas of Ohio, Inc	B	01-17-90	36,000
ST90-1469	Sabine Pipe Line Co	Olympic Pipeline Co	B	01-17-90	20,000
ST90-1470	Sabine Pipe Line Co	Sipco Gas Transmission Corp	B	01-17-90	50,000
ST90-1471	Tex/Con Gas Pipeline Co	ANR Pipeline Co., et al	C	01-17-90	25,000
ST90-1472	El Paso Natural Gas Co	Arco Natural Gas Marketing, Inc	G-S	01-17-90	61,000
ST90-1473	Gas Transport, Inc	Hope Gas, Inc	B	01-16-90	1,500
ST90-1474	Northwest Pipeline Corp	Texaco, Inc	G-S	01-17-90	1,000
ST90-1475	Texas Eastern Transmission Corp	Access Energy Pipeline Corp	B	01-17-90	40,000
ST90-1476	Transcontinental Gas Pipe Line Corp	Columbia Gas Transmission Corp	G	01-17-90	60,000

Docket No.[1]	Transporter/seller	Recipient	Part 284 subpart	Date filed	Est. max. daily quantity [2]
ST90-1477	Red River Pipeline	KN Energy, Inc	C	01-18-90	100,000
ST90-1478	Corpus Christi Transmission Co	Corpus Christi Industrial Pipeline Co	C	01-18-90	150,000
ST90-1479	United Gas Pipe Line Co	Laser Marketing Co	G-S	01-18-90	618,000
ST90-1480	Columbia Gulf Transmission Co	CSX Intrastate Gas Co	B	01-18-90	65,000
ST90-1481	Columbia Gulf Transmission Co	Chevron U.S.A. Inc	G-S	01-18-90	350
ST90-1482	Columbia Gulf Transmission Co	Virginia Natural Gas Co	B	01-18-90	30,000
ST90-1483	Nycotex Gas Transport	Columbia Gas Transmission Corp	C	01-18-90	50,000
ST90-1484	El Paso Natural Gas Co	Trigen Resources Corp	G-S	01-18-90	25,750
ST90-1485	Algonquin Gas Transmission Co	Valley Gas Co	B	01-18-90	997
ST90-1486	Algonquin Gas Transmission Co	Valley Gas Co	G-S	01-18-90	3,000
ST90-1487	Algonquin Gas Transmission Co	City of Middlebrough, Gas & Elect. Dept	B	01-18-90	1,496
ST90-1488	Delhi Gas Pipeline Corp	Northern Natural Gas Co	C	01-19-90	75,000
ST90-1489	Delhi Gas Pipeline Corp	Texas Gas Transmission Corp	C	01-19-90	15,000
ST90-1490	Delhi Gas Pipeline Corp	KPL Gas Service Co	C	01-19-90	2,000
ST90-1491	Lone Star Gas Co	El Paso Natural Gas Co., et al	C	01-19-90	115,000
ST90-1492	Lone Star Gas Co	Natural Gas Pipeline Co. of America	C	01-19-90	50,000
ST90-1493	Arkla Energy Resources	AER Louisiana Intrastate Pipeline	B	01-19-90	55,000
ST90-1494	United Gas Pipe Line Co	Texaco Gas Marketing, Inc	G-S	01-19-90	41,200
ST90-1495	Mississippi River Transmission Corp	Houston Gas Exchange Corp	G-S	01-19-90	25,000
ST90-1496	Mississippi River Transmission Corp	World Color Press	G-S	01-19-90	920
ST90-1497	Mississippi River Transmission Corp	Natural Gas Pipeline Co. of America	G	01-19-90	500,000
ST90-1498	Mississippi River Transmission Corp	Illinois Power Co	G-S	01-19-90	241,500
ST90-1499	Mississippi River Transmission Corp	Entrade Corp	G-S	01-19-90	25,000
ST90-1500	Natural Gas Pipeline Co. of America	Northern Illinois Gas Co	B	01-19-90	1,000
ST90-1501	Natural Gas Pipeline Co. of America	Texarkoma Transportation Co	G-S	01-19-90	100,000
ST90-1502	Natural Gas Pipeline Co. of America	Eagle Natural Gas Co	G-S	01-19-90	16,650
ST90-1503	Stingray Pipeline Co	Equitable Resources Marketing Co	K-S	01-19-90	250,000
ST90-1504	Stingray Pipeline Co	Golden Gas Energies, Inc	B	01-19-90	30,000
ST90-1505	Stingray Pipeline Co	FRM, Inc	B	01-19-90	50,000
ST90-1506	Commonwealth Gas Pipeline Corp	Columbia Gas Transmission Corp	G-HT	01-19-90	25,100
ST90-1507	Williston Basin Interstate P/L Co	Neches Gas Distribution Co	B	01-19-90	86,300
ST90-1508	Tennessee Gas Pipeline Co	Trunkline Gas Co	G	01-19-90	1,000,000
ST90-1509	Transok, Inc	Arkla Energy Resources	C	01-19-90	50,000
ST90-1510	Northern Natural Gas Co	Marathon Oil Co	G-S	01-19-90	25,000
ST90-1511	Northern Natural Gas Co	Conoco, Inc	G-S	01-19-90	50,000
ST90-1512	Northern Natural Gas Co	Enron Gas Marketing, Inc	G-S	01-19-90	10,000
ST90-1513	Tennessee Gas Pipeline Co	Kerr-McGee Chemical Corp	G-S	01-22-90	2,600
ST90-1514	Stingray Pipeline Co	TPC Pipeline, Inc	B	01-22-90	100,000
ST90-1515	Black Marlin Pipeline Co	Amoco Gas Co	B	01-22-90	30,000
ST90-1516	Northern Border Pipeline Co	Northern Natural Gas Co	G	01-22-90	100,000
ST90-1517	Northern Border Pipeline Co	Northern Natural Gas Co	G	01-22-90	450,000
ST90-1518	K N Energy, Inc	Vesta Energy Co	G-S	01-22-90	50,000
ST90-1519	K N Energy, Inc	Kansas Pipeline Co	B	01-22-90	50,000
ST90-1520	K N Energy, Inc	Kansas Power and Light Co	B	01-22-90	10,000
ST90-1521	K N Energy, Inc	Northern Gas of Wyoming	B	01-22-90	653
ST90-1522	K N Energy, Inc	Kansas Power and Light Co	G-S	01-22-90	20,000
ST90-1523	K N Energy, Inc	Mobil Natural Gas, Inc	G-S	01-22-90	20,000
ST90-1524	Natural Gas Pipeline Co. of America	Trinity Pipeline, Inc	B	01-22-90	5,000
ST90-1525	Natural Gas Pipeline Co. of America	Montana Power Co	B	01-22-90	20,000
ST90-1526	Natural Gas Pipeline Co. of America	Columbia Gas Transmission Corp	G	01-22-90	150,000
ST90-1527	Natural Gas Pipeline Co. of America	City of Lincoln	B	01-22-90	100,000
ST90-1528	Natural Gas Pipeline Co. of America	NGC Intrastate Pipeline Co	B	01-22-90	100,000
ST90-1529	Natural Gas Pipeline Co. of America	Valero Transmission, L.P	B	01-22-90	200,000
ST90-1530	Panhandle Eastern Pipe Line Co	Mobil Natural Gas, Inc	G-S	01-22-90	100,000
ST90-1531	Panhandle Eastern Pipe Line Co	Missouri Pipeline	B	01-22-90	50,000
ST90-1532	Panhandle Eastern Pipe Line Co	Energy Pipeline Co	B	01-22-90	7,000
ST90-1533	Trunkline Gas Co	Peoples Gas Light & Coke Co	B	01-22-90	270,000
ST90-1534	Trunkline Gas Co	Associated Intrastate Pipeline Co	B	01-22-90	50,000
ST90-1535	Trunkline Gas Co	Coastal Gas Marketing Co	G-S	01-22-90	100,000
ST90-1536	Trunkline Gas Co	Tarpon Gas Marketing Ltd	G-S	01-22-90	90,000
ST90-1537	Trunkline Gas Co	Kimball Resources, Inc	G-S	01-22-90	30,000
ST90-1538	Trunkline Gas Co	Florida Gas Transmission Co	G	01-22-90	5,000
ST90-1539	Trunkline Gas Co	South Central Intrastate Pipe line Co	B	01-22-90	75,000
ST90-1540	Trunkline Gas Co	Florida Gas Transmission Co	G	01-22-90	15,000
ST90-1541	Trunkline Gas Co	Panhandle Trading Co	G-S	01-22-90	75,000
ST90-1542	Trunkline Gas Co	Southeastern Michigan Gas Co	B	01-22-90	10,000
ST90-1543	Trunkline Gas Co	NGC Intrastate Pipeline Co	B	01-22-90	150,000
ST90-1544	Northwest Pipeline Corp	Robert L. Bayless	G-S	01-22-90	3,000
ST90-1545	El Paso Natural Gas Co	Lone Star Gas Co	B	01-22-90	51,500
ST90-1546	El Paso Natural Gas Co	Gasmark Inc	G-S	01-22-90	3,296
ST90-1547	United Gas Pipe Line Co	Phoenix Gas Pipeline Co	G-S	01-22-90	103,000
ST90-1548	United Gas Pipe Line Co	Texaco Gas Marketing, Inc	G-S	01-22-90	103,000
ST90-1549	Natural Gas Pipeline Co. of America	NGC Intrastate Pipeline Co	B	01-23-90	150,000
ST90-1550	Natural Gas Pipeline Co. of America	Peoples Gas Light & Coke Co	B	01-23-90	1,300
ST90-1551	Natural Gas Pipeline Co. of America	Reliance Pipeline Co	B	01-23-90	15,000
ST90-1552	ANR Pipeline Co	Northern Illinois Gas Co	B	01-23-90	100,000
ST90-1553	ANR Pipeline Co	Memphis Light, Gas and Water Division	B	01-23-90	20,000
ST90-1554	ANR Pipeline Co	Texline Gas Co	B	01-23-90	50,000
ST90-1555	ANR Pipeline Co	Wisconsin Public Service Corp	B	01-23-90	100,000
ST90-1556	ANR Pipeline Co	Union Gas Limited	B	01-23-90	15,000

Docket No.[1]	Transporter/seller	Recipient	Part 284 subpart	Date filed	Est. max. daily quantity [2]
ST90-1557	ANR Pipeline Co	Union Gas Limited	B	01-23-90	100,000
ST90-1558	Arkla Energy Resources	Neches Gas Distribution Co	B	01-23-90	45,000
ST90-1559	Neches Pipeline System	Natural Gas Pipeline Co. of America	C	01-23-90	40,000
ST90-1560	Acadian Gas Pipeline System	Natural Gas Pipeline Co. of America	C	01-23-90	2,000
ST90-1561	Dow Pipeline Co	Texas Eastern Transmission Corp	C	01-23-90	50,000
ST90-1562	Transcontinental Gas Pipe Line Corp	Louis Dreyfuss Energy Corp	G-S	01-23-90	9,975,000
ST90-1563	Transcontinental Gas Pipe Line Corp	Coastal Gas Marketing Co	G-S	01-23-90	5,400,000
ST90-1564	Equitrans, Inc	Equitable Gas Co., et al	B	01-23-90	6,860
ST90-1565	Texas Gas Transmission Corp	Citizens Gas and Coke Utility	B	01-23-90	2,500
ST90-1566	Texas Gas Transmission Corp	Citizens Energy Corp	G-S	01-23-90	200,000
ST90-1567	Texas Gas Transmission Corp	NGC Intrastate Pipeline Co	B	01-23-90	50,000
ST90-1568	Texas Gas Transmission Corp	Entrade Corp	G-S	01-23-90	200,000
ST90-1569	Texas Gas Transmission Corp	Amoco Production Co	G-S	01-23-90	300,000
ST90-1570	ONG Transmission Co	Northern Natural Gas Co	C	01-23-90	50,000
ST90-1571	ONG Transmission Co	Panhandle Eastern Pipe Line Co	C	01-23-90	50,000
ST90-1572	Delhi Gas Pipeline Corp	Northern Natural Gas Co	C	01-24-90	5,000
ST90-1573	United Texas Transmission Co	Natural Gas Pipeline Co. of America	C	01-24-90	32,000
ST90-1574	United Texas Transmission Co	Transcontinental Gas Pipe Line Corp	C	01-24-90	20,000
ST90-1575	United Texas Transmission Co	Natural Gas Pipeline Co. of America	C	01-24-90	50,000
ST90-1576	United Texas Transmission Co	Transcontinental Gas Pipe Line Corp	C	01-24-90	30,000
ST90-1577	Natural Gas Pipeline Co. of America	Access Energy Pipeline Co	B	01-24-90	100,000
ST90-1578	Natural Gas Pipeline Co. of America	Illinois Power Co	B	01-24-90	10,000
ST90-1579	Natural Gas Pipeline Co. of America	Central Illinois Light Co	B	01-24-90	10,000
ST90-1580	ANR Pipeline Co	BP Gas Transmission Co	B	01-24-90	100,000
ST90-1581	ANR Pipeline Co	Gilbert Paper Co	G-S	01-24-90	500
ST90-1582	ANR Pipeline Co	Peoples Gas & Coke Co	B	01-24-90	5,000
ST90-1583	ANR Pipeline Co	Entrade Corp	G-S	01-24-90	10,000
ST90-1584	ANR Pipeline Co	Seagull Marketing Services, Inc	G-S	01-24-90	60,000
ST90-1585	Arkla Energy Resources	Enogex Inc	B	01-24-90	30,000
ST90-1586	Trunkline Gas Co	PSI, Inc	G-S	01-24-90	20,000
ST90-1587	Northwest Pipeline Corp	Thermal Exploration, Inc	G-S	01-24-90	1,100
ST90-1588	Transcontinental Gas Pipe Line Corp	Columbia Gas Transmission Corp	G	01-24-90	16,000
ST90-1589	Transcontinental Gas Pipe Line Corp	Superior Natural Gas Corp	G-S	01-24-90	25,000
ST90-1590	Transcontinental Gas Pipe Line Corp	Shell Gas Trading Co	G-S	01-24-90	25,000
ST90-1591	Transcontinental Gas Pipe Line Corp	Enermark Gas Gathering Corp	G-S	01-24-90	285,000
ST90-1592	United Gas Pipe Line Co	Amoco Production Co	G-S	01-24-90	312,090
ST90-1593	United Gas Pipe Line Co	Enermark Gas Gathering Corp	G-S	01-24-90	103,000
ST90-1594	United Gas Pipe Line Co	Gulf South Pipeline Co	G-S	01-24-90	309,000
ST90-1595	United Gas Pipe Line Co	Laser Marketing Co	G-S	01-24-90	618,000
ST90-1596	Pacific Gas Transmission Co	Access Energy Pipeline Corp	B	01-25-90	30,000
ST90-1597	Pacific Gas Transmission Co	Cascade Natural Gas Corp	B	01-25-90	50,000
ST90-1598	Williams Natural Gas Co	Reliance Pipeline Co	B	01-25-90	85
ST90-1599	Williams Natural Gas Co	City of Plattsburg	B	01-25-90	131
ST90-1600	Northwest Pipeline Corp	Bonneville Fuels Corp	G-S	01-25-90	7,500
ST90-1601	Columbia Gas Transmission Corp	Gas Marketing, Inc	G-S	01-25-90	10,000
ST90-1602	Columbia Gas Transmission Corp	Allegheny & Western Energy Corp	G-S	01-25-90	30,000
ST90-1603	Columbia Gas Transmission Corp	Atwood Energy, Inc	G-S	01-25-90	6,000
ST90-1604	Columbia Gas Transmission Corp	Cabot Oil & Gas Corp	G-S	01-25-90	17,000
ST90-1605	Tennessee Gas Pipeline Co	Rochester Gas & Electric Corp	B	01-25-90	25,000
ST90-1606	ANR Pipeline Co	Kaztex Energy Management, Inc	G-S	01-25-90	1,600
ST90-1607	ANR Pipeline Co	Bridgeline Gas Distribution Co	B	01-25-90	60,000
ST90-1608	ANR Pipeline Co	Coastal Gas Marketing Co	G-S	01-25-90	200,000
ST90-1609	ANR Pipeline Co	Consolidated Papers, Inc	G-S	01-25-90	3,000
ST90-1610	ANR Pipeline Co	Centran Corp	G-S	01-25-90	500
ST90-1611	Mid Louisiana Gas Co	Texican Natural Gas Co	G-S	01-26-90	20,000
ST90-1612	Mid Louisiana Gas Co	Coastal Gas Marketing Co	G-S	01-26-90	40,000
ST90-1613	Questar Pipeline Co	Mobil Natural Gas, Inc	G-S	01-26-90	10,000
ST90-1614	Tennessee Pipeline Co	Varibus Corp	B	01-26-90	1,000,000
ST90-1615	Black Marlin Pipeline Co	Enron Industrial Natural Gas Co	B	01-26-90	75,000
ST90-1616	Colorado Interstate Gas Co	Southern Union Gas Co	B	01-26-90	4,000
ST90-1617	Colorado Interstate Gas Co	Union Pacific Texas Gathering, Inc	B	01-26-90	25,000
ST90-1618	Gas Gathering Corp	Southern Union Exploration Co	G-S	01-26-90	6,000
ST90-1619	Taft Pipeline Co	Northern Natural Gas Co	C	01-26-90	100,000
ST90-1620	Texas Gas Transmission Corp	PSI, Inc	G-S	01-26-90	75,000
ST90-1621	Texas Gas Transmission Corp	Southern Gas Co	G-S	01-26-90	450,000
ST90-1622	Texas Gas Transmission Corp	Phibro Distributors Corp	G-S	01-26-90	200,000
ST90-1623	El Paso Natural Gas Co	Sunrise Energy Co	G-S	01-26-90	20,600
ST90-1624	Columbia Gas Transmission Corp	Eastern Pipeline Corp	B	01-26-90	5,000
ST90-1625	Trunkline Gas Co	NGC Transportation, Inc	G-S	01-29-90	75,000
ST90-1626	Trunkline Gas Co	Caterpillar, Inc	G-S	01-29-90	30,000
ST90-1627	Trunkline Gas Co	Panda Resources, Inc	G-S	01-29-90	50,000
ST90-1628	Trunkline Gas Co	NGC Transportation, Inc	G-S	01-29-90	20,000
ST90-1629	Trunkline Gas Co	Stellar Gas Co	B	01-29-90	100,000
ST90-1630	Trunkline Gas Co	Equitable Resources Marketing Co	G-S	01-29-90	50,000
ST90-1631	Trunkline Gas Co	Texline Gas Co	B	01-29-90	75,000
ST90-1632	Trunkline Gas Co	Wintershall Pipeline Corp	B	01-29-90	50,000
ST90-1633	Trunkline Gas Co	Illinois Power Co	B	01-29-90	22,000
ST90-1634	Red River Pipeline	K N Energy, Inc	C	01-29-90	75,000
ST90-1635	Sea Robin Pipeline Co	Equitable Resources Marketing Co	G-S	01-29-90	211,150
ST90-1636	United Gas Pipe Line Co	Catamount Natural Gas, Inc	G-S	01-29-90	51,500

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ST90-1637	United Gas Pipe Line Co	Crescent Gas Corp	B	01-29-90	15,450
ST90-1638	United Gas Pipe Line Co	Entrade Corp	G-S	01-29-90	103,000
ST90-1639	United Gas Pipe Line Co	Desoto Pipeline Co	B	01-29-90	2,060
ST90-1640	United Gas Pipe Line Co	Llano, Inc	B	01-29-90	41,200
ST90-1641	United Gas Pipe Line Co	Entrade Corp	G-S	01-29-90	103,000
ST90-1642	United Gas Pipe Line Co	Woodward Pipeline, Inc., et al	B	01-29-90	15,450
ST90-1643	Washington Gas Pipe Line Co	Piedmont Natural Gas Co	D	01-29-90	50,000
ST90-1644	Northwest Pipeline Corp	Colorado Interstate Gas Co	G	01-29-90	1,500
ST90-1645	Tennessee Gas Pipeline Co	Granite State Gas Transmission, Inc	G	01-29-90	51,550
ST90-1646	CNG Transmission Corp	Phoenix Diversified Ventures, Inc	G-S	01-29-90	7,000
ST90-1647	Seagull Interstate Corp	Cavallo Pipeline Co	B	01-30-90	10,000
ST90-1648	Seagull Shoreline System	Seagull Interstate Corp	C	01-30-90	10,000
ST90-1949	Seagull Shoreline System	Texas Eastern Transmission Co	C	01-30-90	10,000
ST90-1650	Cavallo Pipeline Co	Seagull Interstate Corp	C	01-30-90	10,000
ST90-1651	Williston Basin Interstate P/L Co	Quivira Gas Co	B	01-30-90	88,629
ST90-1652	Williston Basin Interstate P/L Co	MGTC, Inc	B	01-30-90	30,401
ST90-1653	Williston Basin Interstate P/L Co	Montana-Dakota Utilities Co	B	01-30-90	112,976
ST90-1654	Williston Basin Interstate P/L Co	Interenergy Corp	B	01-30-90	18,000
ST90-1655	Williston Basin Interstate P/L Co	Montana-Dakota Utilities Co	B	01-30-90	2,336
ST90-1656	Williston Basin Interstate P/L Co	Longhorn Pipeline Co	B	01-30-90	14,385
ST90-1657	Transwestern Pipeline Co	Phillips Petroleum Co	G-S	01-30-90	5,000
ST90-1658	Mississippi River Transmission Corp	City of Red Bud	G-S	01-30-90	2,250
ST90-1659	Mississippi River Transmission Corp	Spectrulite Consortium	G-S	01-30-90	4,600
ST90-1660	Mississippi River Transmission Corp	Shell Oil Co	G-S	01-30-90	52,500
ST90-1661	Mississippi River Transmission Corp	Amoco Petroleum Additives Co	G-S	01-30-90	6,120
ST90-1662	Mississippi River Transmission Corp	Asarco, Inc	G-S	01-30-90	2,652
ST90-1663	Mississippi River Transmission Corp	Associated Intrastate Pipeline Co	B	01-30-90	104,000
ST90-1664	Mississippi River Transmission Corp	Ladd Gas Marketing	G-S	01-30-90	20,000
ST90-1665	Mississippi River Transmission Corp	Continental Natural Gas, Inc	G-S	01-30-90	100,000
ST90-1666	Mississippi River Transmission Corp	Golden Gas Energies, Inc	G-S	01-30-90	30,000
ST90-1667	Mississippi River Transmission Corp	Georgia-Pacific Corp	G-S	01-30-90	15,000
ST90-1668	Mississippi River Transmission Corp	Ford Motor Co	G-S	01-30-90	10,000
ST90-1669	Equitrans, Inc	Commonwealth Gas Co	G-S	01-30-90	49,000
ST90-1670	Transcontinental Gas Pipe Line Corp	Superior Natural Gas Corp	G-S	01-30-90	50,000
ST90-1671	Northern Natural Gas Co	Kansas Power and Light Co	B	01-30-90	30,000
ST90-1672	Northern Natural Gas Co	Iowa Southern Utilities Co	B	01-31-90	19,200
ST90-1673	Northern Natural Gas Co	Anadarko Trading Co	G-S	01-31-90	10,000
ST90-1674	Northern Natural Gas Co	Kansas Power and Light Co	B	01-31-90	10,000
ST90-1675	Northern Natural Gas Co	Panda Resources, Inc	G-S	01-31-90	15,000
ST90-1676	United Texas Transmission Co	Entex, Inc	C	01-31-90	200,000
ST90-1677	Gulf Energy Pipeline Co	United Gas Pipe Line Co	C	01-31-90	15,000
ST90-1678	Gulf Energy Pipeline Co	Trunkline Gas Co	C	01-31-90	10,000
ST90-1679	Columbia Gulf Transmission Co	Total Minatome Corp	G-S	01-31-90	1,200
ST90-1680	Columbia Gulf Transmission Co	Diamond Shamrock Offshore Partners Ltd	G-S	01-31-90	23,000
ST90-1681	Columbia Gulf Transmission Co	Loutex Energy, Inc	G-S	01-31-90	70,000
ST90-1682	Trunkline Gas Co	People Gas Light & Coke Co	B	01-31-90	50,000
ST90-1683	Trunkline Gas Co	Central Illinois Light Co	B	01-31-90	2,500
ST90-1684	Trunkline Gas Co	Valero Transmission, L.P	B	01-31-90	200,000
ST90-1685	Trunkline Gas Co	Panhandle Trading Co	G-S	01-31-90	25,000
ST90-1686	Trunkline Gas Co	Peoples Gas Light & Coke Co	B	01-31-90	30,000
ST90-1687	Trunkline Gas Co	Access Energy Corp	G-S	01-31-90	20,000
ST90-1688	Trunkline Gas Co	Conoco, Inc	G-S	01-31-90	50,000
ST90-1689	Natural Gas Pipeline Co. of America	Texaco Gas Marketing, Inc	G-S	01-31-90	150,000
ST90-1690	Transcontinental Gas Pipe Line Corp	Santa Fe Minerals	G-S	01-31-90	1,625,000
ST90-1691	Panhandle Eastern Pipe Line Co	Iowa Electric Light & Power Co	B	01-31-90	100,000
ST90-1692	Panhandle Eastern Pipe Line Co	Missouri Pipeline	B	01-31-90	50,000
ST90-1693	Panhandle Eastern Pipe Line Co	Northern Illinois Gas Co	B	01-31-90	50,000
ST90-1694	Panhandle Eastern Pipe Line Co	Kokomo Gas and Fuel Co	B	01-31-90	9,400
ST90-1695	Panhandle Eastern Pipe Line Co	Missouri Pipeline	B	01-31-90	50,000
ST90-1696	Panhandle Eastern Pipe Line Co	Home Petroleum Corp	G-S	01-31-90	1,000
ST90-1697	Panhandle Eastern Pipe Line Co	NGC Transportation, Inc	G-S	01-31-90	75,000
ST90-1698	Panhandle Eastern Pipe Line Co	BHP Gas Marketing Co	G-S	01-31-90	6,000
ST90-1699	Panhandle Eastern Pipe Line Co	General Motors Corp	G-S	01-31-90	7,000

[1] Notice of transactions does not constitute a determination that filings comply with commission regulations in accordance with Order No. 436 (final rule and notice requesting supplemental comments, 50 FR 42,372, 10/10/85).

[2] Estimated maximum daily volumes includes volumes reported by the filing company in MMBtu, Mcf and DT.

Note.—ST90-1332 was withdrawn by the filing company and deleted.

Project Nos. 2908-007, et al.

Hydroelectric Applications; City of New Roads, LA et al.; Applications Filed with the Commission

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1 *a. Type of Application:* Surrender of License.

b. Project No.: 2908-007.

c. Date filed: December 28, 1989.

d. Applicant: City of New Roads, Louisiana.

e. Name of Project: Red River Lock and Dam No. 3.

f. Location: On the Red River in Grant and Natchitoches Parishes, Louisiana.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)-825(r).

h. Applicant Contact: Honorable Sylvester Muckelroy, Mayor, City of

New Roads, 211 West Main Street, New Roads, LA 70760, (504) 638-7047.

i. FERC Contact: Michael Dees (202) 357-0807.

j. Comment Date: March 30, 1990.

k. Description of Application: On June 19, 1986, a license was issued to construct, operate and maintain the Red River Lock and Dam No. 3 Project No. 2908. The project would consist of: (a) A powerhouse containing three generating units rated at 18,000 kW each for a total installed capacity of 54,000 kW. The powerhouse would be constructed integrally with the Corps' proposed gated spillway structure; (b) an approximately 165-foot-wide inlet channel with a maximum depth of approximately 77 feet; (c) an approximately 165-foot-wide outlet channel with a maximum depth of approximately 44 feet; (d) a transmission system consisting of the 350-foot, 6.9-kV generator leads, the three 20 MVA 6.9/230 kV transformers, the 0.82 mile, 230-kV transmission line, and the 230-kV substation; and (e) appurtenant facilities. Licensee states that the project is no longer economically feasible.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

2 *a. Type of Application:* Surrender of License.

b. Project No.: 3348-007.

c. Date filed: December 19, 1989.

d. Applicant: City of Covington, Virginia.

e. Name of Project: Gathright Dam Hydro Project.

f. Location: On the Jackson River in Alleghany County, Virginia.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)-825(r).

h. Applicant Contact: Mr. Michael LaRow, Sigma Consultants, Inc., 74 Bent Road, Sudbury, MA 01776, (508) 443-5660.

i. FERC Contact: Ed Lee (202) 357-0809.

j. Comment Date: March 30, 1990.

k. Description of Application: The license for this project was issued on july 18, 1985, for an installed capacity of 6 MW. The licensee states that it has determined that the project would be economically infeasible. No construction has commenced at the project site.

l. This notice also consists of the following standard paragraphs: B and C.

3*a. Type of Application:* Surrender of License.

b. Project No.: 5297-006.

c. Date filed: December 11, 1989.

d. Applicant: Manville Hydro Company, Inc.

e. Name of Project: Manville Dam.

f. Location: On the Blackstone River in Providence County, Rhode Island.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)-825(r).

h. Applicant Contact: Mr. Robert I. Stolzman, 2300 Hospital Trust Tower, Providence, RI 02903, (401) 274-7200.

i. FERC Contact: Charles T. Raabe (202) 357-0811.

j. Comment Date: March 30, 1990.

k. Description of Project: The proposed project would have consisted of: (1) A 160-foot-long, 19-foot-high granite masonry dam; (2) a reservoir with a surface area of 58 acres at surface elevation 89.4 feet M.S.L.; (3) headworks with trashracks; (4) two 135-foot-long, 10-foot by 10-foot concrete box culvert penstocks; (5) a powerhouse containing two generator units with a total installed capacity of 1,240 kw; (6) a 220-foot-long, 50-foot-wide tailrace; (7) the 13.8 kV generator leads; (8) a 200-foot-long, 13.8-kV transmission line; and (9) appurtenant facilities. Licensee states that events have occurred which have rendered the construction of the project uneconomical. Therefore, licensee has requested that its license be terminated. The license was issued August 29, 1983 and would have expired July 31, 2023. The licensee has not commenced construction of the project.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

4*a. Type of Application:* Surrender of License.

b. Project No.: 7371-007.

c. Date Filed: December 11, 1989.

d. Applicant: Dayton K. and Frances S. Bulter.

E. NAME OF PROJECT: Little Butte Creek.

f. Location: On Little Butte Creek in Butte County, California.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)-825(r).

h. Applicant Contact: Mr. Alan S. Avis, 7389 Skyway, Paradise, CA 95962, (916) 872-8600.

i. FERC Contact: Mr. William Roy-Harrison, (202) 357-0845.

j. Comment Date: March 30, 1990.

k. Description of Project: The project would have consisted of a diversion dam, a penstock, a powerhouse containing a generating unit with a rated capacity of 500 kW, a tailrace, a transmission line, and appurtenant facilities.

The licensee stated that the regional energy situation establishes that construction and operation of the project is not cost effective at this time. Therefore, the licensee requested that its license be terminated. The licensee has not commenced construction of the project.

l. This notice also consists of the following standard paragraphs: B, C, & D2.

5*a. Type of Application:* Major license.

b. Project No.: 9952-002.

c. Date Filed: July 31, 1989.

d. Applicant: Mr. Warren Osborn.

e. Name of Project: Sixmile Creek Hydropower Project.

f. Location: On Sixmile Creek in Adams County, Idaho near the town of New Meadows. T20N, R2E, Boise Meridian.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Applicant Contact: Mr. Carl L. Myers, P.E., Myers Engineering Company, P.A., 750 Warm Springs Avenue, Boise, ID 83712, (208) 336-1425

i. Commission Contact: Ms. Deborah Frazier-Stutely, (202) 357-0842.

j. Comment Date: May 3, 1990.

k. Description of Project: The proposed project would consist of: (1) A 3-foot-high, 17-foot-long diversion dam; (2) a 12-foot-high, 14-foot-long, 8-foot-deep intake structure at elevation 6,445 feet, consisting of a trashrack, removable fish screens, and a sluice gate to be located on the east bank of Sixmile Creek; (3) a 24-inch-diameter, 7,900-foot-long buried penstock with a butterfly valve and vent pipe; (4) a 14-foot-high, 24-foot-long powerhouse containing a single generating unit with an installed capacity of 2,100-kW, operating under a head of 1,100 feet, producting an estimated annual generation of 3.6 GWh; (5) a parshall flume upstream of the powerhouse to provide for accurate bypass measurements; (6) a tailrace; (7) a 3,200-foot-long, 14.4-kV transmission line typing into the existing Idaho Power Company New Meadows Feeder line; (8) existing roadways and skid trails to be upgraded to improve project access; and (9) appurtenant facilities.

The applicant has not proposed any recreational facilities.

1. Purpose of Project: Project power will be sold to Idaho Power Company.

m. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

6 *a. Type of Application:* Preliminary Permit.

b. Project No. : 10830-000.

c. Date Filed: October 10, 1989.

d. Applicant: Nez Perce Tribe.

e. Name of Project: Clearwater Fish Hatchery Hydropower Project.

f. Location: On the North Fork of Clearwater River in Clearwater County, Idaho.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)-825(r).

h. Applicant Contact: Allen V. Pinkham, Nez Perce Tribal Executive Committee, P.O. Box 305, Lapwai, Idaho 83540, (202) 357–0840.

i. Commission Contact: Nanzo T. Coley, (202) 357–0840.

j. Comment Date: March 30, 1990.

k. Competing application: Project No. 10819–000, Comment Date: December 11, 1989.

l. Description of Project: The applicant proposes to utilize the proposed Clearwater Fish Hatchery (CFH) water supply system, which is currently being designed by the U.S. Army Corps of Engineers (Corps). The Corps proposes to construct an 18-inch and a 36-inch diameter pipe through its existing Dworshak dam to supply water to the CFH and the Dworshak National Fish Hatchery. This water supply would be intercepted by the proposed project and then discharged into a distribution tank, which would divide the flows between the two hatcheries. The proposed project would consist of: (1) A proposed 36-inch-diameter penstock; (2) a proposed powerhouse containing one generating unit rated at 1,920 kW; (3) a proposed 1,300-foot-long, 13.8-kV transmission line; and (4) appurtenant facilities. The estimated average annual energy output for the project is 14,050 MWh. The applicant estimates the cost of the work to be performed under the preliminary permit at $50,000.

m. Purpose of Project: Power produced at the project would be sold to the Washington Water Power Company.

n. This notice also consists of the following standard paragraphs: A8, A9, A10, B, C, and D2.

7 *a. Type of Application:* Preliminary Permit.

b. Project No.: 10845–000.

c. Date Filed: November 13, 1989.

d. Applicant: Parcoal Energy, Inc.

e. Name of Project: Parcoal Hydropower Project.

f. Location: On the Gauley and Elk Rivers near Webster Springs, Webster County, West Virginia.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Jack D. Cline, Parcoal Energy, Inc., P.O. Box 595, Crab Orchard, WV 25827, (304) 252–4627.

i. FERC Contact: Michael Dees (202) 357–0807.

j. Comment Date: April 26, 1990.

k. Description of Project: The proposed project would consist of: (1) A proposed earth dam 800 feet long and approximately 55 feet high; (2) a proposed 300 acre reservoir; (3) a proposed pumphouse or tunnel; (4) a proposed penstock; (5) a proposed powerhouse with an installed capacity of 6,500 kW; (6) a proposed tailrace; (7) a proposed transmission line approximately one mile long; and (8) appurtenant facilities. Project power would be sold to Monongahela Power Company. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $90,000.

The applicant has stated in the work plan that ground disturbing work will be done at the dam and powerhouse sites. These areas will be reseeded and regarded.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

8 *a. Type of Application:* Minor License (Constructed).

b. Project No.: 10852–000.

c. Date Filed: December 1, 1989.

d. Applicant: Ace Ranch Associates.

e. Name of Project: Ace Ranch Water Power Project.

f. Location: On the West Fork Carson River in Alpine County California, near the towns of Woodfords and Paynesville. T.11N, R.20E Mt. Diablo Meridan and Base.

g. Filed Pursuant to: Federal Power Act 16 USC §§ 791(a)–825(r).

h. Applicant Contact: Mr. Art Hall, Ace Ranch Associates, P.O. Box 1479, Minden, NV 89423, (702) 782–5174. Mr. Mark Henwood or Dr. Kenneth Henwood, Henwood Energy Services, Inc., 2555 3rd St. Suite 110, Sacramento, CA 95818.

i. FERC Contact: Ms. Deborah Frazier-Stutely (202) 357–0842.

j. Comment Date: April 9, 1990.

k. Description of Project: The project consists of: (1) An irrigation-stock pond; (2) an 8-foot-high concrete intake box with a fish/debris screen; (3) two 850-foot-long penstocks 8-inches and 16-inches in diameter; (4) a 28-foot by 12-foot wood frame powerhouse containing two generating units rated at 80-kW and 15-kW, operating under a head of 130 feet, producing an average annual energy output between 0.45 and 0.60 million kWh; (5) an 80-foot-long, .480-kV underground transmission line that ties into an existing Sierra Pacific Power Company line; and appurtenant facilities.

l. Purpose of Project: Power is used primarily for Ranch requirements with the excess power being sold to the Sierra Pacific Power Company.

m. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

9 *a. Type of Application:* Preliminary Permit.

b. Project No.: 10858–000.

c. Date filed: December 6, 1989.

d. Applicant: Sutton Hydro Associates.

e. Name of Project: Sutton Dam.

f. Location: On the Elk River near Sutton, Braxton County, West Virginia.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. Applicant Contact: Mr. David K. Iverson, Synergics, Inc., 191 Main Street, Annapolis, MD 21401, (301) 268–8820.

i. FERC Contact: Michael Dees, (202) 357–0807.

j. Comment Date: April 26, 1990.

k. Description of Project: The proposed project would utilize the U.S. Army Corps of Engineers' Sutton Dam and reservoir and would consist of: (1) A steel penstock; (2) a powerhouse housing two hydro units with a combined capacity of 9 MW; (3) a concrete lined tailrace; (4) a transmission line approximately 2,500 feet long; and (5) appurtenant facilities. Applicant estimates that the average annual energy generation would be 32 GWh and that the cost of the studies under the permit would be $100,000. The project energy would be sold to Monogahela Power Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

10 *a. Type of Application:* Preliminary Permit.

b. Project No.: 10859–000.

c. Date filed: December 6, 1989.

d. Applicant: W.M. Lewis & Associates, Inc.

e. Name of Project: Barren River Project.

f. Location: On the Barren River near Barren, Allen and Monroe Counties, Kentucky.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. Applicant Contact: Mr. James S. Sigg, W.M. Lewis & Associates, Inc., P.O. Box 1383, Portsmouth, OH 45662, (614) 354–3238.

i. FERC Contact: Robert Bell, (202) 357–0806.

j. Comment Date: April 26, 1990.

k. Description of Project: The proposed project would utilize the existing 1,800-foot-long, 82-foot-high U.S. Army Corps of Engineers' Dam and Reservoir and would consist of: (1) A proposed intake structure; (2) a proposed 1,600-foot-long, 15-foot-diameter steel penstock and tunnel; (3) a proposed powerhouse having 3 generating units having a total rated capacity of 7,825 kW; (4) a proposed tailrace; a proposed 5.9-mile long, 161-kV transmission line; and (5) appurtenant facilities. The applicant estimates the average annual generation is 52,700,000 kWh. All existing project facilities are owned by the U.S. Army Corps of Engineers. All project energy

generated would be sold to a local utility. The cost of the studies is estimated to be $15,000.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

11 *a. Type of Application:* Preliminary Permit.

b. Project No.: 10860–000.

c. Date filed: December 6, 1989.

d. Applicant: W.M. Lewis & Associates, Inc..

e. Name of Project: East Fork Dam.

f. Location: On the East Fork of the Little Miami River and Lake William Harsha in Clermont County, Ohio.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. Applicant Contact: Mr. James S. Sigg, W.M. Lewis & Associates, Inc., P.O. Box 1383, Portsmouth, OH 45662, (614) 354–3238.

i. FERC Contact: Robert Bell, (202) 357–0806.

j. Comment Date: April 26, 1990.

k. Description of Project: The proposed project would utilize the existing 1,450-foot-long, 200-foot-high U.S. Army Corps of Engineers' East Fork Dam and the William Harsha Lake reservoir and would consist of: (1) An existing intake structure; (2) a proposed 715-foot-long, 8-foot-diameter steel penstock and tunnel; (3) a proposed 20-foot-diameter surge tank; (4) a proposed 330-foot-long, 8-foot-diameter exposed steel penstock; (5) a proposed powerhouse containing 3 generating units with a total rated capacity of 4,000 kW; (6) a proposed tailrace channel; (7) a proposed 2,500-foot-long 12.5 kV transmission line; and (8) appurtenant facilities. The proposed project would have an annual average generation of 15,800,000 kWh. All existing facilities are owned by the U.S. Army Corps of Engineers. All project energy generated would be sold to a local utility. The cost of the studies is estimated to be $15,000.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

a. Type of Filing: Preliminary Permit.

b. Project No.: 10874–000.

c. Data Filed: January 23, 1990.

d. Applicant: Finney Creek Hydro, Inc.

e. Name of Project: Finney Creek Hydroelectric Project.

f. Location: Occupies lands in the Mount Baker National Forest, on Finney, Gee, and Clendenen Creeks near the town of Concrete, in Skagit County, Washington.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Michael S. Wright, Permit/Engineering, Inc., 1300–114th Avenue SE #220, Bellevue, WA 98004, (206) 451–7371.

i. FERC Contact: Thomas Dean, (202) 357–0841.

j. Comment Date: April 23, 1990.

k. Description of Application: The proposed project would consist of: (1) A 40-foot-long diversion dam on Gee Creek at elevation 1,600 feet msl; (2) a 32-inch-diameter, 12,000-foot-long penstock; (3) a 40-foot-long diversion dam on Clendenen Creek at elevation 1,440 feet msl; (4) a 32-inch-diameter, 1,500-foot-long penstock; (5) a 70-foot-long diversion dam on Finney Creek at elevation 1,440. feet msl; (6) a 72-inch-diameter, 6,000-foot-long penstock leading to a forbay; (7) an 81-inch-diameter, 21,000-foot-long penstock leading to; (3) a powerhouse containing two generating units with a combined installed capacity of 17,000 kW; (9) a tailrace; (10) a 9-mile-long, 34.5-kV transmission line.

The applicant estimates the average annual energy production at 69 GWh. The approximate cost of the studies under the permit would be $300,000.

l. Purpose of Project: Applicant intends to sell the power generated from the proposed facility to Puget Sound Power and Light Company or to another utility.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

a. Type of Application: Preliminary Permit.

b. Project No.: 10876–000.

c. Data Filed: January 29, 1990.

d. Applicant: Sam Rayburn Municipal Power Agency.

e. Name of Project: Lake Livingston Hydro Project.

f. Location: On the Trinity River near Livingston, Polk County, Texas.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Applicant Contact:

Ralph J. Gillis, Attorney, Gillis & Campbell, Suite 227, 160 Old Derby Street, Hingham, MA 02043, (617) 749–2432.

North B. Bardell, Jr., Executive Director, Sam Rayburn Municipal Power Agency, 1412 South Houston Street, P.O. Box 1700, Livingston, TX 77351, (409) 327–5303.

i. FERC Contact: Ed Lee, (202) 357–0809.

j. Comment Date: April 26, 1990.

k. Competing Application: Project No. 10820–000, Date Filed: September 18, 1989, Due Date: January 3, 1990.

l. Description of Project: The proposed project would consist of: (1) The existing 14,400-foot-long and 90-foot high Lake Livingston Dam; (2) the existing 82,600-acre Lake Livingston reservoir; (3) proposed 800-foot-long headrace; (4) a proposed intake structure connected to four steel penstocks; (5) a new concrete powerhouse housing four 15–MW generating units for a total installed capacity of 60 MW; (6) a proposed 2,000-foot-long tailrace; (7) a new 2-mile-long, 138–kW transmission line; and (8) appurtenant facilities. The Applicant estimates that the average annual generation would be 192 GWh. The cost of the work and studies to be performed under the permit would be $150,000. The site is owned by the Trinity River Authority of Texas, 5300 South Coleus Street, Box 60, Arlington, Texas 76010. The Applicant proposes that all power generated will so sold within its own power system.

m. This notice also consists of the following standard paragraphs: A8, A9, A10, B, C, and D2.

Standard Paragraphs:

A3. Development Application—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing developing application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person

to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit and development applications or notices of intent. Any competing preliminary permit or development application or notice of intent to file a competing preliminary permit or development application must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice. A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comments date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Dean Shumway, Director, Division of Project Review, Federal Energy Regulatory Commission, Room 1027, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. Agency Comments—States, agencies established pursuant to federal law that have the authority to prepare a comprehensive plan for improving, developing, and conserving a waterway affected by the project, federal and state agencies exercising administration over fish and wildlife, flood control, navigation, irrigation, recreation, cultural or other relevant resources of the state in which the project is located, and affected Indian tribes are requested to provide comments and recommendations for terms and conditions pursuant to the Federal Power Act as amended by the Electric Consumers Protections Act of 1986, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Public Law No. 88–29, and other applicable statutes. Recommended terms and conditions must be based on supporting technical data filed with the Commission along with the recommendations, in order to comply with the requirement in section 313(b) of the Federal Power Act, 16 U.S.C. 8251(b), that Commission findings as to facts must be supported by substantial evidence.

All other Federal, state, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the statutes listed above. No other formal requests will be made. Responses should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the applicant. If an agency does not respond to the Commission within the time set for filing, it will be presumed to have no comments. One copy of an agency's response must also be sent to the Applicant's representatives.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtain by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: March 8, 1990.

Lois D. Cashell,

Secretary.

[FR Doc. 90–5769 Filed 3–13–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. G–3894–037, et al.]

ARCO Oil & Gas Co., Divison of Atlantic Richfield Company, et al. Applications for Termination or Amendment of Certificates [1]

March 7, 1990.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7 of the Natural Gas Act for authorization to terminate or amend certificates as described here, all as more fully described in the respective applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before March 26, 1990, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). 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

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Description
G-3894-037, D, Feb. 13, 1990	ARCO Oil and Gas Company, Division of Atlantic Richfield Company, P.O. Box 2819, Dallas, TX 75221.	El Paso Natural Gas Company, Langlie Mattix Field, Lea County, New Mexico.	Assigned 9-1-89 to Doyle Hartman
G-3894-038, D, Feb. 13, 1990	ARCO Oil and Gas Company, Division of Atlantic Richfield Company.	El Paso Natural Gas Company, NMFU Leases, Lea County, New Mexico.	Assigned 12-1-88 to Charles N. Evans and Jerry W. Guy.
G-11809-001, D, Oct. 27, 1989	Marathon Oil Company, P.O. Box 3128, Houston, TX 77253.	Northern Natural Gas Company, Division of Enron Corp., Southeast Lea County Field, Lea County, New Mexico.	Assigned 6-1-89 to Penroc Oil Corporation.
G-13385-001, D, Feb. 13, 1990	ARCO Oil and Gas Company, Division of Atlantic Richfield Company.	Northern Natural Gas Company, Division of Enron Corp., Hougoton Field, Finney County Field, Kansas.	Assigned 9-1-89 to Texaco Inc.
CI64-349-000, D, Feb. 26, 1990	Exxon Corporation, P.O. Box 2180, Houston, TX 77252-2180.	Colorado Interstate Gas Company, Wamsutter 1-30, Federal 1-6 and Federal 1-18 Wells, Sweetwater County, Wyoming.	Assigned 1-1-90 to Hawthorn Oil Company and Lance R. Neiberger.
CI69-304-000, D, Feb. 26, 1990	Exxon Corporation	Transwestern Pipeline Company, Campbell "G" #1, Hemphill County, Texas.	Assigned 4-1-89 to Paco Petroleum, Inc.
CI69-312-000 D, Feb. 26, 1990	do	do	Do.
CI90-54-000 (G-4158), D, Feb. 16, 1990.	Chevron U.S.A. Inc., P.O. Box 3725, Houston, TX 77253-3725.	Texas Eastern Transmission Corporation, Minoak Field, Bee County, Texas.	Assigned 1-1-85 to Padre Energy, Inc.
CI90-57-000 (CI70-100), D, Feb. 21, 1990.	Amoco Production Company, P.O. Box 3092, Houston, TX 77253.	Texas Gas Transmission Corporation, East Cameron Blocks 9 and 14, Offshore Louisiana.	Assigned 1-1-89 to Rosewood Resources, Inc.
CI90-59-000 (CI80-304), D, Feb. 21, 1990.	Amoco Production Company	ANR Pipeline Company, High Island Block 469, Offshorer Texas.	Do.
CI90-60-000 (CI84-225-000) D, Feb. 21, 1990.	do	ANR Pipeline Company, HIgh Island Bocks 469 and 494, Offshore Texas.	Do.

[Docket No. TA90-1-46-000]

Kentucky West Virginia Gas Co.; Proposed Change in FERC Gas Tariff

March 6, 1990.

Take notice that Kentucky West Virginia Gas Company (Kentucky West) on March 1, 1990, tendered for filing with the Federal Energy Regulatory Commission (Commission) its annual PGA filing, which includes Twentieth Revised Sheet No. 41 to its FERC Gas Tariff, Second Revised Volume No. 1, to become effective May 1, 1990.

Kentucky West states that Twentieth Revised Sheet No. 41 reflects a deferred gas cost adjustment of ($0.0016) and a $.7977 current adjustment increase based on an average cost of gas reflects Kentucky West's exercise of contractual provisions, pursuant to its obligations under various gas purchase agreements, so as to provide for a total price of $3.2416 per dth inclusive of all taxes and any other production-related cost add-ons that it would pay under these contract.

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 interest or 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 become entitled pursuant to a final order in the proceedings initiated by Commission order of January 10, 1989, in Docket No. TQ89-1-46, *et al.*, or to which it 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 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 §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before March 26, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-5771 Filed 3-13-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-90-000 TM90-7-37-000]

Northwest Pipeline Corp.; Proposed Change in FERC Gas Tariff

March 8, 1990.

Take notice that on March, 2, 1990, Northwest Pipeline Corporation ("Northwest") tendered for filing and acceptance the following tariff sheets:

First Revised Volume No. 1

Sixty-Third Revised Sheet No. 10
Thirty-Sixth Revised Sheet No. 10-A
Fifth Revised Sheet No. 12

Original Volume No. 1-A

Twenty-Fifth Revised Sheet No. 201

Original Volume No. 2

Fourteeth Revised Sheet No. 2.3

Northwest states that the purpose of this filing is to update its Commodity SSP Charge and Fixed Monthly SSP Charge, effective April 1, 1990, to (1) reflect interest applicable to January, February and March 1990, (2) the

amortization of principal and interest for the months of October, November and December 1989, and (3) to reflect the inclusion of additional SSP Costs that have occurred since Northwest's last quarterly filing. The proposed revised Commodity SSP Charge is 3.82 cents per MMBtu.

Northwest states that a copy of this filing has been sent to all parties of record in Docket No. RP89-137 and to all jurisdictional customers and affected stated regulatory commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426, in accordance with § § 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before March 15, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. And person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 90-5855 Filed 3-13-90; 8:45 am]

BILLING CODE 6717-01-M

OXY USA Inc., Applications for Certificates and Abandonment of Service [1]

[Docket No. G-4579-065, et al.]

March 7, 1990.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before March 26, 1990, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All protests filed with the Commission will be considered by it in determining the application 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 Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Description
G-4579-065, C, Feb. 1, 1990	OXY USA Inc., P.O. Box 300, Tulsa, OK 74102.	Colorado Interstate Gas Company, Witcher "B", Miller "S" and Hanke Units, Morton County, Kansas.	New leases acquired for acreage previously dedicated by Coastal Oil and Gas Corporation in Docket No. G-8789.
CI79-420-002, E, Jan. 16, 1990	Oryx Energy Company, P.O. Box 2880, Dallas, TX 75221-2880.	Trunkline Gas Company, High Island Block A-511, Offshore Texas.	Acreage acquired 7-1-89 from Diamond Shamrock Offshore Partners Limited Partnership.
CI90-33-000 (CI76-805), B, Jan. 2, 1990.	OXY USA Ind	Tennessee Gas Pipleine Company, West Cameron Block 69, Offshore Louisiana.	Lease expired 1-31-89.
CI90-53-000 (CI88-190-000), E, Feb. 14, 1990.	Oryx Energy Company	Transcontinental Gas Pipe Line Corporation, Mustang Island A-111 Field, Offshore Texas.	Acreage acquired 7-1-89 from Enron Oil & Gas Company.
CI90-55-000, E, Feb. 20, 1990	Mesa Operating Limited Partnership, P.O. Box 2009, Amarillo, TX 79189.	ANR Pipeline Company, Cedardale Field, Woodward County, Oklahoma.	Acreage acquired 2-1-88, from Vanguard Oil & Gas, Inc.
CI90-56-000 (CI67-878), F, Feb. 20, 1990.	Mesa Operating Limited Partnership	Panhandle Eastern Pipe Line Company, Peek South Field, Ellis County, Oklahoma.	Acreage acquired 8-1-88 from Mobil Oil Corporation.
CI90-62-000 (G-17113), F, Feb. 23, 1990.	Phillips Petroleum Company, 990-G Plaza Office Bldg, Bartlesville, OK 74004.	Williams Natural Gas Company, Guymon Field, Texas County, Oklahoma.	Acreage acquired 6-1-88 from Texaco Producing Inc.

Filing Code; A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Assignment of acreage; E—Succession; F—Partial Succession.

[FR Doc. 90-5854 Filed 3-13-90; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3744-6]

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; where appropriate, it includes the actual data collection instrument.

DATE: Comments must be submitted on or before April 13, 1990.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 382-2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: Emission Control System Performance Warranty Regulations and Voluntary Aftermarket Part Certification Program. (ICR # 0116.03; OMB # 2060-0060). This is a renewal of a previously approved collection.

Abstract: Automotive aftermarket part manufacturers must submit an application for certification that includes testing, reporting, and keeping records of their parts' emission and durability. The manufacturers must demonstrate to EPA which parts are

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

certified and for which vehicle they are certified.

The Agency needs the information to verify compliance with federal emission standards.

Burden Statement: The public reporting burden for this collection of information is estimated to average 140 hours per response for reporting, and 5 hours per recordkeeper. This estimate includes the time needed to review instructions, search existing data sources, gather the data needed and review the collection of information.

Respondents: Automotive aftermarket part manufacturers and builders.

Estimated No. of Respondents: 11.

Estimated No. of Responses Per Respondent: 3.

Estimated Total Annual Burden on Respondents: 4,688 hours.

Frequency of Collection: As part is certified.

Send comments regarding the burden estimates, 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, 401 M Street SW., Washington, DC 20460

and

Nicolas Garcia, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place NW., Washington, DC 20530.

Dated: March 2, 1990.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 90-5753 Filed 3-13-90; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3744-7]

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 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 burden.

DATE: Comments must be submitted on or before April 13, 1990.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 382-2740.

SUPPLEMENTARY INFORMATION:

Office of Toxic Substances

Title: Toxic Chemical Release Inventory Petitions; (EPA ICR #1357; OMB #2070-0090). This ICR requests renewal of the existing clearance.

Abstract: Anyone may petition to add or delete a chemical from the list of toxic chemicals subject to annual reporting on Form R under Section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA). Petitioners must provide supporting information only once. EPA wil use the information supplied in the petition to evaluate the need to add or delete the chemical.

Burden Statement: The public reporting burden for this collection of information is estimated to average 138 hours per response, including time for reviewing the guidance document, conducting literature searches, analyzing the information, and writing and reviewing the petition.

Respondents: Owners or operators of facilities that manufacture, process or otherwise use a toxic chemical; public interest groups, or anyone else concerned about a chemical on the list.

Estimated Number of Respondents: 50.

Estimated Total Annual Burden on Respondents: 6900.

Frequency of Collection: Once per petition.

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-223), 401 M Street SW., Washington, DC 20460

and

Marcus Peacock, Office of Management and Budget, Office of Management and Regulatory Affairs, 725 17th Street NW., Washington, DC 20503, Telephone: (202) 395-3084.

Dated: March 2, 1990.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 90-5754 Filed 3-13-90; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3744-5]

Report to Congress: Methods to Manage and Control Plastic Waste

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of report to Congress on methods to manage and control plastic waste.

SUMMARY: The EPA is today announcing the availability of the Report to Congress on Methods to Manage and Control Plastic Waste. EPA prepared this report in response to section 2202 of the 1987 Marine Plastic Pollution Research and Control Act. The report focuses on plastic waste in the municipal solid waste stream (i.e., postconsumer plastic waste). Industrial waste streams from the production of plastics are not generally considered in this report except for plastic pellets, which are the raw materials that many processors use to manufacture plastic products. Plastic pellets are of significant concern in the marine environment. The report includes information on the amount and types of plastics produced in the U.S., the types, sources and effects of plastics in the marine environment, an examination of the current management practices for plastic waste, and finally, methods to improve management of plastic wastes, including source reduction, plastics recycling, and degradable plastics. Actions to be conduced by EPA and recommended actions for others (e.g., industry, States, and other Federal Agencies) are presented.

ADDRESSES: This report is available for viewing at all EPA libraries and in the EPA RCRA docket room, U.S. Environmental Protection Agency, 401, M Street SW., Washington DC 20460, from 9:30 a.m. to 3:30 p.m., Monday thru Friday, except legal holidays; telephone (202) 382-4646. The public may copy a maximum of 50 pages of material from any docket at no cost. Additional copies cost 20 cents per page. The document may be purchased from the National Technical Information Service (NTIS), U.S. Department of Commerce, Springfield, Virginia 22161, at (703) 487-4600: "Report to Congress: Methods to Manage and Control Plastic Waste" (EPA/530-SW-89-051, NTIS No: PB90-163106). A copy of the Executive Summary (EPA/530-SW-89-051A) is available free of charge through the RCRA Hotline at (800) 424-9346 or (202) 382-3000.

FOR FURTHER INFORMATION CONTACT: For general information and/or a copy of the Executive Summary, call the RCRA Hotline at (800) 424-9346 or (202) 382-3000. For technical information on the report, contact Susan Mooney, Office of Solid Waste (OS-301), U.S. Environmental Protection Agency, 401 M Street SW., Washington DC 20460, (202) 382-5649.

Dated: February 14, 1990.

Willian K. Reilly,

Administrator.

[FR Doc. 90-5844 Filed 3-13-90; 8:45 am]

BILLING CODE 6560-50-M

[OPP-30303; FRL-3710-7]

Certain Companies; Applications to Register Pesticide Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing 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.

DATE: Comment by April 13, 1990.

ADDRESS: By mail submit comments identified by the document control number [OPP-30303] and the registration/file number, and the Product Manager (PM) at the following address: Public Docket and Freedom of Information Section, Field Operations Programs (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, In person, bring comments to: Environmental Protection Agency, Rm. 246, 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. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Phil Hutton, Product Manager (PM) 17, Registration Division (H7505C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Office location/telephone number: Rm. 207, CM#2, Environmental Protection Agency, 1921 Jefferson Davis Hwy, Arlington, VA 22202, (703-557-2690).

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: 53219-E. Applicant: Mycogen Corporation, 5451 Oberlin Drive, San Diego, CA 92121. Product name: MYX 1806. Insecticide. Active ingredient: Delta endotoxin of *bacillus thuringiensis* variety *san diego* 0.8 percent. Proposed classification/Use: General. For control of the Colorado potato beetle on potatoes, tomatoes, and eggplants. (PM 17)

2. File Symbol: 50675-O. Applicant: Mitsubishi International Corporation, 520 Madison Ave., New York, NY 10022. Product name: GB-Rope Grape Berry Moth Pheromone Dispensers. Insecticide. Active ingredients: (*Z*)-9 Dodecenyl acetate 82.0 percent and (*Z*)-11 tetradecenyl acetate 8.0 percent. Proposed classification/Use: General. For use in grape vineyards. (PM 17)

3. File Symbol: 53575-RE. Applicant: Biocontrol Limited, (Australia) 719 Second St., Davis, CA 95616. Product name: Biocontrol-Isomate-OLR Pheromone. Insecticide. Active ingredients: *E*,11 Tetradecenyl acetate, *Z*,11 tetradecenyl acetate, *E*,11 tetradecenol, and *E*,11 tetradecenol at 81, 4.5, 2.25, and 2.25 percent respectively. Proposed classification: General. For outdoor use on certain crops to control pests. Type registration: Conditional. (PM 17)

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 Program Management and Support Division (PMSD) 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 PMSD office (703-557-3262), to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

Dated: February 23, 1990.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 90-5595 Filed 3-13-90; 8:45 am]

BILLING CODE 6560-D

[OPP-180823; FRL-3709-8]

Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted specific exemptions for the control of various pests to the eight States as listed below. An exemption was granted to the Commonwealth of Puerto Rico Department of Agriculture, and an exemption was also granted to the United States Department Agriculture. A crisis exemption was initiated by the Florida Department of Agriculture and Consumer Services. These exemptions, issued during the months of October and November, are subject to application and timing restrictions and reporting requirements designed to protect the environment to the maximum extent possible. Information on these restrictions is available from the contact persons in EPA listed below.

DATES: See each specific and crisis exemption for its effective date.

FURTHER INFORMATION CONTACT: See each emergency exemption for the name of the contact person. The following information applies to all contact persons: By mail: Registration Division (H7505C), Office of Pesticide Programs, 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, (703-557-1806).

SUPPLEMENTARY INFORMATION: EPA has granted specific exemptions to the:

1. California Department of Food and Agriculture for the use of metalaxyl on blackberries, boysenberries, evergreen thornless berries, and youngberries to control downy mildew; October 23, 1989, to April 15, 1990. (Susan Stanton)

2. California Department of Food and Agriculture for the use of metalaxyl on strawberries to control red stele disease; October 20, 1989, to April 30, 1990. (Susan Stanton)

3. California Department of Food and Agriculture for the use of prometryn on parsley to control cheeseweed, burning nettle, and shepherd's purse; October 24, 1989, to June 30, 1990. (Libby Pemberton)

4. California Department of Food and Agriculture for the use of chlorothalonil

on mushrooms to control verticillium fungicola; November 2, 1989, to October 19, 1990. (Susan Stanton)

5. California Department of Food and Agriculture for the use of zinc phosphide on sugarbeets to control meadow mice; November 15, 1989, to January 1, 1990. (Libby Pemberton)

6. Florida Department of Agriculture and Consumer Services for the use of propiconazole on celery to control cercospora and septoria; November 25, 1989, to July 31, 1990. (Jim Tompkins)

7. Florida Department of Agriculture and Consumer Services for the use of propiconazole on sweet corn to control rust and corn leaf blight; November 22, 1989, to August 31, 1990. Florida had initiated a crisis exemption for this use. (Jim Tompkins)

8. Florida Department of Agriculture and Consumer Services for the use of avermectin B_1 on tomatoes for fresh market to control leafminers; November 6, 1989, to July 31, 1990. Florida had initiated a crisis exemption for this use. (Libby Pemberton)

9. Florida Department of Agriculture and Consumer Services for the use of fosetyl-aluminum (Aliette) on head and leaf lettuce to control downy mildew; October 17, 1989, to May 31, 1990. (Susan Stanton)

10. Florida Department of Agriculture and Consumer Services for the use of diquat on tomatoes and green peppers to control nightshade and parthenium; October 2, 1989, to August 31, 1990. (Jim Tompkins)

11. Idaho Department of Agriculture for the use clopyralid on mint to control various weeds; October 2, 1989, to November 1, 1989. (Susan Stanton)

12. Illinois Department of Agriculture for the use of thiabendazole on corn in storage to control fungi; November 15, 1989, to January 1, 1990. Illinois had initiated a crisis exemption for this use. (Jim Tompkins)

13. Missouri Department of Agriculture for the use of thiabendazole on stored corn to control fungi; November 15, 1989, to January 1, 1990. (Jim Tompkins)

14. Oregon Department of Agriculture for the use of clopyralid on mint to control various weeds; October 2, 1989, to November 1, 1989. (Susan Stanton)

15. Puerto Rico Department of Agriculture for the use of diquat on tomatoes and green peppers to control nightshade and parthenium; October 2, 1989, to August 31, 1990. (Jim Tompkins)

16. Texas Department of Agriculture for the use of avermectin B_1 on celery to control spider mites; October 2, 1989, to October 1, 1990. (Libby Pemberton)

17. Texas Department of Agriculture for the use of cyromazine on peppers (bell, chili, and jalapeno) to control leafminers; October 17, 1989, to September 1, 1990. Texas had initiated a crisis exemption for this use. (Susan Stanton)

18. Texas Department of Agriculture for the use of bifenthrin on popcorn and corn grown for seed to control mites; October 12, 1989, to November 24, 1989. Texas had initiated a crisis exemption for this use. (Jim Tompkins)

19. Washington Department of Agriculture for the use of clopyralid on mint to control various weeds; October 2, 1989, to November 1, 1989. (Susan Stanton)

20. United States Department of Agriculture for the use of methyl bromide on various imported food and feed commodities to control any plant pests new to, or not heretofore known to, be widely prevalent or distributed within and throughout the United States; November 15, 1989, to November 14, 1992. (Libby Pemberton)

A crisis exemption was initiated by the Florida Department of Agriculture and Consumer Services on November 21, 1989, for the use of avermectin B_1 on celery to control two-spotted spider mites. This program has ended. (Libby Pemberton)

Authority: 7 U.S.C. 136.

Dated: February 27, 1990.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 90-5845 Filed 3-13-90; 8:45 am]

BILLING CODE 6560-50-D

[OPTS-44547; FRL 3715-5]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the receipt of test data on Commercial Hexane (CAS Nos. 110-54-3 and 96-37-7), submitted pursuant to a final test rule under the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543B, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: Section 4(d) of TSCA requires EPA to publish a notice in the **Federal Register** reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(a) within 15 days after it is received.

I. Test Data Submissions

Test data for commercial hexane was submitted by The American Petroleum Institute on behalf of the major U. S. commercial hexane manufacturers pursuant to a test rule at 40 CFR 799.2155. It was received by EPA on February 22, 1990. The submissions describe: (1) A subchronic inhalation toxicity study and special pathology report of commercial hexane in the rat and mouse, (2) a 13 week inhalation study of potential effects of commercial hexane on behavior and neuromorphology in rats, (3) an acute operant behavior study of inhaled commercial hexane in the albino rat, and (4) chromosome aberrations in Chinese hamster ovary cells exposed to commercial hexane. These tests are required by this test rule. This chemical is used as a solvent to extract seed oils.

EPA has initiated its review and evaluation process for these data submissions. At this time, the Agency is unable to provide any determination as to the completeness of the submissions.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPTS-44547). This record includes copies of all studies reported in this notice. The record is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, Rm. NE-G004, 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

Dated: March 6, 1990.

Frank D. Kover,

Acting Director, Existing Chemical Assessment Division, Office of Toxic Substances.

[FR Doc. 90-5766 Filed 3-13-90; 8:45 am]

BILLING CODE 6560-50-D

FEDERAL MARTIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and 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 10220. Interested parties may submit protests or 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 and protests are found in § 560.602 and/or § 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.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No: 224–200330.

Title: Port of New Orleans/Coastal Cargo Company, Inc. Lease Agreement.

Parties: Board of Commissioners of the Port of New Orleans (Port), Coastal Cargo Company, Inc. (Lessee).

Filing Party: Joseph W. Fritz, Jr., Staff Attorney, Board of Commissioners of the Port of New Orleans, P.O. Box 60046, New Orleans, LA. 70160.

Synopsis: The Agreement provides for the lease of sections 1 through 43 (approximately 145,798 sq. ft.) of the Thalia Street Wharf for the purpose of loading or discharging cargo from vessels, stevedoring and such other purposes as shall contribute to the domestic or foreign waterborne commerce of the Port. Annual base rent is $87,478.80. Applicable tariff charges, dockage and wharfage, but not demurrage and sheddage, will be assessed against the lessee. The term of the lease is two years, March 8, 1990 through March 7, 1992.

By the Federal Maritime Commission.

Dated: March 8, 1990.

Joseph C. Polking,

Secretary.

[FR Doc. 90–5779 Filed 3–9–90; 8:45 am]

BILLING CODE 6730–01–M

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 10220. 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 apears. 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.: 224–011026–001.

Title: Port of Seattle/Stevedoring Services of America.

Parties: Port of Seattle, Stevedoring Services of America.

Synopsis: The Agreement provides for the termination of the basic lease agreement (Agreement No. 224–011026).

Agreement No.: 224–200329.

Title: South Carolina State Ports Authority/Orient, Overseas Container Line Inc. Terminal Agreement.

Parties: South Carolina State Ports Authority (Authority), Orient Overseas Container Line Inc. (OOCL).

Synopsis: The Agreement provides OOCL with the use of "Area O" at the Authority's Wando Terminal, Port of Charleston, for the berthing of vessels, marshalling of containers and other acts incidental to container shipping terminal operations. OOCL agrees to pay the Authority a $32.50 fee per loaded twenty-foot equivalent unit and an $11.00 fee per empty container for certain terminal services. The term of the Agreement is for five years and may be extended for two additional five-year terms.

By Order of the Federal Maritime Commission.

Dated: March 8, 1990.

Joseph C. Polking,

Secretary.

[FR Doc. 90–5780 Filed 3–13–90; 8:45 am]

BILLING CODE 6730–01–M

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.: 202–009238–024.

Title: Greece Westbound Conference.

Parties:

Farrell Lines, Inc., Lykes Bros. Steamship Co., Inc., Sea-Land Service, Inc., Zim Israel Navigation Company, Ltd.

Synopsis: The modification to the Agreement reduces, for a period of forty days from the date of effectiveness, the required notification period for independent action from 10 calendar days to 4 calendar days. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Dated: March 8, 1990.

Joseph C. Polking,

Secretary.

[FR Doc. 90–5750 Filed 3–13–90; 8:45 am]

BILLING CODE 6730–01–M

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Public Law 89–777 (80 Stat. 1357, 1358) and Federal Maritime Commission General Order 20, as amended (46 CFR part 540):

Special Expeditions, Inc. and Wilderness Cruises, Inc., 720 Fifth Avenue, New York, NY 10019.

Vessel: Sea Bird.

Dated: March 8, 1990.

Joseph C. Polking,

Secretary.

[FR Doc. 90–5749 Filed 3–13–90; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

KD Bancshares, Inc.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities; Correction

This notice corrects a previous **Federal Register** Notice (FR Doc. 90–4782) published on page 7565 of the issue for Friday, March 2, 1990.

Under the Federal Reserve Bank of Chicago, the entry for RD Bancshares, Inc., is amended to read as follows:

1. *KD Bancshares, Inc.*, Edgerton, Wisconsin; to acquire Jerry Smith & Associates, Inc., Madison, Wisconsin, and thereby engage in providing management consulting to financial institutions pursuant to § 225.25(b)(11) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, March 8, 1990.

William W. Wiles,

Secretary of the Board.

[FR Doc. 90-5783 Filed 3-13-90; 8:45 am]

BILLING CODE 6210-01-M

Saban S.A., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 5, 1990.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Saban S.A.*, Panama City, The Republic of Panama; to acquire an additional 4.96 percent of the voting shares of Republic New York Corporation, New York, New York, and thereby indirectly acquire The Williamsburg Savings Bank, Brooklyn, New York, and Republic National Bank of New York, New York, New York.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *First Southeastern Banc Group, Inc.*, Harmony, Minnesota; to merge with and acquire 100 percent of the voting shares of Houston Bancorporation, Inc., St. Paul, Minnesota; and thereby indirectly acquire Minnesota Bank, N.A., Caledonia, Minnesota.

C. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *P.N.B. Financial Corporation*, Kingfisher, Oklahoma, to acquire 83.6 percent of the voting shares of Bank of Marshall, Marshall, Oklahoma. Comments on this application must be received by March 23, 1990.

Board of Governors of the Federal Reserve System, March 8, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-5784 Filed 3-13-90; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Maximum Use Concentrations for NIOSH/MSHA-Certified Chemical Cartridge Respirators

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control (CDC), Public Health Service, HHS.

ACTION: Notice of change in the maximum use concentration for chemical cartridge respirators.

SUMMARY: On September 1, 1989, compliance with the new permissible exposure limits established in the Occupational Safety and Health Administration's (OSHA) Air Contaminants Standard (29 CFR 1910.1000) became mandatory. On August 29, 1989, the Mine Safety and Health Administration (MSHA) published a proposed rule for Air Quality, Chemical Substances and Respiratory Protection Standards (54 FR 35759), which contains a proposal to revise MSHA's permissible exposure limits as well. These standards have necessitated a change in the NIOSH/MSHA approval labels for chemical cartridge respirators. This change involves the deletion of maximum use concentrations from those labels.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy J. Bollinger, Chief, Certification Branch, Division of Safety Research, NIOSH, CDC, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505, telephone: (304) 291-4331 or FTS 923-4331.

SUPPLEMENTARY INFORMATION: In 1972, the National Institute for Occupational Safety and Health (NIOSH) and the Bureau of Mines (BOM) initiated the respirator certification program conducted under part 11 of title 30 Code of Federal Regulations (30 CFR part 11). Currently NIOSH and MSHA jointly certify respirators that meet the requirements of 30 CFR part 11. These regulations provide a description of chemical cartridge respirators that include maximum use concentrations for certified cartridges (§ 11.150). These maximum use concentrations are based on the acceptable exposure limits at the time 30 CFR part 11 was promulgated. They were calculated by multiplying the assigned protection factor of 10 for half-mask chemical cartridge respirators by the exposure limit accepted in 1972 for each specific contaminant. Although not specifically required in 30 CFR part 11, NIOSH has requested manufacturers to include these maximum use concentrations on all chemical cartridge approval labels.

OSHA recently revised the permissible exposure limits for 212 substances and established permissible exposure limits for an additional 164 substances (Air Contaminants Standard, 29 CFR 1910.1000). Compliance with the new permissible exposure limits became mandatory on September 1, 1989. The revised permissible exposure limits affect the maximum use concentrations for three of the substances listed in 30 CFR part 11 (ammonia, chlorine, and sulfur dioxide). On August 29, 1989 (54 FR 35759), MSHA published a proposed rule for Air Quality, Chemical Substances, and Respiratory Protection Standards, which contains a proposal to revise their permissible exposure limits. The OSHA permissible exposure limits vary from the exposure limits used by NIOSH in 1972 to establish the maximum use concentrations in 30 CFR part 11. MSHA and other regulatory agencies may establish exposure limits that vary from the new OSHA permissible exposure limits, and future standards may further revise acceptable exposure limits. Thus, NIOSH is eliminating the identification of maximum use concentrations on chemical cartridge approval letters and labels issued under 30 CFR part 11. In addition, NIOSH intends to propose a revision of the regulations for the certification of respiratory protective devices which will be published as 42 CFR part 84. Certification labels and letters under the revised regulations would not identify maximum use concentrations.

Respirator users are advised to review substance-specific health standards to determine which respirators are permitted by regulatory agencies. If there is no substance-specific standard that specifically addresses which respirators can be used for protection against the contaminants used in a specific workplace, then the user must determine the exposure limit established by applicable regulatory standards or the recommended exposure limit established by NIOSH for all substances in that workplace. Then the *NIOSH Respirator Decision Logic* (DHHS (NIOSH) Publication No. 87-108) can be used to determine which classes of respirators can provide adequate protection. Where chemical cartridge respirators can be used, the user should calculate the maximum use concentrations based on applicable exposure limits. For example, OSHA and MSHA currently recognize an assigned protection factor of 10 for half-mask respirators. Therefore, the maximum use concentration for half-mask chemical cartridge respirators should never exceed 10 times the applicable exposure limit (e.g., OSHA or MSHA permissible exposure limit, NIOSH recommended exposure limit). All other respirator selection criteria remain unchanged.

NIOSH has sent a letter to all manufacturers of MSHA/NIOSH-approved chemical cartridge respirators requesting that they remove maximum use concentrations from their approval labels. Approval labels should be modified to state: Approved for respiratory protection against (substance). Do not exceed maximum use concentration established by regulatory standards.

Dated: February 21, 1990.

Larry W. Sparks,

Acting Director, National Institute for Occupational Safety and Health.

[FR Doc. 90-4388 Filed 3-13-90; 8:45 am]

BILLING CODE 4160-19-M

Food and Drug Administration

[Docket No. 90N-0097]

Drug Export: Novapath™ Immunoblot HIV Diagnostic Assay

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Bio-Rad laboratories, Inc., has filed an application requesting approval for the export of the biological product Novapath™ Immunoblot HIV Diagnostic Assay to Australia, The Federal Republic of Germany, France, Italy, and New Zealand.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human biological products under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Boyd Fogle, Jr., Center for Biologics Evaluation and Research (HFB-120), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8191.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of that act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Bio-Rad Laboratories, Inc., 1000 Alfred Nobel Dr., Hercules, CA 94547, has filed an application requesting the approval for the export of the biological product, Novapath™ Immunoblot HIV Diagnostic Assay to Austraia, The Federal Republic of Germany, France, Italy, and New Zealand. Novapath™ Immunoblot HIV Diagnostic Assay is an in vitro qualitative method for detection of antibody to individual polypeptides of Human Immunodeficiency Virus (HIV) in human serum or plasma samples. The application was received and filed in the Center for Biologics Evaluation and Research on November 14, 1989, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by March 26, 1990, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated under 21 CFR 5.44.

Dated: March 5, 1990.

Thomas S. Bozzo,

Director, Office of Compliance, Center for Biologics Evaluation and Research.

[FR Doc. 90-5793 Filed 3-13-90; 8:45 am]

BILLING CODE 4160-01-M

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETING: The following advisory committee meeting is announced:

Antiviral Drugs Advisory Committee

Date, time, and place. March 29 and 30, 1990, 8:30 a.m., Holiday Inn, Two Montgomery Village Ave., Gaithersburg, MD.

Type of meeting and contact person. Open public hearing, March 29, 1990, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 12:30 p.m.; closed presentation of data, 12:30 p.m. to 5 p.m.; open public hearing, March 30, 1990, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 4:30 p.m.; Gretchen Hascall, Center for Drug Evaluation and Research (HFD-9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4695.

General function of the committee. The committee reviews and evaluates available data on the safety and

effectiveness of marketed and investigational human drugs for use in the treatment of acquired immunodeficiency syndrome (AIDS), AIDS-related complex (ARC), and other viral, fungal, and mycobacterial infections.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before March 23, 1990, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On March 29, 1990, the committee will discuss *Mycobacterium avium intracellulare* (MAI): scientific and regulatory issues in drug development. On March 30, 1990, the committee will discuss the safety and efficacy of zidovudine (AZT) for pediatric patients with human immunodeficiency virus (HIV) infection.

Closed presentation of data. The committee wil hear trade secret and/or confidential commercial information relevant to pending new drug applications. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meetings are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI–35), Food and Drug Administration, Rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2, 10(d)), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that hav previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative sessions to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. App. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: March 7, 1990.

James S. Benson,

Acting Commissioner of Food and Drugs.

[FR Doc. 90-5796 Filed 3-13-90; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 90E-0061]

Determination of Regulatory Review Period for Purposes of Patent Extension; Clozaril®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Clozaril® and his publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Nancy E. Pirt, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of the regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Clozaril®. Clozaril® (clozapine) is indicated for the management of severely ill schizophrenic patients who fail to respond adequately to standard antipsychotic drug treatment. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Clozaril® (U.S. Patent No. 3,962,248) from Sandoz Pharmaceuticals Corp., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration and the product's regulatory review period. FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the active ingredient, clozapine, represented the first permitted commercial marketing or use.

FDA has determined that the applicable regulatory review period for Clozaril® is 6,523 days. Of this time, 5,766 days occurred during the testing phase of the regulatory review period, while 757 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective:* November 19, 1971. The applicant claims October 29, 1971, as the date the investigational new drug (IND) application became effective. However, FDA records indicate that the IND was received by FDA on October 20, 1971, and became effective 30 days later, on November 19, 1971.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act:* September 1, 1987. The applicant claims August 31, 1987, as the date the new drug application (NDA 19-758) was filed. However, FDA records indicate that the NDA application was received by FDA on September 1, 1987.

3. *The date the application was approved:* September 26, 1989. FDA has verified the applicant's claim that NDA 19-758 was approved on September 26, 1989.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 730 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before May 14, 1990, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before September 10, 1990, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d Sess., pp. 41-42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 7, 1990.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 90-5794 Filed 3-13-90; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 90E-0033]

Determination of Regulatory Review Period for Purposes of Patent Extension; Vivotif Berna™ Vaccine

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Vivotif Berna™ Vaccine and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the

Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Nancy E. Pirt, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product, Vivotif Berna™ Vaccine. Vivotif Berna™ Vaccine (*Salmonella typhi* Ty21a) is indicated for immunization of adults and children greater than 6 years of age against disease caused by *S. typhi*. Subsequent to this approval, the Patent and Trademark Office (PTO) received a patent term restoration application for Vivotif Berna™ Vaccine (U.S. Patent No. 3, 856,935) from the Swiss Serum and Vaccine Institute Berne, and PTO requested FDA's assistance in determining the patent's eligibility for patent term restoration. FDA, in a letter dated January 29, 1990, advised PTO that this human drug product had undergone a regulatory review period. The letter also stated that the active ingredient, *S. typhi* Ty21a, represented the first permitted commercial marketing or use. Shortly thereafter, PTO requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Vivotif Berna™ Vaccine is 3,481 days. Of this time, 662 days occurred during the testing phase of the regulatory review period, while 2,819 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective:* June 6, 1980. The applicant claims May 29, 1980, as the date the investigational new drug (IND) application became effective. However, FDA records indicate that the IND was received by FDA on May 7, 1980, and was effective on June 6, 1980.

2. *The date the application was initially submitted with respect to the human drug product under section 351 of the Public Health Service Act:* March 29, 1982. The applicant claims March 12, 1982, as the date on which the Product License Application (PLA) was initially submitted. However, FDA records indicate that the PLA was received by FDA on March 29, 1982.

3. *The date the application was approved:* December 15, 1989. FDA has verified the applicant's claim that PLA 82-0076 was approved on December 15, 1989.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 730 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before May 14, 1990, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before September 10, 1990, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, Part 1, 98th Cong., 2d Sess., pp. 41-42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 7, 1990.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 90-5795 Filed 3-13-90; 8:45 am]

BILLING CODE 4160-01-M

Public Health Service

Health Resources and Services Administration; Statement of Organization, Functions and Delegations of Authority

Part H, chapter HB (Health Resources and Services Administration) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (47 FR 38409-24, August 31, 1982, as amended most recently at 55 FR 2152, January 22, 1990) is amended to reflect the estblishment of the Office of Rural Health Policy (HBA13) within the Office of the Administrator, Health Resources and Services Administration. This Office is being established in accordance with the provisions of section 711 of the Social Security Act, as amended.

Under HB-10, Organization and Functions, add the following functional statement immediately after the functional statement for the Office of Equal Opportunity and Civil Rights (HBA12):

Office of Rural Health Policy (HBA13) Serves as a focal point within the Department and as a principal source of advice to the Secretary for coordinating nationwide efforts to strengthen and improve the delivery of health services to populations in rural areas. Specifically: (1) Collects and analyzes information regarding the special problems of rural health care providers and populations; (2) works with states, State hospital associations, private associations, foundations, and other organizations to focus attention on, and promote solutions to, problems related to the delivery of health services in rural communities; (3) provides staff support to the National Advisory Committee on Rural Health; (4) stimulates and coordinates interaction on rural health activities and programs, both within the Department (particularly with the

Health Care Financing Administration) and with other Federal agencies, such as the Veterans Administration, the Department of Agriculture, the Department of Defense, and the Department of Transportation; (5) supports rural health center research across the country and keeps informed of research and demonstration projects funded by states and foundations in the field of rural health care delivery; (6) establishes and maintains a resource center for the collection and dissemination of the latest information and research findings related to the delivery of health services in rural areas; (7) coordinates responses to inquiries from congressional and private sector sources related to rural health; (8) advises the Secretary on the effects of current policies and proposed statutory, regulatory, administrative, and budgetary changes in the programs established under Titles XVIII and XIX of the Social Security Act on the financial viability of small rural hospitals, the ability of rural areas (and rural hospitals in particular) to attract and retain physicians and other health professionals, and access to (and the quality of) health care in rural areas; (9) oversees compliance by the Health Care Financing Administration (HCFA) with the requirement that rural hospital impact analyses are developed whenever proposed HCFA regulations might have a significant impact on a substantial number of small rural hospitals; (10) oversees compliance by HCFA with the requirement that 10 percent of its research and demonstration budget is used for rural projects; (11) supports specialized research programs on rural minority health issues and agricultural health and safety; and (12) plans and manages a nationwide program which provides technical assistance to rural hosptials.

This reorganization is effective upon date of signature.

Dated: March 6, 1990.

Robert G. Harmon,

Administrator.

[FR Doc. 90-5797 Filed 3-13-90; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Operation and Maintenance Rates; Blackfeet Irrigation Project

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Public notice.

PURPOSE: Increase to the Blackfeet Irrigation Project Operation and Maintenance Rates.

SUMMARY: The Bureau of Indian Affairs will be increasing the operation and maintenance rate of the Blackfeet Irrigation Project from $7.50 to $7.75 per assessable acre. Congressional Cost of Living and Operation cost have increased in 1989 and are anticipated to increase in 1990.

The project's annual operation and maintenance charges are based on the estimated normal operating cost of the project for one Fiscal Year. Copies of the proposed budget may be acquired from the Superintendent of the Blackfeet Agency, Bureau of Indian Affairs, Browning, Montana 59417. A self addressed manila envelop with postage must be included when making your request.

The due date for all operation and maintenance charges will be May 1 of each calendar year.

Interest and/or penalty fees will be assessed on all (Trust, and Fee assessed lands) delinquent operation and maintenance charges as prescribed in the 42 Bureau of Indian Affairs Manual and the Code of Federal Regulations, chapter 4, part 102. Government agencies, such as Federal, State and Tribal Governments are exempted from interest and/or penalty fees.

This notice will be published and posted at the following locations:

U.S. Post Offices and Newspaper

Browning, Mt. 59417, Glacier Reporter, Cut Bank, Mt. 59427, Browning, Mt. 59417, Valier, Mt. 59486

Bureau of Indian Affairs

Blackfeet Agency, Browning, Mt. 59417.

Comments: On November 3, 1989, the Bureau of Indian Affairs published in the **Federal Register** (Notice No. 46470) that the Blackfeet Indian Irrigation Project proposed an increase to the operation and maintenance charges. No adverse comments and/or objections were received by the Superintendent of the Blackfeet Agency during the 30 day comment period.

Appeal Process: Chapter 25, part 2 of the Code of Federal regulations outlines the appeal process for this administrative action. Appeals must be received by the Billings Area Director, Bureau of Indian Affairs, 316 North 26th St., Billings, Montana 59101 via the Superintendent of the Blackfeet Agency, before the close of buisness on April 12, 1990.

SUPPLEMENTARY INFORMATION: This notice is issued pursuant to the Code of Federal Regulations, chapter 25, part 171 under the authority delegated to the Area Director, by the Assistant Secretary of Indian Affairs and the Deputy Assistant Secretary of the Interior [Departmental Manual, chapter 3, part 230 (3.1 and 3.2)].

Richard Whitesell,

Billings Area Director.

[FR Doc. 90-5785 Filed 3-13-90; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[UT-920-00-4120-14; UTU-64375]

Public Hearing and Call for Public Comment on Fair Market Value and Maximum Economic Recovery; Coal Lease Application UTU-64375

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of land Management announces a public hearing on a proposed coal lease sale and requests public comment on the fair market value of certain coal resources it proposes to offer for competitive lease sale. The lands included in Coal Lease Application UTU-64375 are located in Emery County, Utah, approximately 10 miles northwest of Orangeville, Utah. The BLM has modified the tract in the delineation process to the following description:

T. 17 S., R. 6 E., SLM,
Sec. 26, S½SW¼, W½SW¼SE¼;
Sec. 27, S½S½;
Sec. 34, all;
Sec. 35, lots 3 and 4, W½SW¼NE¼, S½NW¼, W½W½SE¼.
T. 18 S., R. 6 E., SLM,
Sec. 1, lots 1-8, S½N¼, E½NE¼SW¼, E½NW¼NE¼SE¼, N½NW¼NE¼SE¼, N½NW¼SE¼;
Sec. 2, lots 1-8, S½N½, N½NE¼SW¼, N½SW¼NE¼SW¼, SE¼NE¼SW¼, NW¼NE¼,SE¼, N½SW¼NE¼SE¼, N½NW¼SE¼, N½S½NW¼SE¼;
Sec. 3, lots 1, 2, and 8, NE¼SE¼NE¼;
T. 18 S., R. 7 E., SLM,
Sec. 6, lots 4-7, W½SE¼NW¼, W½E½SW¼.

Containing 2,630.81 acres.

One economically minable coal bed, the Hiawatha is found in this tract. The Hiawatha seam averages 10.8 feet in thickness and ranges from 5 to over 15 feet. This tract contains an estimated 12.2 million tons of recoverable high-volatile B bituminous coal. The average coal quality in the seam on an as received basis is as follows: 12,539 BTU/lb., 4.66 percent moisture, .56 percent sulfur, 8.77 percent ash, 44.71 percent fixed carbon, and 41.30 percent volatile matter.

The public is invited to the hearing to make public comments on the proposal

to lease and also to submit written comments on the fair market value and the maximum economic recovery of the tract.

DATE: The public hearing will be held April 19, 1990; and the comments on fair market value and maximum economic recovery must be received at the Bureau of Land Management, Utah State Office, by May 1, 1990.

ADDRESSES: For more information on this proposal, please contact Max Nielson, (Telephone: (801) 539-4038), Bureau of Land Management, Utah State Office, P.O. Box 45155, 324 South State Street, Salt Lake City, Utah 84145-0155.

The public hearing will be held at the Emery County Courthouse, Commission Room, 2nd Floor, 95 E. Main St., Castle Dale, Utah, at 7 p.m.

FOR FURTHER INFORMATION CONTACT: Max Nielson (801) 539-4038.

SUPPLEMENTARY INFORMATION: In accordance with Federal coal management regulations 43 CFR parts 4322 and 4325, a public hearing shall be held on the proposed sale to allow public comment on and discussion of the potential effects of mining the proposed lease. Not less than 30 days prior to the publication of a notice of sale, the Secretary shall solicit public comments on fair market value appraisal and maximum economic recovery and on factors that may effect these two determinations. Proprietary data marked as confidential may be submitted to the Bureau of Land Management in response to this solicitation of public comments. Data so marked shall be treated in accordance with the laws and regulations governing the confidentiality of such information. A copy of the comments submitted by the public on fair market value and maximum economic recovery, except those portions identified as proprietary by the author and meeting exemptions stated in the Freedom of Information Act, will be available for public inspection at the above address during regular business hours (8 a.m. and 4 p.m.), Monday through Friday.

Comments on fair market value and maximum economic recovery should be sent to the Bureau of Land Management and should address, but not necessarily be limited to, the following information:

1. The quality and quantity of the coal resource.

2. The mining method or methods which would achieve maximum economic recovery of the coal, including specifications of seams to be mined and the most desirable timing and rate of production.

3. The quantity of coal.

4. If this tract is likely to be mined as part of an existing mine and therefore be evaluated on a realistic incremental basis, in relation to the existing mine to which it has the greatest value.

5. If this tract should be evaluated as part of a potential larger mining unit and evaluated as a portion of a new potential mine (i.e., a tract which does not in itself form a logical mining unit).

6. The configuration of any larger mining unit of which the tract may be a part.

7. Restrictions to mining which may affect coal recovery.

8. The price that the mined coal would bring when sold.

9. Costs, include mining and reclamation, of producing the coal and the times of production.

10. The percentage rate at which anticipated income streams should be discounted, either in the absence of inflation or with inflation, in which case the anticipated rate of inflation should be given.

11. Depreciation and other tax accounting factors.

12. The value of any surface estate where held privately.

13. Documented information on the terms and conditions of recent and similar coal land transactions in the lease sale area.

14. Any comparable sales data of similar coal lands.

Coal values developed by BLM may or may not change as a result of comments received from the public and changes in market conditions between now and when final economic evaluations are completed.

Dated: March 7, 1990.

James M. Parker,

State Director, Utah.

[FR Doc. 90-5782 Filed 3-13-90; 8:45 am]

BILLING CODE 4310-DQ-M

[AZ-920-00-4212-12; AZA-22775]

Realty Action; Exchange of Public Lands for Private Lands in Mohave County; Correction

March 5, 1990.

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction notice.

FOR FURTHER INFORMATION CONTACT: Lisa Schaalman, Arizona State Office, Bureau of Land Management, P.O. Box 16563, Phoenix, Arizona 85011, (602) 640-5534.

SUPPLEMENTARY INFORMATION: In **Federal Register** document 89-4360 on page 8004, in the second column, starting at the ninth line from the top, in the issue of Friday, February 24, 1989, the private land the Bureau of Land Management is acquiring should read:

Gila and Salt River Meridian

T. 40 N., R. 6 W., sec. 17, S½.

T. 41 N., R. 6 W., sec. 5, lot 1.

Florence V. Wilhight,

Acting Chief, Branch of Lands Operations.

[FR Doc. 90-5822 Filed 3-13-90; 8:45 am]

BILLING CODE 4310-32-M

Minerals Management Service

Information Collection Submitted for Review

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 information collection requirement and related explanatory material may be obtained by contacting Jeane Kalas at 303-231-3046. Comments and suggestions on the requirement should be made directly to the Bureau Clearance Officer at the telephone number listed below and to the Office of Management and Budget Paperwork Reduction Project (1010-0022), Washington, DC, 20503, telephone 202-395-7340.

Title: Report of Sales and Royalty Remittance.

Abstract: The Report of Sales and Royalty Remittance is submitted by those individuals and companies producing minerals from leased Indian lands or from leased Federal lands, both onshore and offshore. Respondents report monthly on oil and gas lease activities, documentating essential data used by the Royalty Management Program in the calculation of royalties due. Data include quantity and quality of the product, selling arrangement, price at which the product was sold and other pertinent information necessary to determine the correct royalty amount due, reconcile or audit data, and distribute and correlate payments with the appropriate accounts.

Bureau From Number: MMS-2014.

Frequency: Monthly.

Description of Respondents: Oil and gas lessees, reporting activities from Indian or Federal onshore or offshore leases.

Annual Responses: 2,908,140 lines.

Annual Burden Hours: 280,228.

Bureau Clearance Officer: Dorothy Christopher 703-787-1239.

Dated: February 1, 1990.

Jerry D. Hill,

Associate Director for Royalty Management.

[FR Doc. 90-5824 Filed 3-13-90; 8:45 am]

BILLING CODE 4310-MR-M

[DES 90-8]

Alaska Region; Availability of the Draft Environmental Impact Statement and Locations and Dates of Public Hearings on the Proposed Beaufort Sea Lease Sale 124

The Minerals Management Service (MMS) has prepared a draft Environmental Impact Statement (EIS) relating to the proposed 1991 Outer Continental Shelf oil and gas lease sale of available unleased blocks in the Beaufort Sea. The proposed Beaufort Sea Sale 124 will offer for lease approximately 22.1 million acres. Single copies of the draft EIS can be obtained from the Regional Director, Minerals Management Service, Alaska Region, 949 East 36th Avenue, Anchorage, Alaska 99503-4302, Attention: Public Information. Copies can also be requested by telephone, (907) 261-4435.

Copies of the draft EIS will also be available for inspection in the following public libraries: Arctic Environmental Information and Data Center, University of Alaska, 707 A Street, Anchorage, Alaska, Army Corps of Engineers Library, U.S. Department of Defense, Anchorage, Alaska; Alaska Resources Library, U.S. Department of the Interior, Anchorage, Alaska; University of Alaska, Anchorage Consortium Library, 3211 Providence Drive, Anchorage, Alaska; Fairbanks North Star Borough Public Library (Noel Wien Library), 1215 Cowles Street, Fairbanks, Alaska; Elmer E. Rasmuson Library, 310 Tanana Drive, Fairbanks, Alaska; Alaska State Library, Juneau, Alaska; Alaska Field Operation Center Library, U.S. Department of the Interior, Bureau of Mines, Juneau, Alaska; Juneau Memorial Library, 114 4th Street, Anchorage, Alaska; Kenai Community Library, 163 Main Street Loop, Kenai, Alaska; University of Alaska-Juneau Library, 11120 Glacier Highway, Juneau, Alaska; Kettleson Memorial Library, Sitka, Alaska; Soldotna Public Library, 235 Binkley Street, Soldotna, Alaska; Alakanuk Public Library, Alakanuk, Alaska; North Slope Borough School District Library/Media Center, Barrow, Alaska; Brevig Mission Community Library, Brevig Mission, Alaska; Buckland Public Library, Buckland, Alaska; Davis Menadelook Memorial H.S. Library, Diomede, Alaska; Elim Community Library, Elim, Alaska; Northern Alaska Environmental Center Library, 218 Driveway, Fairbanks, Alaska; University of Alaska, Fairbanks, Institute of Arctic Biology, 311 Irving Building, Fairbanks, Alaska; Gambell Community Library/Learning Center, Gambell, Alaska; Golovin Community Library, Golovin, Alaska; Kaveolook School Library, Kaktovik, Alaska; Kiana Elementary School Library, Kiana, Alaska; McQueen School Library, Kivalina, Alaska; George Francis Memorial Library, Kotzebue, Alaska; Koyuk City Library, Koyuk, Alaska; Kegoayah Kozga Public Library, Nome, Alaska; Noorvik Elementary/High School Library, Noorvik, Alaska; Tikigaq Library, Point Hope, Alaska; Savoonga Community Library, Savoonga, Alaska, Shaktoolik School Library, Shaktoolik, Alaska; Nellie Weyiouanna Ilisaavik Library, Shishmaref, Alaska; Stebbins Community Library, Stebbins, Alaska; Ticasuk Library, Unalakleet, Alaska; Kingikme Public Library, Wales, Alaska; and Nuiqsut Library, Nuiqusut, Alaska.

In accordance with 30 CFR 256.26, the MMS will hold public hearings to receive comments and suggestions relating to the EIS.

The hearings will be held on the following dates and times indicated:

April 17, 1990

North Slope Borough Assembly Chambers, Barrow, Alaska, 7:30 p.m.

April 18, 1990

Community Center, Kaktovik, Alaska, 1:00 p.m.

April 19, 1990

Community Center, Nuiqsut, Alaska, 1:00 p.m.

April 20, 1990

University Plaza Building, 949 East 36th Avenue, Room 601, Anchorage, Alaska, 1:00 p.m.

The hearings will provide the Secretary of the Interior with information from Government Agencies and the public which will help in the evaluation of the potential effects, including effects on subsistence uses, of the proposed lease sale.

Interested individuals, representatives of organizations, and public officials wishing to testify at the hearings are asked to contact the Regional Director at the above address or Richard Roberts by telephone, (907) 261-4632, by Wednesday, April 11, 1990.

Time limitation may make it necessary to limit the length of oral presentations to 10 minutes. An oral statement may be supplemented by a more complete written statement which may be submitted to a hearing official at the time of oral presentation or by mail until May 8, 1990. This will allow those unable to testify at a public hearing an opportunity to make their views known and for those presenting oral testimony to submit supplemental information and comments.

Comments concerning the draft EIS will be accepted until May 8, 1990, and should be addressed to the Regional Director, Minerals Management Service, Alaska Region, 949 East 36th Avenue, Anchorage, Alaska 99508-4302.

Dated: March 9, 1990.

Ed Cassidy,

Deputy Director, Minerals Management Service.

Approved:

Jonathan P. Deason,

Director, Office of Environmental Affairs.

[FR Doc. 90-5803 Filed 3-13-90; 8:45 am]

BILLING CODE 4320-MR-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-292]

Certain Methods of Making Carbonated Candy Products; Termination of Investigation on the Basis of a Determination of No Violation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission has determined to affirm, with modifications, the initial determination (ID) of the presiding administrative law judge (ALJ) in the above-captioned investigation. The investigation is therefore terminated on the basis that there is no violation of section 337.

FOR FURTHER INFORMATION CONTACT: Frances Marshall, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 29436; telephone 202-252-1089. Hearing-impaired individuals are advised that information about this matter can be obtained by contacting the Commission's TDD terminal, 202-252-1810.

SUPPLEMENTARY INFORMATION: On January 31, 1989, General Foods Corporation, Carbonated Candy Ventures, and Pop Rocks, Inc., filed a complaint under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) alleging infringement of two U.S. process patents for making carbonated candy by two proposed respondents, Zeta Espacial, S.A. of Barcelona, Spain and Confex, Inc. of Shrewsbury, New Jersey. The Commission instituted an investigation of the complaint and issued a notice of

investigation which was published in the **Federal Register** on March 8, 1989 (54 FR 9903).

On December 8, 1989, the ALJ issued an ID finding no violation of section 337 in this investigation with regards to the importation and sale of carbonated candy products alleged to have been manufactured abroad by processes covered by the claims of U.S. Letters Patent 3,985,910 (the '910 patent) and U.S. Letters Patent 4,001,457 (the '457 patent).

On January 24, 1990, the Commission determined to review the issues of claim construction, infringement under the doctrine of equivalents, validity of the '910 patent (inventorship, indefiniteness, and best mode), and the existence of a domestic industry practicing the '910 patent. 55 FR 3281 (Jan. 31, 1990). The ALJ's findings on those issues addressed in the ID that the Commission determined not to review became the determination of the Commission. All the parties submitted briefs, and later reply briefs, on the issues under review as well as on the issues of remedy, the public interest, and bonding. The Commission did not receive any other submissions.

Having examined the record in this investigation, including the ID, the Commission has determined that no violation of section 337 has taken place.

The authority for the Commission's disposition of this matter is contained in section 337 of the Tariff Act of 1930 (19 U.S.C 1337) and in § 210.56 of the Commission's Interim Rules of Practice and Procedure (19 CFR 210.56).

Copies of the Commission's Order, the nonconfidential versions of the Commission's Opinion and the ID, and all other nonconfidential documents filed in connection with this investigation are, or will be, 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: 202-352-1000.

By Order of the Commission.

Issued: March 8, 1990.

Kenneth R. Mason,

Secretary.

[FR Doc. 90-5800 Filed 3-13-90; 8:45 am]

BILLING CODE 7020-02-M

Sanctions for Breaches of Commission Protective Order

AGENCY: U.S. International Trade Commission.

ACTION: Imposition of public sanctions for breaches of a Commission protective order.

SUMMARY: Notice is hereby given of the public sanctions imposed by the Commission for breaches of the administrative protective order ("APO") issued in Certain Electrically Resistive Monocomponent Toner and "Black Powder" Preparations Therefor, Inv. No. 337-TA-253, by two attorneys under the protective order, Bart S. Fisher, Esq., and Christopher R. Sullivan, Esq. The Commission has issued public letters of reprimand to these counsel. Mr. Fisher has in addition been barred from access to confidential business information under Commission APO in any Commission investigation for the next three months.

FOR FURTHER INFORMATION CONTACT: Edwin J. Madaj, Jr., Esq. (202-252-1100), Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC. Copies of the letters of reprimand are available for public inspection in the Office of the Secretary, 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 at 202-252-1810.

SUPPLEMENTARY INFORMATION: In connection with the above-specified investigation, these counsel, in order to obtain access to business confidential information submitted by other persons in the investigation, agreed to be bound by the terms of the APO, Order No. 1, issued in this investigation by the presiding administrative law judge, Judge John Mathias. That protective order expressly indicated that (1) the information under the protective order was to be used solely for the purposes of the Commission investigation, (2) it was prohibited to disclose information under the protective order to unauthorized persons, (3) it was required that unauthorized disclosure of protective order information be immediately brought to the attention of the ALJ and the submitter of information, together with all pertinent facts relating to such improper disclosure, and (4) it was required that information subject to the protective order be destroyed or returned to the submitters of such information upon final termination of the Commission investigation.

On March 3, 1989, the Commission received a request filed by these counsel, seeking an amendment of the APO so that the confidential version of the ALJ's final initial determination (ID) could be submitted to a federal district court in Massachusetts for use in antitrust litigation. The request revealed that the confidential ID had in fact already been submitted to the district court, without prior leave by the Commission of the consent of all persons whose business proprietary information, obtained pursuant to the APO, appeared in the ID. The March 3, 1989, request for amendment of the protective order was denied, and the Commission subsequently investigated whether the APO had been breached and obtained further information on the matter.

The Commission offered the relevant persons under the protective order the opportunity to be heard on the question of whether a breach of the protective order had occurred, and, if so, the level of sanction that would be appropriate. Responses were made and were considered by the Commission.

Mr. Fisher improperly retained protective order information after final termination of the Commission's investigation, which he agreed had occurred on dismissal of the appeal of the Commission's determination made in this investigation on August 3, 1988. He also used protective order information to draft portions of a brief that was submitted to the district court. Mr. Fisher has been reprimanded, and has been barred from access to business confidential information under Commission protective order in any Commission investigation for three months from the date of the letter of reprimand.

Mr. Sullivan improperly disclosed protective order information by making such information available to persons not under the APO and by causing protective order materials to be placed initially in the public files of the district court. He also improperly retained protective order information and failed to report the improper disclosure to the Commission and to the submitters of the confidential information disclosed, as required by the protective order. Mr. Sullivan has been reprimanded, though the Commission reduced the sanction that it otherwise would have imposed due to unusual mitigating circumstances described in the public letter of sanction.

Authority: The authority for this action is conferred by section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, as amended, and by section 210.37(c) of the Commission's rule of practice and procedure, as amended, 19 CFR 210.37(c), as amended.

Issued: March 12, 1990.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 90-5977 Filed 3-12-90; 12:06 pm]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-301]

Certain Imported Artificial Breast Prostheses and the Manufacturing Processed Therefor; Commission Decision Not To Review an Initial Determination Terminating Investigation as to Two Respondents on the Basis of a Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) (Order No. 15) issued by the presiding administrative law judge (ALJ) terminating the above-captioned investigation as to two respondents. The ID grants the joint motion of complainant Amoena Corporation (Amoena) and respondents Tertulin Eberl (Eberl) and Airway Division of Surgical Appliance Industries, Inc. (Airway), to terminate the investigation with respect to those two respondents, on the basis of a settlement agreement.

ADDRESSES: Copies of the nonconfidential version of 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 202-252-1000.

FOR FURTHER INFORMATION CONTACT: Andrea C. Casson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202-252-1105. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

SUPPLEMENTARY INFORMATION: This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission interim rule 210.53 (19 CFR 210.53).

On January 26, 1990, complainant and respondents Eberl and Airway filed a joint motion to terminate the investigation with respect to those two respondents, on the basis of a settlement agreement. The Commission investigative attorney filed a public interest statement supporting the motion to terminate the investigation. On February 9, 1990, the ALJ issued an ID granting the motion, and terminating the investigation with respect to the settling respondents. No petitions for review or agency or public comments were received.

By Order of the Commission.

Issued: March 8, 1990.

Kenneth R. Mason,

Secretary.

[FR Doc. 90-5802 Filed 3-13-90; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 332-282]

Review of Mexico's Recent Trade and Investment Liberalization Measures Phase II: Prospects for Future U.S.-Mexican Trade Relations

AGENCY: United States International Trade Commission.

ACTION: Notice of off-site hearing.

EFFECTIVE DATES: February 6, 1990.

FOR FURTHER INFORMATION CONTACT: Constance A. Hamilton (202-252-1263), Trade Reports Division, Office of Economics, U.S. International Trade Commission, Washington, DC 20436.

Background

Phase II of investigation no. 332-282 will provide a summary of the views of recognized authorities (for example, government officials, scholars, private sector businessmen, and others) on possibilities for the future direction of the U.S.-Mexican bilateral relationship. Such possibilities might include a free trade area, an enhanced dispute settlement mechanism, sectoral approaches, and other options for enhanced bilateral relations.

Public Hearing

A public hearing in connection with phase II of this investigation will be held in Tucson, Arizona on May 8, 1990 at a time and place to be announced at a later date. All persons have the right to appear by counsel or in person, to present information, and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 500 E Street, SW. Washington, DC. 20436, no later than noon, April 30, 1990. The deadline for filing prehearing briefs (original and 14 copies) is April 30, 1990. Post hearing briefs are due on May 22, 1990.

Written Submissions

Interested persons are invited to submit written statements concerning the matters to be addressed in the phase II report. Commercial or financial information that a party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of §201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection to interested persons by the Office of the Secretary to the Commission. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted at the earliest possbile date and should be received no later than July 16, 1990. All submissions should be addressed to the Secretary to the Commission at the Commission's office in Washington, DC.

By Order of the Commission.

Issued: March 6, 1990.

Kenneth R. Mason,

Secretary.

[FR Doc. 90-5805 Filed 3-13-90; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-452 (Preliminary)]

Pressure-Sensitive PVC Battery Covers From West Germany

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports from West Germany of pressure-sensitive PVC battery covers,[2] provided for in subheading

[1] The record is defined in § 207.2(h) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(h)).

[2] The product covered by this investigation is protective and decorative covers for ready-to-use dry-cell consumer batteries. Such covers have at least two, and as many as three layers of polyvinyl chloride (PVC) film, in addition to a layer of adhesive material and a layer of vaporized aluminum.

8506.90.00 of the Harmonized Tariff Schedule of the United States (previously reported under item 682.95 of the former Tariff Schedules of the United States), that are alleged to be sold in the United States at less than fair value (LTFV).

Background

On January 19, 1990, a petition was filed with the Commission and the Department of Commerce by National Label Company, Lafayette Hill, PA, alleging that an industry in the United States is materially injured or threatened with material injury or the establishment of a domestic industry is being materially retarded by reason of LTFV imports of pressure-sensitive PVC battery covers from West Germany. Accordingly, effective January 19, 1990, the Commission instituted preliminary antidumping investigation No. 731–TA–452 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of January 26, 1990 (55 FR 2708). The conference was held in Washington, DC, on February 9, 1990, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on March 5, 1990. The views of the Commission are contained in USITC Publication 2265 (March 1990), entitled "Pressure-sensitive PVC battery covers from West Germany:" Determination of the Commission in Investigation No. 731–TA–452 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

By Order of the Commission.

Issued: March 7, 1990.

Kenneth R. Mason.

Secretary.

[FR Doc. 90–5804 Filed 3–13–90; 8:45 am]

BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

Agency Information Collection Activities Under OMB Review

The following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) are being submitted to the Office of Management and Budget for review and approval. Copies of the forms and supporting documents may be obtained from the Agency Clearance Officer, Darlene Proctor (202) 275–7233. Comments regarding this information collection should be addressed to Darlene Proctor, Interstate Commerce Commission, Room 2203, Washington, DC 20423 and to Wayne Brough, Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503. When submitting comments, refer to the OMB number or the Title of the Form.

Type of Clearance: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

Bureau/Office: Bureau of Accounts.

Title of Form: Annual Survey Form for Certain Switching and Terminal Companies.

OMB Form Number: 3120–0111.

Agency Form No.: ACAA–20 (form previously unnumbered).

Frequency: Annual.

Respondents: Switching and Terminal companies.

No. of Respondents: 18.

Total Burden Hours: 72.

Type of Clearance: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

Bureau/Office: Bureau of Accounts.

Title of Form: Annual Report to the Interstate Commerce Commission.

OMB Form Number: 3120–0111.

Agency Form No.: ACAA–R–1 (formerly R–1).

Frequency: Annual.

Respondents: Class I Railroads.

No. of Respondents: 21.

Total Burden Hours: 16,800.

Noreta R. McGee,

Secretary.

[FR Doc. 90–5826 Filed 3–13–90; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–49 (Sub-No. 100X)]

Ann Arbor Railroad—Abandonment Exemption—In Lucas County, OH; Exemption

Applicant has filed a notice of exemption under 49 CFR part 1152, subpart F—*Exempt Abandonments* to abandon its 2.38-mile line of railroad, the Cherry Street Spur, between the northeasterly right-of-way of Cherry Street at milepost 0.0 and the north right-of-way line of Manhatten Boulevard at milepost 2.38, in Toledo, Lucas County, OH.

In a decision to be served shortly, the Commission has waived, at applicant's request and at the recommendation of our Section of Energy and Environment (SEE), the environmental reporting requirements at 49 CFR 1105.7(a). Accordingly, SEE will not prepare an environmental assessment and this notice will not provide for the filing of petitions to stay involving or comments on environmental issues.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on April 13, 1990 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues, formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[1] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by March 26, 1990.[2] Petitions for reconsideration or requests for public use conditions under 49 CFR 1152.28 must be filed by April 3, 1990, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Michael J. Barron, Ann Arbor Railroad, P.O. Box 380, Howell, MI 48844.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

[1] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[2] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

Public use or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: March 7, 1990.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 90-5717 Filed 3-13-90; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on the 2d day of March 1990, a proposed consent decree in *United States* v. *J.Y. Arnold & Associates, Inc,* Civil Action No. C87-0345-L(B), was lodged with the United States Disrict Court for the Western District of Kentucky. The complaint sought injunctive relief and civil penalties under section 113(b) of the Clean Air Act against Defendant J.Y. Arnold & Associates, Inc. The complaint alleged that the Defendant had violated the National Emission Standards for Hazardous Air Pollutants ("NESHAP") for asbestos, promulgated under sections 112 and 114 of Act, 42 U.S.C. 7412 and 7414, and codified at 40 CFR part 61, subpart M, with respect to an asbestos renovation project conducted at the Adeth Jeshurun Synagogue in Louisville, Kentucky.

Under the proposed Consent Decree, the Defendant must pay a civil penalty of $17,500. The Decree requires the Defendant to undertake numerous remedial measures to ensure that it complies with the asbestos NESHAP, including the implementation of asbestos control and training programs.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *J.Y. Arnold & Associates, Inc,* D.J. Ref. 90-5-2-1-1043.

The proposed consent Decree may be examined at any of the following offices: (1) The United States Attorney for the Western District of Kentucky, 10th Floor, Bank of Louisville Bldg., 510 West Broadway, Louisville, Kentuccky 40202; (2) the U.S. Environmental Protection Agency, Region 4, 345 Courtland Street, NE., Atlanta, Georgia; and (3) the Environmental Enforcement Section, Land & Natural Resources Division, U.S. Department of Justice, 10th & Pennsylvania Avenue, NW., Washington, DC. Copies of the proposed Decree may be obtained by mail from the Environmental Enforcement Section of the Department of Justice, Land and Natural Resources Division, P.O. Box 7611, Benjamin Franklin Station, Washington, DC., 20044, or in person at the U.S. Department of Justice Building, Room 1517, 10th Street and Pennsylvania Avenue, NW., Washington, DC. Any request for a copy of the proposed Consent Decree should be accompanied by a check for copying costs totalling $2.90 ($0.10 per page) payable to "United States Treasurer."

Richard B. Stewart,

Assistant Attorney General, Land & Natural Resources Division.

[FR Doc. 90-5786 Filed 3-13-90; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on February 28, 1990 a proposed consent decree in *United States* v. *R.E.A.G. et al.,* Civil Action No. B-87-24 (TFGD), was lodged with the United States District Court for the District of Connecticut. The proposed consent decree concens a complaint filed by the United States that alleged violations of section 112 of the Clean Air Act, 42 U.S.C. 7412 and the National Emission Standards for Hazardous Air Pollutants ("NESHAP") for Asbestos, 40 CFR part 61, subpart M during the renovation of the former Beverly Theater in Bridgeport, Connecticut. The complaint alleged that defendant Cristwood Associates, Inc. ("Cristwood"), as well as other defendants R.E.A.G., NAACO, Inc., and AA Building Wrecking Co., Inc., violated the asbestos NESHAP during the building renovation. The complaint sought injunctive relief to require compliance with the asbestos NESHAP and civil penalties for past violations. The proposed consent decree involves only the claims against defendant Cristwood. The decree requires the defendant Cristwood to pay a civil penalty of $10,000 and requires Cristwood to take affirmative measures to prevent future violations of the NESHAP for asbestos. These measures include employee training, designation of certain employees to be responsible for regulatory compliance, inspections of job sites, and assessment of removal projects. This consent decree only resolves the liability of Cristwood. The court has previously entered consent decrees with defendants AA Building Wrecking, Inc. and NAACO, Inc.

The Department of Justice will receive for a period of thirty (30) days from the date of the publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *R.E.A.G. et al.,* D.J. Ref. 90-5-2-1-1076 and specify the Cristwood decree.

The proposed consent decree may be examined at the offfice of the United States Attorney for the District of Connecticut, Room 308, Federal Building and Courthouse, 915 Lafayette Blvd., Bridgeport, CT 06604 and at the Region I Office of the United States Environmental Protection Agency, John F. Kennedy Federal Building, Boston, MA 02203-2211. Copies of the consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.60 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Richard B. Stewart,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 90-5787 Filed 3-13-90; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984—UNIX International, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), UNIX International, Inc. ("UNIX") on January 31, 1990, filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The additional written notification was filed for the purpose of extending the protection of section 4 of the Act, limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

On January 30, 1989, UNIX filed its original notification pursuant to section 6(a) of the Act. The Department of Justice (the "Department") published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 1, 1989, 54 FR 8608. On May 4, 1989, August 1, 1989, and October 31, 1989, UNIX filed additional written notifications. The Department published notices in the **Federal Register** in response to the additional notifications on June 22, 1989 (54 FR 26266), August 17, 1989 (54 FR 33985), and November 29, 1989 (54 FR 49124), respectively.

As of January 26, 1990, the following have become members of UNIX:

Department of National Defense-Canada
ESIX Systems, Inc.
Fellesdata
JSB Computer
KAIST
Mentec Int'l.
Mississippi State University
NCB, Singapore
Netherlands-CBS
Open Technology, Ltd.
Sanyo/Icon
Solbourne Computer
Solucions Info., S.A.
Stardent
Stollman
TIS, Ltd.
University of Milan

There has been no other change to UNIX's membership or planned activities.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 90-5788 Filed 3-13-90; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Office of the Secretary

President's Committee on the International Labor Organization; Meeting

In accordance with section 10(a) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is hereby given of a meeting of the President's Committee on the ILO:

Name: President's Committee on the International Labor Organization.

Date: Tuesday, March 27, 1990.

Time: 10 a.m.

Place: U.S. Department of Labor, Third & Constitution Ave., NW., room S-2508, Washington, DC 20210

This meeting will be closed to the public under the authority of section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. section 552(c)(1). During its closed session, the Committee will disclose national security matters.

All communications regarding this Committee should be addressed to: Ms. Shellyn Gae McCaffrey, Counselor to the Committee, U.S. Department of Labor, Third & Constitution Ave., NW., room S-2235, Washington, DC 20210, telephone (202) 523-6043.

Due to the schedules of senior officials who will be participating in this meeting, we are unable to provide the full 15 days of advance notice of this meeting.

Signed at Washington, DC, this 12th day of March, 1990.

Elizabeth Dole,

Secretary of Labor.

[FR Doc. 90-5913 Filed 3-13-90; 8:45 am]

BILLING CODE 4510-23-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (90-19)]

Granting of Federal Information Processing Standards (FIPS) Waiver Requests

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of granting of FIPS waiver request.

SUMMARY: Pursuant to section 3506(b) of title 44 of the U.S. Code, the authority to waive, under conditions specified by the Secretary of Commerce, NASA hereby gives notice of granting a request for waiver of FIPS 60-2, 61-1, 63-1, and 97 for the Director, Goddard Space Flight Center, to acquire a Massively Parallel Workstation (MPW) for the Science Information Systems Center (SISC).

DATES: The waiver was effective February 6, 1990.

ADDRESSES: National Aeronautics and Space Administration, Code NT, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Wallace O. Keene, Assistant Associate Administrator for Information Resources Management, 202-453-1775.

C. Howard Robins, Jr.

Associate Administrator for Management.

[FR Doc. 90-5838 Filed 3-13-90; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL CRITICAL MATERIALS COUNCIL

Executive Office of the President

National Commission on Superconductivity (NCOS)

The purpose of the National Commission on Superconductivity is to review all major policy issues regarding United States applications of recent research in advanced superconductors in order to assist the Congress in devising a national strategy, including research and development priorities, the development of which will assure United States leadership in the development and application of superconducting technologies. The Commission will meet on March 30, 1990 in room 105 (Columbia Suite) of the River Inn Hotel, 924 25th Street, NW., Washington, DC., from 3 until 5 p.m.

The proposed agenda is the following:

1. Status reports of the working groups.

2. An open period for public comment and discussion.

Perry M. Lindstrom,

Acting Executive Director.

[FR Doc. 90-5798 Filed 3-9-90; 10:12 am]

BILLING CODE 3130-01-M

NUCLEAR REGULATORY COMMISSION

Houston Lighting & Power Co., et al., South Texas Project, Unit 1; Environmental Assessment and Finding of No Significant Impact

[Docket No. 50-498]

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of a one-time exemption from a portion of the requirements of appendix J of 10 CFR part 50 to the Houston Light & Power Company, acting for itself and for the City of San Antonio (acting by and through the City Public Service Board of San Antonio), Central Power and Light Company, and the City of Austin, Texas (the licensee), for the South Texas Project (STP) Unit 1 located in Matagorda County, Texas.

Environmental Assessment

Identification of Proposed Action

Section III.D.3 of appendix J, 10 CFR part 50, states that "Type C tests shall be performed during each reactor shutdown for refueling but in no case at intervals greater than 2 years". The licensee in its letter of January 30, 1990 requested that the Type C tests required to be performed during the second refueling outage be deferred until the third refueling outage. Because the second refueling outage is scheduled to occur in April 1990, six months after first refueling outage, conducting the Type C tests during the third refueling outage (April 1991) would be a test interval of

18 months, which is within the interval stated in section III.D.3.

Need for Proposed Action

The proposed one-time exemption is needed because of the brief time interval (six months) between completion of the first refueling outage in October 1989 and the second refueling outage scheduled for April 1990. Further, the results of Type C testing conducted during the first refueling outage do not indicate that an increased testing fequency is required. Literal compliance with the regulation would lead to increased occupational exposure.

Environmental Impact of the Proposed Action

The proposed one-time exemption to 10 CFR part 50, appendix J, section III.D.3 will not increase to greater than previosuly determined the probability of accidents and post/accident radiological releases, nor otherwise affect radiological plant effluents. Type C tests were successfully conducted six months before the presently scheduled second refueling outage. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed one-time exemption.

With regard to potential non-radiological impacts, the proposed one-time exemption involves features located entirely within the restricted area as defined in 10 CFR part 20. They would not affect non-radiological plant effluents and would have no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed one-time exemption.

Alternatives to the Proposed Actions

The principal alternative to the proposed actions would be to deny the requested one-time exemption. This would result in increased costs and occuaptional exposure.

Alternative Use Of Resources

This action does not involve the use of resources not previously considered in the Final Environmental Statement (NUREG–1171) for the South Texas Project, Units 1 and 2.

Agencies and Persons Contacted

The NRC staff reviewed the licensee's request and applicable documents referenced therein that support this one-time exemption for South Texas Project, Units 1 and 2. The NRC did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for this action.

Based upon the environmental assessment, we conclude that this action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for one-time exemption dated January 30, 1990. This document, utilized in the NRC staff's technical evaluation of the exemption request, is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488.

Dated at Rockville, Maryland, this 7th day of March 1990.

For the Nuclear Regulatory Commission

Frederick J. Hebdon,

Director, Project Directorate IV, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 90–5816 Filed 3–13–90; 8:45 am]

BILING CODE 7590-01-M

[Docket No. 50–213]

Connecticut Yankee Atomic Power Co.; 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 amendment to Facility Operating License No. 61 and issued to Connecticut Yankee Atomic Power Company (CYAPCO/Licensee), for operation of the Haddam Neck Plant.

The amendment would amend Facility Operating No. License DPR–61 by incorporating a license condition that specifies that an augmented primary system radiochemistry monitoring program be established and maintained for Cycle 16 and 17 operation. The purpose of the program is to closely monitor the fuel during operation to ensure that if there are any leaking fuel rods, the total number is maintained well below the limits assumed in the Haddam Neck Plant safety analysis. The program will specify appropriate actions to be taken if there are increases in primary coolant activity that indicate an unacceptable number of failed fuel rods.

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 April 13, 1990, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written 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 should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room located at the Russell Library, 123 Broad Street, Middletown, Connecticut 06457. 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 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 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.

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, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (in Missouri 1-800-342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John F. Stolz: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Garfield, Esquire, Day, Berry and Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499, 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 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendments after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated February 12, 1990, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Dated at Rockville, Maryland, this 7th day of March 1990.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director Project Directorate I-4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 90-5814 Filed 3-13-90; 8:45 am]

BILLING CODE 7590-01-M

[Dockets Nos. 50-369 and 50-370]

Duke Power Co.; Consideration of Issuance of Amendments to Facility Operating Licenses and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating Licenses Nos. NPF-9 and NPF-17 issued to Duke Power Company (the licensee) for operation of McGuire Nuclear Station, Units 1 and 2, located in Mecklenburg County, North Carolina.

In accordance with the licensee's application dated February 15, 1990, the proposed amendments would change the Technical Specifications (TSs) to allow the use of Babcock and Wilcox (B&W) sleeves for steam generator tube repair as an alternative to tube removal from service by use of plugs. Specifically, the alternative to repair would be implemented by changing "tube" to "tube or sleeve" in the definitions and acceptance criteria of "Imperfection" (TS 4.4.5.4.a.1), "Degradation" (TS 4.4.5.4.a.2), "Degraded Tube" (TS 4.4.5.4.a.3), "% Degradation" (TS 4.4.5.4.a.4), "Defect" (TS 4.4.5.4.a.5), "Plugging Limit" (TS 4.4.5.4.a.6), and "Unserviceable" (TS 4.4.5.4.a.7). The term "Plugging Limit" (TS 4.4.5.4.a.6) would be changed to "Repair Limit," and its present definition (which refers to removal from service by plugging) would be supplemented to include repair by sleeving. Corresponding changes regarding plugging "or repairing" would be made to TS 4.4.5.4.b. Similarly, the contents of the Special Report required by TS 4.4.5.5 to be submitted to the Commission would be expanded to include identification of the tubes plugged "or repaired." The new definition and acceptance criteria for "Repair Limit" (TS 4.4.5.4.a.6) would also specify that "If a tube is sleeved due to degradation in the F* distance, then any defects in the tube below the sleeve will remain in service without repair," and that "The Babcock & Wilcox process (or method) equivalent to the method described in Topical Report BAW-2045(P)-A will be used."

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the request for amendments involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed 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.

By letter of January 4, 1990, to B&W, the NRC approved B&W Topical Report BAW-2045(P), "Recirculating Steam Generator Kinetic Sleeve Qualification for 3/4 Inch OD Tubes." This topical report, submitted to the NRC June 9, 1989, and supplemented December 12, 1989, describes the sleeving process to repair a degraded tube in order to maintain the function and integrity of the tube. Sleeving is advantageous to

plugging because the sleeved tube remains in service and functions in much the same manner as the original tube while the sleeve serves as a replacement pressure boundary for the degraded portion of the tube. The sleeving process also results in lower radiological exposure to workers than the plugging alternative and does not increase the types or amounts of effluents or waste that may be released offsite.

The topical report provided results of the sleeve design verification which included analysis and confirmatory testing to confirm the sleeving technique for defective tubes. The sleeve is qualified in two lengths, 11 inches and 17.5 inches. The shorter sleeve can be used in all tube locations, including peripheral tubes, and the longer sleeve would be used when it is desirable to extend further into the tube past the flow distribution baffle. The design and operating conditions specified in the topical report for the sleeve bound the McGuire steam generator design conditions. The sleeve material, thermally tested Alloy 690 Inconel, is also more resistant to corrosion phenomenon than the tubes.

The present TS 4.4.5.4 requires that tubes with an imperfection depth of 40% of the nominal wall thickness be plugged. This plugging limit does not apply for imperfections located more than two inches below the top face of the tube sheet or the top of the last hardroll (i.e., beyond the so-called F* distance), provided the tube is not degraded within the top 2 inches (i.e., within the F* distance). This exclusion was previously approved by the NRC by McGuire Amendments 89 (Unit 1) and 70 (Unit 2) because defects located beyond the F* distance do not affect steam generator integrity or leakage. The proposed change would preserve this existing provision (and recognize that the function of the tube is replaced by the function of the sleeve) by specifying that if a tube is sleeved due to degradation in the F* distance, then any defects in the tube below the sleeve will remain in service without repair. For imperfections located elsewhere, the proposed change would require repair by sleeving or removal by plugging for all tubes or sleeves with imperfections exceeding the repair limit of 40% of the tube or sleeve nominal wall thickness.

The NRC staff has reviewed the licensee's submittal and the B&W topical report, and has reached the following conclusions:

(1) Operations of McGuire in accordance with the proposed amendments 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 change is the steam generator tube rupture accident. The probability or consequences of this previously evaluated accident do 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 and surveillance requirements. The sleeve is less susceptible to the identified stress corrosion failure mechanisms of the original tube because of 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, if necessary, in accordance with TSs.

(2) Operation of McGuire in accordance with the proposed amendments 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. 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 sleeve is a passive component with failure mechanisms that are similar to the original tube.

(3) Operation of McGuire in accordance with the proposed amendments would not involve a significant reduction in a margin of safety. The structural integrity of the tube is maintained by the installation of the sleeve. The potential for primary-to-secondary leakage is reduced by the addition of the steam generator tube sleeves. The sleeve material is less susceptible to the failure mechanisms of the original tube. The effects of sleeve installation (versus tube plugging) on steam generator performance, heat transfer, flow restriction, and steam generation capacity were analyzed and described in the topical report. The results show that plugging one tube is equivalent to the heat transfer reduction of sleeving 48 tubes, the primary flow reduction of sleeving 20 tubes, and the loss of steam generation capacity of sleeving 40 tubes. This means sleeving is preferable to plugging when considering core margin for most safety analysis. Furthermore, the use of sleeving is bounded by the existing loss of coolant accident (LOCA) analysis. For the purpose of this analysis, 20 sleeves have the same effect as plugging one tube.

Accordingly, the Commission proposes to determine that the proposed changes do not involve a significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By April 13, 1990, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses 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 petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room located at

Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223. 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, wil rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effet 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 amendments 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 request for amendments involves no significant hazards consideration, the Commission may issue the amendments and make them effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendments.

If a final determination is that the amendments involve a significant hazards consideration, any hearing held would take place before the issuance of any amendments.

Normally, the Commission will not issue the amendments 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 amendments before the expiration of the 30-day notice period, provided that its final determination is that the amendments involve no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to David B. Matthews: (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 Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated February 15, 1990, Topical Report BAW-2045 dated June 1988, and letter dated January 4, 1990, from J.E. Richardson, NRC, to J.H. Taylor, B&W, accepting the topical report. These items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555 and at the Local Public Document Room located at Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223.

Dated at Rockville, Maryland, this 8th day of March 1990.

For the Nuclear Regulatory Commission.

Lawrence P. Crocker,

Acting Director, Project Directorate II-3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 90-5815 Filed 3-13-90; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 27759; File No. SR-AMEX-89-27]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Approving Proposed Rule Change Providing for Procedures To Resolve Uncompared Trades in Options Excluded From Clearance

March 5, 1990.

The American Stock Exchange, Inc. ("Amex"), on November 13, 1989, filed with the Commission a proposed rule change (File No. SR-Amex-89-72) under section 19(b)(1) of the Securities Exchange of 1934 ("Act").[1] The proposal concerns the resolution of uncompared option trades that are excluded from clearance. Notice of the proposal was published in the **Federal Register** on December 11, 1989, to solicit comments from interested persons.[2] No comments were received. This order approves the proposal.

I. Description of the Proposal

The rule change consists of revisions to Amex Rule 970, an option contract rule dealing with resolution of uncompared trades. Rule 970 currently sets forth the basic procedures that Amex members must follow to close out uncompared option trades that cannot be resolved by mutual agreement.[3]

Amex states in its filing, however, that Rule 970 is inadequately drafted and that the proposed version will provide a clearer and more precise description of the existing procedures that Amex members must follow to resolve such option trades. The text of the proposed revisions is incorporated largely from the text of Amex Rule 723 (the parallel rule for equity transactions), which has a more complete and more detailed description of the relevant comparison procedures.[4] Thus, the existing option procedures will be codified by these textual revisions. The revisions will not affect the operation of Rule 970; *i.e.*, its operation will remain completely unchanged.[5]

The revisions will specify, among other things, that prior to daily "call time," [6] all parties must check their contract sheets and (1) verify uncompared trades that are the subject of Rejected Option Trade Notices ("ROTNs") and (2) review advisories that cite them as the contra side of uncompared trades. At call time, the uncompared side must deliver ROTNs to the contra side whose name was given up. If the contra side "DKs" and ROTN (indicating that it does not know the trade as specified), the uncompared side will promptly forward the ROTN to the broker who executed the order. The ROTN must be "OK'd" (signifying acceptance of the trade as specified) or "DK'd" no later than one-half hour prior to the opening of trading unless an agent (including a specialist) was involved in executing the order, in which case the time limit will be extended an additional 15 minutes. If a ROTN is not resolved, a ruling must be obtained from a Floor Official as to whether the transaction is bona-fide.[7]

II. Rationale for the Proposal

Amex believes that the proposed rule change is consistent with the Act, particularly sections 6(b)(5) and 17A of the Act, in that improving the clarity and precision of rules governing the treatment of uncompared option trades will promote cooperation and coordination among persons engaged in, and facilitate the prompt and accurate clearance and settlement of, securities transactions.

III. Discussion

The Commission believes that the proposal is consistent with the Act. Section 17A(a)(1) of the Act states that inefficient procedures for the clearance and settlement of securities transactions (including the comparison of trades) impose unnecessary costs on investors and on persons facilitating transactions on behalf of investors. Moreover, section 6(b)(5) of the Act expressly encourages efforts by exchanges toward efficiency in exchange rules governing the clearing, settling, and processing of information with respect to transactions in securities.[8]

This proposal, by expanding and revising the text of Rule 970, clarifies the procedures that Amex members must use in resolving uncompared option trades. In so doing, it furthers efforts toward the prompt and accurate clearance and settlement of securities transactions. The Commission reiterates that this proposal effects no operational changes, but merely clarifies existing procedures that are applicable to uncompared option trades.

IV. Conclusion

For the reasons discussed above, the Commission finds that the proposed rule change is consistent with the Act, particularly sections 6 (b)(5) and 17A of the Act, and the rules and regulations thereunder.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act that the above-mentioned proposed rule change (File No. SR-Amex-89-27) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority (17 CFR 200.3(a)(12)).

Jonathan G. Katz,

Secretary.

[FR Doc. 90-5808 Filed 3-13-90; 8:45 am]

BILLING CODE 8010-01-M

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] *See* Securities Exchange Act Release No. 27498 (December 4, 1989), 54 FR 50831.

[3] Rule 970 specifies that it applies where a disagreement between Amex members arising from an uncompared option trade cannot be resolved in a timely manner by mutual agreement, and provides for closing out the trade by entering into offsetting transactions on the trading floor.

[4] For the text of the proposed revisons, *see, supra*, note 2.

[5] Telephone conversation between Claudia Crowley, Special Counsel, Amex, and Thomas C. Etter, Attorney, SEC (January 17, 1990).

[6] The filing identifies "call time" as the time designated by the Amex when members and/or designated representatives must assemble in the area designated by the Exchange to resolve option trades that did not clear.

[7] The text provides that where a party has not received a response to a ROTN within the required timeframes he cannot, without his consent, be held responsible for the trade to the party who failed to respond.

[8] *See also*, Senate Banking, Housing and Urban Affairs Comm. *Report to Accompany S. 249: Securities Acts Amendments of 1975*, S. Rep. No. 75, 94th Cong., 1st Sess. 27-28, 96 (1975).

(Release No. 34-27786; File No. SR-NYS-89-09)

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Hedge Exemptions for Stock Options and Broad-based Index Options and Position and Exercise Limits for Broad-based Index Options

On June 2, 1989, 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 19b-4 thereunder,[2] a proposed rule change to modify existing position and exercise limits for equity and broad-based index options traded on the NYSE.

The proposed rule change was published in Securities Exchange Act Release No. 27025 (July 12, 1989), 54 FR 30304. No comments were received on the proposed rule change.

I. Introduction and Proposal

The NYSE believes that the current position and exercise limits for stock and index options restrict the ability of institutional investors to utilize effectively option contracts as part of their hedging and investment strategies.

[1] 15 U.S.C. 78s(b)(1)((1982).

[2] 17 CFR 240.19b-4 (1989).

In order to provide institutional investors with additional opportunities to use options contracts in conjunction with their existing stock portfolios, the NYSE proposes to adopt three specific measures. These proposals will also conform the NYSE's position and exercise limit rules with those of the other options exchanges. Specifically, the NYSE proposes to: (1) Establish a pilot program during which certain equity options positions, that are fully hedged by underlying stocks, will be exempt from equity options position and exercise limits; (2) increase the position and exercise limits for broad-based index options contracts, specifically options contracts on the NYSE Composite Index ("NYA"); and (3) establish a pilot program during which public customers may apply for a "hedge exemption" from the broad-based index option position limits.[3]

A. Stock Position and Exercise Limits

The NYSE proposes to amend Rule 704(b) in order to establish a pilot program during which certain equity options positions, that are fully hedged by underlying stocks, will be exempt from the equity options position and exercise limits. Currently, the NYSE position limit rules circumscribe the number of option contracts on the same side of the market (*i.e.*, short calls and long puts or long calls and short puts) that an investor may control. Position limits for equity options are determined in accordance with a three-tiered system (*i.e.*, 3,000, 5,000, or 8,000 contracts) based on the number of shares of the underlying security outstanding and/or the underlying security's trading volume. Exercise limits correspond to position limits, such that investors are allowed to exercise, during any five business days, only the number of option contracts set forth as the position limit.

During the proposed pilot program, an automatic exemption from equity option position and exercise limits will be provided for accounts that have established one of the four most commonly used hedged positions on a limited one-for-one basis (*i.e.*, 100 shares of stock for one option contract or, in the case of an adjusted contract, the number of shares represented by the adjusted contract).[4] The exemption only covers the options position that is hedged. Under the NYSE proposal, the maximum position limit (hedged and unhedged combined) may not exceed twice the applicable present position limit.

The NYSE has not proposed any changes to its exercise limits. Therefore, investors will be allowed to exercise, during any five consecutive business days, the same number of contracts set forth as the position limit for that option, including those that are hedged (*i.e.*, if the position limit for an option is 5,500 contracts and an investor has established a hedged position of 6,500 contracts, the investor could exercise all 6,500 option contracts during any five consecutive business days.)

B. Index Options and Position Limits

The NYSE also proposes to amend Rules 704(c) and 705 in order to modify the position and exercise limits applicable to options on its broad-based stock index, the NYSE Composite Index ("NYA").[5] Currently, the position limit for NYA contracts is $300 million, which represents the aggregate dollar value of the options contracts a party may hold. Because the existing position limit for NYA contracts is expressed in dollars, when the NYA index value fluctuates, the allowable number of NYA options contracts that a customer may hold also fluctuates.

The NYSE proposes to adopt position and exercise limit rules applicable to broad-based index options that are similar to the position and exercise limit rules applicable to broad-based index options of the other options exchanges.[6] First, the NYSE proposes to express its position and exercise limits in terms of the numbers of contracts that a party may hold rather than in the dollar value of the contracts. The Exchange believes that basing position and exercise limits on a fixed number of contracts, rather than on their dollar value, will eliminate the unnecessary compliance and administrative complications that currently occur because of fluctuations in the value of the NYA.

The NYSE proposes to raise the aggregate position limit to 45,000 contracts on the same side of the market, with no more than 25,000 contracts in the nearest-term series. The NYSE also proposes to establish an exercise limit of 25,000 contracts (the same limit as the nearest-term series position limit).[7] The NYSE believes that its proposed position and exercise limits are similar to the existing limits for the broad-based index option contracts that are traded at the AMEX, CBOE, and PHLX, based on the dollar value represented by such contracts.[8]

C. Index Hedge Exemption

The NYSE also proposes a new Rule 704(c)(ii) in order to establish a pilot program during which public customers may apply for a hedge exemption from broad-based index options position limits.[9] The purpose of the proposal is to provide public customers that wish to hedge large stock portfolios with relief from existing broad-based stock index option position limits.

The purpose of the hedge exemption is to permit more effective hedging by public customers of their broad-based stock portfolios, while at the same time continuing to limit the accumulation of extremely large options positions for speculative or market trading purposes. Accordingly, the NYSE proposal specifically precludes the use of the hedge exemption for index arbitrage. Moreover, the proposed broad-based

[3] The NYSE originally proposed the equity and index options hedge exemption pilot programs until May 19, 1990 and July 22, 1989, respectively. The Exchange subsequently amended its proposal to extend the termination date of both proposed pilot programs until December 22, 1990. *See* letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Mark McNair, Staff Attorney, Division of Market Regulation, Commission, dated March 1, 1990.

[4] The Commission has approved similar equity options hedge exemption pilot programs by the American Stock Exchange, Inc. ("AMEX"), the Chicago Board Options Exchange, Inc. ("CBOE"), the Philadelphia Stock Exchange, Inc. ("PHLX"), and the Pacific Stock Exchange, Inc. ("PSE"). *See* Securities Exchange Act Release Nos. 25738 (May 24, 1988), 53 FR 20201 and 25811 (June 20, 1988), 53 FR 22821.

[5] The NYA is the only broad-based index on which options are traded on the NYSE. If options on other broad-based indexes are approved by the Commission for trading on the NYSE, then the Commission would determine at that time the appropriate position and exercise limits for options contracts on such indexes.

[6] The Commission has approved similar broad-based index option position limits by the AMEX and CBOE. *See* Securities Exchange Act Release No. 24556 (June 5, 1987) 52 FR 22695 and the PHLX. *See* Securities Exchange Act Release No. 25644 (May 3, 1988), 53 FR 16829.

[7] Currently, the existing NYA position limit of $300 million equates to approximately 16,284 contracts based on the Index value of 184.39 on February 9, 1990. The revised position limit of 45,000 contracts and 25,000 contracts in the nearest-term series, based on the same Index value, equates to $829 million and $460 million, respectively.

[8] The Exchange submitted comparative data for the AMEX, CBOE, and PHLX broad-based indexes based on December 27, 1988 values. Current data continues to confirm that the proposed NYSE NYA position limits are comparable to those of the other options exchanges. For example, the current maximum position for options on CBOE's Standard and Poor's 100 index option is 25,000 contracts, which is worth $789 million on March 2, 1990.

[9] The Commission has approved similar hedge exemptions, on a pilot basis, for the CBOE and AMEX. *See* Securities Exchange Act Release Nos. 25739 (May 24, 1988), 53 FR 20204 and 25938 (July 22, 1988), 53 FR 28738. The CBOE and AMEX proposals, originally approved on a one-year pilot basis, have been extended for an additional year and amended to: (1) expand the scope of the hedge exemption to permit an exemption for short stock positions; and (2) expand the securities eligible to serve as the underlying basis of the hedging stock portfolio position. *See* Securities Exchange Act Release Nos. 27322 (September 29, 1989), 54 FR 41889 and 27326 (October 2, 1989), 54 FR 42121.

index hedge exemption, unlike the proposed hedge exemption for equity options, is not automatic. Rather, a public customer would have to apply for it from the NYSE.

Specifically, the Exchange proposes, as a pilot program, a hedge exemption that would permit qualified public customers to take positions in up to 125,000 contracts in NYA options. The proposed 125,000 NYA contract limitation is comparable, based on the dollar value represented by such contracts, to similar options contract limitations in the CBOE and AMEX hedge exemption pilot programs. The NYSE proposes that a customer who seeks an exemption from broad-based index option position limits must: (1) obtain prior Exchange approval, and (2) have a qualified portfolio consisting of net long positions in at least twenty common stocks representing at least four industry groups (with no stock accounting for more than 15% of the value of the portfolio).

The Exchange has developed guidelines, similar to the CBOE and AMEX, for the implementation of the hedge exemption.[10] The NYSE will coordinate its hedge exemption program with the other options exchanges in an effort to guard against the use of a qualified portfolio to obtain exemption(s) in more than one options product. Additionally, the NYSE proposal provides that a customer who violates the hedge exemption, absent reasonable justification or excuse, will be required to liquidate any excess position promptly and in an orderly manner, and, moreover, will lose its exemption. The NYSE's Surveillance Department will monitor a hedge customer's options positions daily, particularly trading activities close to the expiration date of an index options contract.[11] The Exchange believes these procedures, as well as other requirements, will make it difficult to use the exempted positions to disrupt or manipulate the market. Upon approval of this rule change, the Exchange plans to advise its members of the requirements for the hedge exemption from index option position limits and the procedures to be followed in applying for an exemption in one or more information circulars.

II. Discussion

The Commission believes that the NYSE proposals with regard to hedged position limit exemptions for equity and broad-based index options, which proposals are designed to permit institutional investors to utilize more effectively additional equity and index options in conjunction with their stock portfolios, are consistent with the Commission's general approach to position and exercise limits. That approach balances the benefits derived from increased position and exercise limits against the potential for increased market disruption and manipulation from extremely large options positions. The Commission believes that the NYSE' proposals will increase the depth and liquidity of the options markets by permitting institutional investors to hedge greater amounts of stock than would otherwise be the case under current NYSE rules. At the same time, it is unlikely that the higher position limits available by virtue of the proposed rules will be disruptive to the underlying stock market due to their restrictions and the NYSE surveillance program.[12]

The Commission notes that the NYSE has proposed the equity and broad-based index option hedge exemptions as pilot programs until December 22, 1990. During the pilot programs, the NYSE and the Commission will be able to monitor the effects of the hedge exemption to ensure that problems have not arisen due to the increased position and exercise limits. Additionally, the Commission notes that similar proposals have been adopted by other options exchanges, the the Commission is not aware of any problems that have arisen due to these measures.[13]

The Commission also finds that the NYSE proposal to amend its position limit and exercise rule with regard to NYA option contracts is consistent with the Act. Specifically, the Commission believes that establishing position and exercise limits based on a fixed number of options contracts avoids the potential problem of market participants being forced to reduce the number of contracts held because of increases in the NYA's value. In addition, the Commission believes the current fluctuating limitation on the number of allowable contracts is a confusing trading and hedging complication. The Commission also notes that the Exchange has placed a restriction of no more than 25,000 contracts in the near-term series, where historically most of the trading occurs. Finally, the proposed position limits are comparable to those approved by the Commission for other broad-based index options such as the Standard & Poor's 100 and 500 Index options, the Major Market Index option, the Institutional Index option, and the Value Line Composite Index option.

III. Conclusion

For the above reasons, the Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6 and the rules and regulations thereunder.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[14] that the proposed rule change (SR–NYSE–89–09) be, and hereby is, approved as follows: (1) The hedge exemption for equity options, is approved, on a pilot basis, until December 22, 1990; (2) the portion of the proposal to increase the position and exercise limits for broad-based index options is approved; and (3) the hedge exemption for qualified public customers from broad-based index option positions, is approved, on a pilot basis, until December 22, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

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[10] *See* letter from Joseph Dorilio, Principal Analyst Options/Special Products, NYSE, to Mark McNair, Staff Attorney, Division of Market Regulation, SEC, dated January 2, 1990.

[11] The firm carrying the customer's position will be required to telefax to the Surveillance Department on the Wednesday prior to expiration the current status of the customer's qualified portfolio. Although exercise limits in expiring options on expiration will not be restricted, holders who exercise positions will be closely examined and there will be a rebuttable presumption of a violation of the Exchange's policy if the customer liquidates a substantial amount of stock on the day prior to expiration.

[12] With regard to the equity option hedge pilot, the Commission expects the Exchange to determine from its monitoring program information including, but not limited to, the following: the investors who use the exemption; how often the exemption is used; the stock positions hedged; the amount and timing of trading in the stock by the investor while he is using the exemption; the options used to hedge the stock positions; and the size (number of contracts) of the options positions held pursuant to the exemption. Additionally, the NYSE has informed the Commission that it will obtain the following information with regard to the broad-based index option hedge pilot: the persons who use the exemption; how often the exemption is used; the size (dollar value) of any portfolios hedged; the number of stocks represented in these portfolios and the quantify of each stock held; positions held by hedge exemption customers in broad index stock futures, options on those futures, or other stock index option contracts; and the size (number of contracts) of the index options positions held pursuant to the exemption.

[13] The Commission hereby incorporates the reasoning contained in the approval orders for those proposals into the NYSE proposal. *See* notes 4 and 9, *supra*.

[14] 15 U.S.C. 78s(b)(2) (1982).

[15] 17 CFR 200.30–3(a)(12) (1989).

Dated: March 8, 1990.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-5809 Filed 3-13-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17366; File No. 812-7440]

Charter National Life Insurance Company, et al.

March 7, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Charter National Life Insurance Company ("Charter National") and Charter National Variable Account (the "Account").

RELEVANT 1940 ACT SECTION: Order requested under Section 26(b).

SUMMARY OF APPLICATION: Applicants seek an order approving the substitution of shares of the Managed Bond Portfolio of the Scudder Variable Life Investment Fund (the "Fund") for shares of the 1995 and 2000 Portfolios of the Fund and the substitution of shares of the 2010 Portfolio of the Fund for shares of the 2005 Portfolio of the Fund.

FILING DATE: The application was filed on December 6, 1989 and amended on February 20, 1990.

HEARING OR NOTIFICATION OF HEARING: If no hearing is ordered the application will be granted. Any interested person may request a hearing on the application or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on April 2, 1990. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send a copy to the Secretary of the SEC, along with proof of service by affidavit or, in case of an attorney-at-law, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicants, Charter National Life Insurance Company, 8301 Maryland Avenue, St. Louis, Missouri 63105.

FOR FURTHER INFORMATION CONTACT: Cindy J. Rose, Financial Analyst at (202) 272-3027 or Heidi Stam, Special Counsel at (202) 272-2060 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland, (301) 253-4300).

Applicants' Representations:

1. Charter National is a stock life insurance company incorporated under the laws of Missouri on December 7, 1955. Charter National is a wholly-owned subsidiary of Leucadia National Corporation, a New York holding corporation, the shares of which are listed on the New York Stock Exchange and the Pacific Stock Exchange.

2. The Account was established by Charter National as a separate investment account on January 31, 1986 to fund certain flexible premium variable life insurance contracts. The Account is organized and registered under the Act as a unit investment trust. The Account currently has eleven subaccounts, each of which invests exclusively in the shares of an investment portfolio of the Fund.

3. The Contracts permit Contract owners to allocate net premium payments among the eleven subaccounts of the Account. Owners of the Contracts may transfer accumulated values at any time among the subaccounts available at the time of a transfer request. The first two transfer requests in any contract year are free; otherwise each transfer request costs $10.00 per subaccount from which funds are withdrawn. All transfers made at the same time are treated as one request and transfer charges are only imposed for transfers which result from a Contract owner's request. The Contracts require a minimum initial premium of $10,000. The initial premium is the only premium required to be paid under a Contract, although additional premiums may be necessary to keep a Contract in force. The death benefit under the Contracts equals the greater of a minimum guaranteed death benefit or an applicable percentage of accumulated value under a Contract as of the date of the insured's death.

4. The Fund was organized as a Massachusetts business trust on March 15, 1985, and is registered under the Act as an open-end management investment company of the series type. The Fund currently sells one series of its shares of beneficial interest for each of its eleven investment portfolios to a corresponding subaccount of the Account. The investment portfolios are: the Money Market Portfolio; the Managed Bond Portfolio; the Managed Capital Growth Portfolio; the Managed Diversified Portfolio; the Managed International Portfolio, the Managed Natural Resources Portfolio and five Managed Zero Coupon Portfolios maturing on the third Friday of June in the years 1990, 1995, 2000, 2005, and 2010. Scudder, Stevens & Clark Inc. ("Scudder") manages daily investments and business affairs of the Fund.

5. The Managed Bond Portfolio seeks a high level of income consistent with a high-quality portfolio of securities. It invests in U.S. Government, corporate and other notes and bonds paying high current income. The Managed Zero Coupon Portfolios seek as high an investment return over selected periods as is consistent with investment in U.S. Government securities and with the minimization of reinvestment risk. These portfolios invest primarily in U.S. Government zero coupon securities.

6. The Fund currently only sells series of shares of beneficial interest for the Managed Zero Coupon Portfolios to the Account but sells the other series of shares to Charter National Variable Annuity Account and to separate accounts of other insurance companies. The Fund commenced operations on July 10, 1986, at which time Charter National invested $1,000,000 through the Account in the nine investment portfolios initially offered. Charter National also paid Scudder $10,000 to partially defray expenses incurred by Scudder in organizing the Fund. Charter National subsequently invested $500,000 and $450,000 on May 1, 1987 and 1988, respectively, to establish the Managed International and the Managed Natural Resources portfolios.

7. In 1986, Charter National entered into an agreement with Scudder providing that, in the event Scudder received less than $25,000 in advisory fees from the Fund during any of the Fund's first five fiscal years, Charter National (together on a proportionate basis with any other insurance company having a separate account investing in the Fund) would pay Scudder the difference between the annual advisory fee earned and $25,000.

In connection with the establishment of the Account, Charter National entered into an agreement with the Fund in which it agreed to contribute to the capital of the Fund (together on a proportionate basis with any other insurance company having a separate account investing in the Fund) to the extent that the annual operating expenses of any portfolio of the Fund (except the Managed International and Managed Natural Resources Portfolios) exceed 0.75% of the portfolio's average daily net assets for any year of the Fund. The current agreement obligates Charter National to make capital contributions until at least June 1991.

8. As of February 6, 1990, the Managed Zero Coupon Portfolios had the following net assets: the 1990 Portfolio—$932,100; the 1995 Portfolio—$177,700; the 2000 Portfolio—105,900; the 2005 Portfolio—$56,200; and 2010 Portfolio—$821,700. The expense of operating the Manged Zero Coupon Portfolios is high, despite their small size, because many of the expenses (such as those for accounting and outside auditors) remain relatively fixed. For the fiscal year ended December 31, 1989, the Managed Zero Coupon Portfolios had the following expense results:

TABLE OF EXPENSE RATIOS AS A PERCENTAGE OF AVERAGE DAILY NET ASSETS

	Before reimbursement (percent)	After reimbursement (percent)
1990 Portfolio	3.30	0.75
1995 Portfolio	4.32	0.75
2000 Portfolio	12.00	.075
2005 Portfolio	7.75	0.75
2010 Portfolio	4.24	0.75

The total reimbursement necessary in fiscal year 1989 to bring the expense ratios for these portfolios down to the .75% limit was $67,574, well in excess of the gross advisory fee of $16,776, paid by the Fund to Scudder for these portfolios over the same period.

Based on the number of Contract owners on December 31, 1989, the total reimbursment per Contract owner for the fiscal year 1989 equaled the following:

1990 Portfolio	$549.19
1995 Portfolio	895.20
2000 Portfolio	1,829.00
2005 Portfolio	1,943.43
2010 Portfolio	354.21

As of February 9, 1990 there were 12 remaining Contract owners in the 1995 Portfolio, 5 in the 2000 Portfolio and 3 in the 2005 Portfolio.

9. By a supplement dated Septemer 8, 1989 to the prospectus for the Account, all Contract owners (and all prospective investors) received notice of Charter National's decision to cease offering the subaccounts investing in shares of the 1995, 2000 and 2005 Portfolios because of the lack of interest in those subaccounts. The supplement disclosed that premium payments and transfers of accumulated values could no longer be allocated to those subaccounts, although currently accumulated values invested in those subaccounts could remain invested. The supplement encouraged them to transfer accumulated values to one or more of the eight remaining subaccounts and informed them of Charter National's intention to take the necessary actions, under provisions of the Contracts, to permanently eliminate these three subaccounts as investment options under the Contracts.

10. Applicants propose to substitute shares of two portfolios of the Fund for shares of three other portfolios of the Fund by transferring the accumulated values of Contract owners from the subaccounts holding shares of the 1995 and 2000 portfolios to subaccounts holding shares of the Managed Bond Portfolio and from the subaccount of the Account holding shares of the 2005 Portfolio to the subaccount holding shares of the 2010 Portfolio. Applicants propose to do this by redeeming shares of the 1995, 2000 and 2005 portfolios and purchasing with the proceeds shares of the Managed Bond Portfolio and the 2010 Portfolio. The subaccounts investing in shares of the 1995, 2000 and 2005 Portfolios would then be eliminated.

11. The substitution would take place at relative net asset value with no change in the amount of any Contract owner's accumulated value or in the dollar value of his or her investment in the Account. Contract owners will not incur any fees or charges as a result of the substitution nor will their rights or Charter National's obligations under the Contracts be altered in any way. All expenses incurred in connection with the proposed substitution, including legal, accounting and other fees and expenses, will be paid by Charter National. In addition, the proposed substitution will not impose any tax liability on Contract owners. The proposed substitution will not cause the fees and charges currently being paid by existing Contract owners to be greater after the proposed substitution than before the proposed substitution. The substitution will not be treated as a transfer for the purpose of assessing transfer charges.

12. All current and prospective Contract owners will receive notice in the form of a supplement to the May 1, 1989 pospectus for the Account that Charter National is seeking an order from the Commission approving the substitution. The prospectus supplement sent to Contract owners will also inform them that they may, at any time prior to the proposed substitution, transfer their accumulated values from subaccounts investing in the 1995, 2000 and 2005 Portfolios to any of the remaining subaccounts without incurring any transaction fees and without the transfer counting as one of the two free transfers permitted in any contract year. In addition, shortly after the substitution, Charter National will notify, in writing, all Contract owners who had remaining accumulated values transferred from the 1995, 2000 and 2005 Portfolio subaccounts of their right to make a "free transfer" for another thirty days.

13. The Contracts reserved to Charter National the right, subject to Commission approval, to substitute shares of another portfolio of the Fund for shares of the Fund held by a subaccount of the Account or to add or eliminate one or more subaccounts. The prospectus for the Account clearly discloses this.

Charter National reserved this right of substitution and elimination to protect itself and its Contract owners in precisely the type of circumstances it faces now: failure of an underlying management investment company portfolio to meet the reasonable expectations of its legal and beneficial security holders that it would grow to sufficient size that it could attain reasonable net investment return for a portfolio of its type.

14. Charter National does not believe that the current financial circumstances of the 1995, 2000 and 2005 Portfolios will improve in the foreseeable future. Moreover, subsequent to June 1991, Charter National may not always remain able to spend large amounts of money to maintain the favorable expense ratios that these portfolios have enjoyed and cannot sustain the reimbursement policy indefinitely. Absent the proposed substitution or some other similar remedy, the Contract owners will eventually have to bear the real expenses necessary to operate portfolios that have attracted very few assets.

15. Charter National has determined that under these circumstances it is in the best interests of Contract owners to replace the 1995 and 2000 Portfolios of the Fund with the Managed Bond Portfolio which, because of its size, has attained economies of scale not available to the 1995 and 2000 Portfolios and which can be expected to continue to increase its size and economies of scale in the future. Charter National has also determined that under these circumstances it is in the best interests of Contract owners to replace the 2005 portfolio of the Fund with the 2010 Portfolio which, after the proposed substitution, can be expected to achieve modest economies of scale not available to either alone.

16. Applicants proposed substitution will effectively consolidate assets of the discontinued subaccounts invested in

the 1995, 2000 and 2005 Portfolios of the Fund with those invested in very similar portfolios of the Fund. The unreimbursed current expense ratio of the Managed Bond Portfolio is dramatically lower than that of either the 1995 or 2000 Portfolios. The unreimbursed current expense ratio of the 2010 Portfolio is significantly lower than that of the 2005 Portfolio and Applicants anticipate that this consolidation will modestly increase economies of scale and could lead to a reduction of administrative expenses in the 2010 Portfolio. The reimbursed expense ratios are identical for all the investment portfolios involved in the proposed substitution.

17. Applicants submit that the investment objectives of the Managed Bond and 2010 Portfolios make them suitable and appropriate as investment vehicles for Contract owners currently invested in the 1995, 2000 and 2005 Portfolios. The 2010 Portfolio has investment objectives that are very similar to those of the 2005 Portfolio. The Managed Bond Portfolio has investment objectives that are very similar to those of the 1995 and 2000 Portfolios, and pursues those objectives by investing in the same general types of securities as do the 1995 and 2000 Portfolios. For example, the portfolio of the Managed Bond Portfolio is of high quality and as of December 31, 1989, approximately one-half of this portfolio consisted of U.S. Government Securities. In addition, the effective maturity of the Managed Bond Portfolio as of December 31, 1989 was approximately ten years; which was very close to that of the 2000 Portfolio. The standard 30-day yields of the 1995 Portfolio, the 2000 Portfolio and the Managed Bond Portfolio were 8.68%, 8.20% and 8.20%, respectively, as of February 2, 1990.

18. Applicants assert that the proposed substitution will be only temporary in character because Contract owners may always exercise their own judgment as to the most appropriate alternative investment vehicle. All Contract owners may, at any time before the substitution, transfer their accumulated value to any other subaccount and, for thirty days after the substitution, transfer to any of the remaining eight subaccounts of the Account without any cost or other disadvantage. In this regard, the proposed substitution is not the type of substitution which section 26(b) was designed to govern. Unlike traditional unit investment trusts where a depositor or trustee can only substitute an investment security in a manner which permanently affects all the investors in the trust, the Account (although analogous to unit investment trusts in many ways) provides each Contract owner with the right, in effect, to do his or her own substitutions and thereby protect their investments without redemption. The proposed substitution will not, therefore, result in the type of costly forced redemption which section 26(b) was intended to guard against. No sales load deductions will be made beyond those already provided for in the Contracts and the substitutions will be effected at relative net asset value without the imposition of any transfer or other charge.

19. The application states that, for all the reasons stated above, the proposed substitution is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

]FR Doc. 90-5810 Filed 3-13-90; 8:45 am]

BILLING CODE 8010-01-M

[File No. 500-1]

Heartland Financial, Inc.; Order of Suspension of Trading

March 9, 1990.

It appears to the Securities and Exchange Commission that there is a lack of adequate current information concerning the securities of Heartland Financial, Inc., and that questions have been raised about the adequacy and accuracy of publicly disseminated information concerning, among other things, the company's financial condition and the current claim to exemption from the registration provisions of the Securities Act of 1933 made by Heartland Financial, Inc., and pursuant to which its securities are trading. Specifically, substantial questions have been raised regarding the participation of Heartland Financial, Inc., in a distribution of its securities in violation of the registration provisions of the Securities Act of 1933 and the possibility that the assets of the company may be substantially overstated. The Commission is therefore of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of Heartland Financial, Inc.

Therefore, it is ordered, pursuant to section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of Heartland Financial, Inc., over-the-counter or otherwise, is suspended for the period from 9:30 a.m. EST, March 9, 1990 through 11:59 p.m. EST, on March 18, 1990.

By the Commission.

Jonathan G. Katz,

Secretary.

Service List

The attached ORDER OF SUSPENSION OF TRADING in the securities of Heartland Financial, Inc., has been sent to the following entities:

Heartland Financial, Inc., 4300 North Miller Road, Suite 103, Scottsdale, Arizona 85251

First American Biltmore Securities, 5815 North Black Canyon Highway, Phoenix, Arizona 85015

National Securities Corporation, 500 Union Street, Seattle, Washington 98101

Ken Worm, National Association of Securities Dealers, Anti-Fraud Division, 1735 K Street, N.W., Washington, DC 20006.

[FR Doc. 90-5812 Filed 3-13-90; 8:45 am]

BILLING CODE 8010-01-M

[File No. 81-786]

Application and Opportunity for Hearing: Redken Laboratories, Inc.

March 7, 1990.

Notice is hereby given that Redken Laboratories, Inc. ("Applicant") has filed an application pursuant to section 12(h) of the Securities Exchange Act of 1934, as amended, (the "1934 Act") for an order exempting Applicant from certain reporting requirements under section 13(a) of the 1934 Act.

For a detailed statement of the information presented, all persons are referred to the application which is on file at the offices of the Commission in the Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

Notice is further given that any interested person, not later than April 2, 1990 may submit to the Commission in writing his views or any substantial facts bearing on the application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Comission, 450 Fifth Street, NW., Washington, DC 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for such request, and the issues of fact and law raised by the application which he desires to controvert.

Persons who request a hearing or advice as to whether a hearing is

ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponement thereof. At any time after that date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-5806 Filed 3-13-90; 8:45 am]

BILLING CODE 8010-10-M

[File No. 81-844]

Application and Opportunity for Hearing: Sahara Operating Limited Partnership, Hacienda Operating Limited Partnership and Santa Fe Operating Limited Partnership

March 7, 1990.

Notice is hereby given that Sahara Operating Limited Partnership, Hacienda Operating Limited Partnership, and Santa Fe Operating Limited Partnership ("Applicants") have filed an application pursuant to section 12(h) of the Securities Exchange Act of 1934, as amended, (the "1934 Act") for an order exempting each Applicant from certain reporting requirements under section 15(d) of the 1934 Act.

For a detailed statement of the information presented, all persons are referred to the application which is on file at the offices of the Commission in the Public References Room, 450 Fifth Street, NW., Washington, DC 20549.

Notice is further given that any interested person, not later than April 2, 1990 may submit to the Commission in writing his views or any substantial facts bearing on the application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for such request, and the issues of fact and law raised by the application which he desires to controvert.

Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponement thereof, At any time after that date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-5807 Filed 3-13-90; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-17367; 811-4036]

Security Equity Variable Life Separate Account.

March 7, 1990.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 declaring that Applicant has ceased to be an investment company.

APPLICANT: Security Equity Variable Life Separate Account.

RELEVANT 1940 ACT SECTION: Order requesting deregistration under section 8(f) and Rule 8f-1.

SUMMARY OF APPLICATION: Applicant requests an order under section 8(f) declaring that Applicant has ceased to be an investment company.

FILING DATE: The application was filed on October 30, 1989 and amended on February 20, 1990.

HEARING OR NOTIFICATION OF HEARING: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application or ask to be notified if a hearing is ordered. Any request must be received by the SEC by 5:30 p.m. on April 2, 1990. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request either personally or by mail, and also send a copy to the Secretary of the SEC along with proof of service by affidavit or, for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Applicant, 100 Court Street, P.O. Box 1625, Binghamton, New York 13902.

FOR FURTHER INFORMATION CONTACT: Wendell M. Faria, Staff Attorney, at (202) 272-3450, or Heidi Stam, Special Counsel, at (202) 272-2060 (Division of Investment Management, Office of Insurance Products and Legal Compliance).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from either the SEC's Public Reference Branch (when applying in person) or the SEC's commercial copier at (800) 231-3282 (in Maryland, (301) 258-4300).

Applicant's Representations:

1. The Applicant was organized as a separate account of Security Equity Life Insurance Company ("Security Equity") pursuant to the insurance laws of New York on February 16, 1984. It registered as a unit investment trust under the Investment Company Act of 1940 (the "1940 Act") on May 25, 1984, by filing a Notification of Registration on Form N-8A and a registration statement on Form N-8B-2.

2. Also on May 25, 1984, the Applicant filed a registration statement (File No. 2-91361) on Form S-6 under the Securities Act of 1933 ("1933 Act") to register an indefinite amount of scheduled premium variable life insurance policies. The registration statement became effective on May 15, 1985. The policies were offered until November 17, 1986, when sales were terminated. Only 13 policies had been sold by that time, and they were all surrendered (redeemed) by March 17, 1987.

3. On May 7, 1986, the Applicant filed a registration statement on Form S-6 under the 1933 Act (File No. 33-5535) for the purpose of registering single premium variable life insurance policies. The registration statement became effective on June 29, 1987, but no single premium variable life insurance policies were offered.

4. The Applicant has effected a winding-up of its affairs in connection with its liquidation. All of its assets were transferred to Security Equity prior to December 31, 1987. As of the date of this filing, the Applicant had no liabilities. Expenses incurred in connection with the liquidation were minimal and have been allocated to Security Equity.

5. The Applicant has not within the last 18 months transferred any of its assets to a separate trust, and is not a party to any litigation or administrative proceeding. The Applicant is not now engaged, nor does it propose to engage, in any business activities.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-5811 Filed 3-13-90; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2410]

Georgia; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on February 23, 1990, and amendment dated February 26, 1990, I find that the Counties of Carroll, Catoosa, Chattooga, Cobb, Douglas, Fannin, Floyd, Gilmer, Gordon, Murray, Walker, and Whitfield are a disaster area as a result of damages caused by severe storms and tornadoes beginning February 10. Applications for loans for physical damage may be filed until the close of business on April 24, 1990, and for economic injury until the close of business on November 23, 1990, at the address listed below:

Disaster Area 2 Office, Small Business Administration 120 Ralph McGill Boulevard, 14th Floor, Atlanta, GA 30308

or other locally announced locations. In addition, applications for economic injury from small business located in the contiguous counties of Bartow, Coweta, Dade, Dawson, Fulton, Haralson, Heard, Lumpkin, Paulding, Pickens, Polk, and Union in the State of Georgia; the Counties of Cherokee, Cleburne, DeKalb, and Randolph in the State of Alabama; Cherokee County in North Carolina and the Counties of Bradley, Hamilton, and Polk in the State of Tennessee may be filed until the specified date at the above location.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	8.000
Homeowners without Credit Available Elsewhere	4.000
Businesses with Cedit Available Elsewhere	8.000
Businesses and Non-Profit Organizations without Credit Availability Elsewhere	4.000
Others (Including Non-Profit Organizations) with Credit Available Elsewhere	9.250
For Economic Injury:	
Businesses and Small Agricultural Cooperatives without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage for the State of Georgia is 214011, and for economic injury the number is 702300. The economic injury number for the State of Alabama is 701900, for the State of North Carolina the number is 702500, and for the State of Tennessee the number is 702400.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: February 28, 1990.

Alfred E. Judd,

Acting Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 90-5839 Filed 3-13-90; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice 1173]

The U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) Study Group D; Meeting

The Department of State announces that Study Group D of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on April 6, 1990 at 10 a.m. in Room 1205, Department of State, 2201 C Street, NW., Washington, DC. The Study Group D meeting orginally scheduled for March 22, 1990 is hereby cancelled.

The purpose of the meeting is to review and approve delayed contributions for the meeting of Study Group VIII, and to review the results of the February meeting of CCITT Study Group VII.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and individual building passes are required for each attendee. Entry will be facilitated if arrangements are made in advance for the meeting. Prior to the meeting, persons who plan to attend should so advise the office of Mr. Earl Barbely, State Department, Washington, DC., telephone (202) 647-5220. All attendees must use the C Street entrance to the building.

Dated: February 27, 1990.

Earl S. Barbely,

Director, Office of Telecommunications and Information Standards; Chairman, U.S. CCITT National Committee

[FR Doc. 5825 Filed 3-13-90; 8:45 am]

BILLING CODE 4710-07-M

Oceans and International Environmental and Scientific Affairs Advisory Committee; Partially Closed Meeting

The Antarctic Section of the Oceans and International Environmental and Scientific Affairs Advisory Committee will meet at 10 a.m., Thursday, April 5, 1990, in Room 1408, Department of State, 22nd and C Streets, NW., Washington, DC.

At this meeting, officers responsible for Antarctic affairs in the Department of State will discuss the results of the XVth Antarctic Treaty Consultative Meeting (ATCM XV) held in October 1989, in Paris and ongoing preparations for the Special Meetings called for at the ATCM XV; one to discuss the implementation of a comprehensive system for the protection of the Antarctic environment, the second to elaborate the liability protocol as called for in the Antarctic Minerals Convention. Department officials will be prepared to discuss other key issues and problems involving the Antarctic in the context of current domestic and international developments. This session will be open to the public. The public will be admitted to the session to the limits of seating capacity and will be given the opportunity to participate in discussion according to the instructions of the Chairman. As access to the Department of State is controlled, persons wishing to attend the meeting should enter the Department through the Diplomatic ("C" Street) Entrance. Department officials will be at the Diplomatic Entrance to escort attendees.

The Antarctic Section of the Oceans and International Environmental and Scientific Affairs Advisory Committee will also meet on Wednesday, April 4, in Room 7835, Department of State, 22nd and C Streets, NW. The purpose of these discussions will be to elicit views concerning the further development of United States policy regarding Antarctic resources, particularly Antarctic mineral resources. The Fifteenth Antarctic Treaty Consultative Meeting will also be discussed. The meeting will include classified briefings and examination and discussion of classified documents pursuant to Executive Order 12356. The disclosure of classified material and revelation of considerations which go into policy development would substantially undermine and frustrate the U.S. position in future meetings and negotiations. Therefore, the meeting will not be open to the public, pursuant to section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552b(c)(1) and 5 U.S.C. 552b(c)(9)(B).

Requests for further information on the meetings should be directed to R. Tucker Scully of OES/OA, Room 5801,

Department of State. He may be reached by telephone on (202) 647-3262.

Frederick M. Bernthal,

Chairman.

[FR Doc. 90-5828 Filed 3-13-90; 8:45 am]

BILLING CODE 4710-09-M

TENNESSEE VALLEY AUTHORITY

Privacy Act of 1974; Proposed New System of Records

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Notice of proposed new system of records.

SUMMARY: In accordance with 5 U.S.C. 552a(e)(4), TVA is publishing notice covering a proposed system of records: TVA-35, "Building Access Security Records—TVA."

DATES: Comments of the routine uses must be received by April 13, 1990.

ADDRESSES: Comments should be sent to Ronald E. Brewer, Privacy Act Officer, Tennessee Valley Authority, Edney Building 4W 06B, Chattanooga, TN 37402-2801.

FOR FURTHER INFORMATION CONTACT: Ronald E. Brewer at (615) 751-2520.

SUPPLEMENTARY INFORMATION: TVA is publishing a notice covering a proposed new system of records for which new system reports have been submitted to Congress and the Office of Management and Budget (OMB) pursuant to the Privacy Act and OMB Circular No. A-130. This system notice contains proposed routine uses for which a comment period has been provided. This system notice covers records maintained by TVA's Service organization in the course of providing access security for TVA-occupied buildings. The text of the proposed system is set forth below.

TVA-35

SYSTEM NAME:

Building Access Security Records—TVA.

SYSTEM LOCATION:

Services, Facilities Services, Facilities Management, Tennessee Valley Authority, 400 West Summit Hill Drive, Knoxville, TN 37902-1499, and Services, Facilities Services, Facilities Management, Tennessee Valley Authority, 1101 Market Street, Chattanooga, TN 37402-2801. Duplicate copies of certain records may also be located in the files of various organizations' offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals including, but not limited to: Current or former employees; current or former contractor personnel, subcontractor personnel; visitors, and other individuals that have or are seeking to obtain business or other relations with TVA; and individuals who have requested and/or been granted access to TVA buildings or secured areas within a building.

CATEGORIES OF RECORDS IN THE SYSTEM:

Visitor and employee registers, TVA forms authorizing access for individuals into TVA buildings or secured areas within a building, and historical information on an individual's building access or denial of access.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authorization Act of 1933, 16 U.S.C. 831-831dd.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To refer, where there is an indication of a violation of statute, regulation, order, or similar requirement, whether criminal, civil, or regulatory in nature, to the appropriate entity, including Federal, State, or local agencies or other entities charged with enforcement, investigative, or oversight responsibility.

To provide information to a Federal, State, or local entity (1) in connection with the hiring or retention of an individual, the letting of a contract, or issuance of a license, grant, or other benefit by the requesting entity to the extent that the information is relevant to a decision on such matters or (2) in connection with any other matter properly within the jurisdiction of such other entity and related to its prosecutive, investigatory, regulatory, administrative, or other responsibilities.

To the appropriate entity, whether Federal, State, or local, in connection with its oversight or reivew responsibilities or authorized law enforcement activities.

To respond to a request from a Member of Congress regarding an individual.

To the parties or complainants, their representatives, and impartial referees, examiners, or administrative judges, or other decisionmakers in proceedings under the TVA grievance adjustment procedures, TVA Equal Employment Opportunity procedures, Merit Systems Protection Board, or similar procedures.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

To a consultant, private firm, or individual who contracts or subcontracts with TVA, to the extent necessary to the performance of the contract.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on automated data storage devices, hard-copy printouts, and in file folders.

RETRIEVABILITY:

Hard-copy records are indexed by card access number; automated files may be retrieved by any key data element.

SAFEGUARDS:

Security is provided by physical, administrative, and computer system safeguards. Records are kept in secured facilities not accessible to unauthorized individuals.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with established TVA records retention schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Manager, Facilities Services, Tennessee Valley Authority, Chattanooga, TN 37402-2801.

NOTIFICATION PROCEDURE:

Individuals seeking to learn if information on them is maintained in this system of records should address inquiries to the systems manager named above. Individuals should provide name and social security number.

RECORD ACCESS PROCEDURE:

Requests for access may be addressed to the systems manager named above. Individuals should provide name and social security number.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information about them maintained in this system should direct their request to the system manager named above.

RECORD SOURCE CATEGORIES:

The individual about whom the record pertains; requesting organization; TVA personnel records.

Louis S. Grande,

Vice President, Information Services.

[FR Doc. 90-5827 Filed 3-13-90; 8:45 am]

BILLING CODE 8120-01-M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[FRA Docket 87-2, Notice No. 8]

Petition for Extension of Time; National Railroad Passenger Corp.; Public Hearing

The National Railroad Passenger Corporation has petitioned the Federal Railroad Administration (FRA) seeking approval of an extension of time, until December 31, 1990, for the installation of automatic train control systems on trains operating between Hart, milepost 37.2, and Spring, milepost 61.7, on the New Haven, Connecticut to Springfield, Massachusetts connecting line of the Northeast Corridor as set forth by the Federal Railroad Administration's Amended Final Orders published in the **Federal Register** on Wednesday, October 12, 1988 (53 FR 39834).

After examining the carrier's proposal and the available facts, the FRA has determined that a public hearing is necessary before a final decision is made on this proposal.

Accordingly, a public hearing is hereby set for 10 a.m. on April 26, 1990, in the Seventh Floor Conference Room of the Giamo Federal Building at 150 Court Street, in New Haven, Connecticut.

The hearing will be an informal one and will be conducted in accordance with FRA Rules of Practice (49 CFR part 211) by a representative designated by the FRA.

The hearing will be a nonadversary proceeding and, therefore, there will be no cross-examination of persons presenting statements. The FRA representative will make an opening statement outlining the scope of the hearing. After all initial statements by interested parties have been completed, those persons wishing to make brief rebuttal statements will be given the opportunity to do so in the same order in which they made their initial statements. Additional procedures, if necessary for the conduct of the hearing, will be announced at the hearing.

Issued in Washington, DC on March 7, 1990.

Phillip Olekszyk,

Deputy Associate Administrator for Safety.

[FR Doc. 90-5743 Filed 3-13-90; 8:45 am]

BILLING CODE 4910-06-M

[Docket No. RSSI-89-1, Notice No. 3]

Special Safety Inquiry; Hearing Date, Railroad Reporting Requirements

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of hearing date—special safety inquiry.

SUMMARY: FRA will hold a public hearing on Friday, May 18, 1990, in Washington, DC., concerning railroad reporting requirements (see 54 FR 46497, November 3, 1989).

DATES: (1) A public hearing on railroad reporting requirements will begin at 10 a.m. on May 18, 1990, in room 2230 of the Nassif Building, 400 Seventh Street, SW, Washington, DC. Any person who desires to make an oral statement at the hearing is requested to notify the Docket Clerk at least five working days prior to the hearing, by telephone (202-366-0628) or by mail (Docket Clerk, Office of Chief Counsel, FRA, 400 Seventh Street SW., Washington, DC 20590).

(2) Written comments must be received by the Docket Clerk no later than May 25, 1990. Comments received after that date will be considered to the extent possible without incurring additional expense or delay.

ADDRESSES: (1) Hearing location—room 2230, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

(2) Written comments should be submitted to the Docket Clerk, Office of the Chief Counsel, FRA, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Bruce Fine, Chief, Office of Safety Analysis, Office of Safety, FRA, 400 Seventh Street, SW., Washington, DC 20590 (telephone 202-366-0522), or Mark Tessler, Office of Chief Counsel, FRA, 400 Seventh Street, SW, Washington, DC 20590 (telephone 202-366-0628).

SUPPLEMENTARY INFORMATION: On November 3, 1989, FRA published in the **Federal Register** (54 FR 46497) a Notice of Special Safety Inquiry to examine FRA-imposed railroad safety reporting requirements. A hearing on this subject was originally scheduled for January 16, 1990 but was postponed until such time as a hearing on the related issue of accident reporting requirements could be scheduled. FRA has now issued, and published elsewhere in today's **Federal Register**, an Advance Notice of Proposed Rulemaking concerning accident reporting requirements.

FRA will hold a public hearing on accident reporting requirements beginning at 10 a.m. on Thursday, May 17, 1990. A public hearing on railroad reporting requirements will be held beginning at 10 a.m. on Friday, May 18, 1990.

Issued in Washington, DC, on March 6, 1990.

Gilbert E. Carmichael,

Administrator.

[FR Doc. 90-5742 Filed 3-13-90; 8:45 am]

BILLING CODE 4910-06-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Art Advisory Panel of the Commissioner of Internal Revenue Availability of Report of Closed Meetings

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of Availability of Report on Closed Meetings of the Art Advisory Panel.

SUMMARY: The Report is now available.

Pursuant to 5 U.S.C. app. I section 10(d), of the Federal Advisory Committee Act; and 5 U.S.C. section 552b, the Government in the Sunshine Act; and Treasury Directive 21-03 section 8 (1-29-87): A report summarizing the closed meeting activities of the Art Advisory Panel during 1989, has been prepared. A copy of this report has been filed with the Assistant Secretary of the Treasury for Management and is now available for public inspection at:

Internal Revenue Service, Freedom of Information Reading Room, room 1565, 1111 Constitution Avenue NW., Washington, DC 20224

Requests for copies should be addressed to:

Director, Disclosure Operations Division, Attn: FOI Reading Room, Box 388, Benjamin Franklin Station, Washington, DC 20224, Telephone (202) 566-3770. (Not a toll-free telephone number.)

The Commissioner of Internal Revenue has determined that this document is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required. Neither does this document constitute a rule subject to the

Regulatory Flexibility Act (5 U.S.C. chapter 6).

For further information contact:

Karen Carolan, CC:AP:AS:4, 901 D Street SW., Room 224, Washington, DC 20024, Telephone (202) 252-8128 (Not a toll-free telephone number.)

Fred T. Goldberg, Jr.,

Commissioner.

[FR Doc. 90-5746 Filed 3-13-90; 8:45 am]

BILLING CODE 4830-01-M

Art Advisory Panel; Closed Meeting

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of closed meeting of Art Advisory Panel.

SUMMARY: Closed meeting of the Art Advisory Panel will be held in Washington, DC.

DATES: The meeting will be held April 3, 1990.

FOR FURTHER INFORMATION CONTACT: Karen Carolan, CC:AP:AS:4, 901 D Street, SW., Washington, DC. 20024, Telephone No. (202) 252-8128, (not a toll free number).

Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988), that a closed meeting of the Art Advisory Panel will be held on April 3, 1990 in Room 118 beginning at 9:30 a.m., Aerospace Center Building, 901 D Street, SW., Washington, DC. 20024.

The agenda will consist of the review and evaluation of the acceptability of fair market value appraisals of works of art involved in federal income, estate, or gift tax returns. This will involve the discussion of material in individual tax returns made confidential by the provisions of section 6103 of Title 26 of the United States Code.

A determination as required by section 10(d) of the Federal Advisory Committee Act has been made that this meeting is concerned with matters listed in section 552b(c)(3)(, (4), (6), and (7) of Title 5 of the United States Code, and that the meeting will not be open to the public.

The Commissioner of Internal Revenue has determined that this document is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required. Neither does this document constitute a rule subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Fred T. Goldberg, Jr.,

Commissioner.

[FR Doc. 90-5747 Filed 3-13-90; 8:45 am]

BILLING CODE 4830-01-M

UNITED STATES INFORMATION AGENCY

Reporting and Information Collection Requirements Under OMB Review

AGENCY: United States Information Agency.

ACTION: Notice of Reporting Requirements Submitted for OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed or established reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the Agency has made such a submission. The information collection activity involved with this program is conducted pursuant to the mandate given to the United States Information Agency under the terms and conditions of the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87-256. USIA is requesting approval of revisions made to the Fulbright Teacher Exchange Program, United States Information Agency Application for Teaching Positions/Seminars Abroad under OMB control Number 3116-0181 which expires June 30, 1992. The proposed changes are suggested to streamline and improve program administration; enable information to be entered more easily into the data base and insure readability and prevent inaccuracies. Estimated burden hours per response is two. Respondents will be required to respond only one time.

DATES: Comments are requested by March 23, 1990.

COPIES: Copies of the Request for Clearance (SF-83), supporting statement, transmittal letter and other documents submitted to OMB for approval may be obtained from the USIA Clearance Officer. Comments on the items listed should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Office for USIA, and also to the USIA Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Agency Clearance Officer, Ms. Debbie Knox, United States Information Agency, M/ASP, 301 Fourth Street, SW., Washington, DC 20547, telephone (202) 485-7503; and OMB review: Mr. C. Marshall Mills, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Telephone (202) 395-7340.

SUPPLEMENTARY INFORMATION: Public reporting burden for this collection of information is estimated to average two hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the United States Information Agency, M/ASP, 301 Fourth Street, SW., Washington, DC 20547; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Title: A Grants Program for Private Organizations.

Form Number: IAP-92.

Abstract: This information collection is intended to facilitate the administration of academic-year exchanges and short-term seminar programs to educators in order to broaden the educators' understanding of other countries and cultures. This understanding, in turn, is expected to be shared with students, colleagues, members of civic and professional organizations and other interested parties in the educators' respective communities here and abroad, thereby promoting mutual understanding and contributing to the academic excellence of participating institutions.

Proposed Frequency of Response: No. of Respondents—1,200, Recordkeeping Hours—208, Total Annual Burden—2,608.

Dated: March 6, 1990.

Ledra Dildy,

Federal Register Liaison.

[FR Doc. 90-5775 Filed 3-13-90; 8:45 am]

BILLING CODE 6230-01-M

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Art of Central Africa: Masterpieces From The Berlin Museum Fur Volkerkunde" (see list [1])

[1] A copy of this list may be obtained by contacting Mr. R. Wallace Stuart of the Office of the General Counsel of USIA. The telephone number is

Continued

imported from abroad for the temporary exhibit without profit within the United States are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the temporary exhibition or display of the listed exibit objects at the Metropolitan Museum of Art in New York, N.Y., beginning on or about June 6, 1990, to on or about November 4, 1990, is in the national interest.

Public Notice of this determination is ordered to be published in the **Federal Register.**

Dated: March 5, 1990.

Alberto J. Mora,

General Counsel.

[FR Doc. 90-5851 Filed 3-13-90; 8:45 am]

BILLING CODE 8230-01-M

202/485-7978, and the address is room 700, U.S. Information Agency, 301 Fourth Street, SW., Washington, DC 20547.

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "From Poussin To Matisse: The Russian Taste For French Painting: A Loan Exhibition From the U.S.S.R." (see list [1]) imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the Metropolitan Museum of Art in New York, N.Y., beginning on or about May 20, 1990, to on or about July 29, 1990, and at The Art Institute of Chicago, beginning on or about September 8, 1990 to on or about November 25, 1990, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

Dated: March 5, 1990.

Alberto J. Mora,

General Counsel.

[FR Doc. 90-5852 Filed 3-13-90; 8:45 am]

BILLING CODE 8230-01-M

[1] A copy of this list may be obtained by contacting Mr. R. Wallace Stuart of the Office of the General Counsel of USIA. The telephone number is 202/485-7978, and the address is Room 700, U.S. Information Agency, 301 Fourth Street, SW., Washington, DC 20547.

Sunshine Act Meetings

Federal Register
Vol. 55, No. 50
Wednesday, March 14, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of a Matter To Be Withdrawn From Consideration at an Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the following matter will be withdrawn from the "discussion agenda" for consideration at the open meeting of the Board of Directors of the Federal Deposit Insurance Corporation scheduled to be held at 2:00 p.m. on Tuesday, March 13, 1990, in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street NW., Washington, DC:

Memorandum re: Failing Bank Bidding Priority.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898-3813.

Dated: March 9, 1990.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 90-5906 Filed 3-9-90; 5:04 pm]

BILLING CODE 6714-01-M

FEDERAL MARITIME COMMISSION

TIME AND DATE: 2:00 p.m., March 19, 1990.

PLACE: Hearing Room One, 1100 L Street, NW., Washington, DC 20573-0001.

STATUS: Part of the meeting will be open to the public, the rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Portion Open to the Public

1. Petition No. P6-89—*Motor Vehicle Manufacturers Association of the United States, Inc.—Application for Exemption of Vehicle Shipments from Portions of the Shipping Act of 1984.* Consideration of Comments.

Portion Closed to the Public

1. Docket No. 89-02—*Matson Navigation Company, Inc.: Transportation of Cargoes Between Ports and Points Outside Hawaii and Islands Within the State of Hawaii*—Consideration of the Record.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, *Secretary.* (202) 523-5725.

Joseph C. Polking,

Secretary.

[FR Doc. 90-5985 Filed 3-12-90; 12:02 pm]

BILLING CODE 6730-01-M

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Notice of Vote To Close Meeting

At its meeting of March 5, 1990, the Board of Governors of the United States Postal Service voted unanimously to close to public observation its meeting scheduled for April 2, 1990, in Raleigh, North Carolina. The members will disscuss possible strategies in collective bargaining negotiations.

The meeting is expected to be attended by the following persons: Governors Alvarado, del Junco, Griesemer, Hall, Mackie, Nevin, Pace, Ryan and Setrakian; Postmaster General Frank, Deputy Postmaster General Coughlin, Secretary to the Board Harris, and General Counsel Hughes.

The Board determined that pursuant to section 552b(c)(3) of Title 5, United States Code, and §7.3(c) of Title 39, Code of Federal Regulations, this portion of the meeting is exempt from the open meeting requirement of the Government in the Sunshine Act [5 U.S.C. 552b(b)] because it is likely to disclose information prepared for use in connection with the negotiation of collective bargaining agreements under Chapter 12 of Title 39, United States Code, which is specifically exempted from disclosure by section 410(c)(3) of Title 39, United States Code.

In accordance with section 552b(f)(1) of title 5, United States Code, and §7.6(a) of title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in his opinion the meeting may properly be closed to public observation pursuant to section 552b(c)(3) of title 5, United States Code; section 410(c)(3) of title 39, United States Code; and § 7.3(C) of title 39, Code of the Federal Regulations.

Request for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268-4800.

David F. Harris,

Secretary.

[FR Doc. 90-5973 Filed 3-12-90; 11:18 am]

BILLING CODE 7710-12-M

Corrections

Federal Register
Vol. 55, No. 50
Wednesday, March 14, 1990

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commssion

[Docket Nos. MT89-7-001, et al.]

Nora Transmission Co., et al.; Natural Gas Pipeline Rate Filings

Correction

In notice document 90-3881 beginning on page 6041 in the issue of Wednesday, February 21, 1990, make the following correction:

On page 6042, in the first column, under entry 3, in the second line, "February 9, 1990." should read "February 12, 1990".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER90-193-000 et al.]

Northeast Utilities Service Co. et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Correction

In notice document 90-4347 beginning on page 6821 in the issue of Tuesday, February 27, 1990, make the following corrections:

1. On page 6823, in the first column, under entry 11, in the second line "February 15, 1990." should read "February 14, 1990.".

2. On page 6824, in the third column, under entry 23, in the second line, "February 16, 1990." should read "February 20, 1990.".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TQ90-3-38-000]

Ringwood Gathering Co.; Proposed Changes in Gas Tariff

Correction

In notice document 90-5236 appearing on page 8517 in the issue of Thursday, March 8, 1990, make the following correction:

On page 8517, in the second column, the docket number should read as set forth above.

BILLING CODE 1505-01-D

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

Correction

In notice document 90-4583 beginning on page 7371 in the issue of Thursday, March 1, 1990, make the following correction:

On page 7371, In the third column, after the second paragraph, insert "*Agreement No.:* 224-010721-002".

BILLING CODE 1505-01-D

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

Correction

In notice document 90-4587 appearing on page 7372 in the issue of Thursday, March 1, 1990, make the following correction:

In the first column, after the second paragraph, insert "*Agreement No.:* 224-200327".

BILLING CODE 1505-01-D

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

Correction

In notice document 90-4957 appearing on page 7938 in the issue of Tuesday, March 6, 1990, make the following corrections:

1. In the second column, after the second paragraph, insert "*Agreement No.:* 224-200328".

2. In the third column, after the eighth line, insert "*Agreement No.:* 224-200295-001".

BILLING CODE 1505-01-D

federal register

Wednesday
March 14, 1990

Part II

Department of Health and Human Services

Health Care Financing Administration

42 CFR Part 74 et al.

Medicare, Medicaid and CLIA Programs; Revision of Laboratory Regulations; Final Rule With Request For Comments

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 74, 405, 416, 440, 482, 483, 488, and 493

[HSQ-146-FC]

RIN 0938-AB96

Medicare, Medicaid and CLIA Programs; Revision of the Laboratory Regulations for the Medicare, Medicaid, and Clinical Laboratories Improvement Act of 1967 Programs

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule with comment period.

SUMMARY: This rule revises regulations for laboratories regulated under the Medicare, Medicaid and Clinical Laboratories Improvement Act of 1967 (CLIA '67) programs. The revisions recodify the regulations for these programs into a new part 493 in order to simplify administration and unify the health and safety requirements for all programs as much as possible. We will now have a single set of regulations for the three programs, with an additional subpart for the licensure procedures unique to the CLIA program.

We are revising the regulations to remove outdated, obsolete and redundant requirements, make provision for new technologies and place increased reliance on outcome measures of performance.

We provide for new uniform proficiency testing standards. We have also added requirements for additional specialties, such as clinical cytogenetics.

We also implement the now and self-implementing provisions of the Clinical Laboratory Improvement Amendments of 1988 (CLIA '88).

DATES: This rule is effective September 10, 1990, except for 42 CFR part 493, Subpart H, which will be effective on January 1, 1991, and § 483.75, which will be effective on October 1, 1990. In addition, § 405.1128 will expire on October 1, 1990.

To be considered, comments must be mailed or delivered to the appropriate address, as provided below, and must be received by 5:00 p.m. on May 14, 1990.

ADDRESSES: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HSQ-146-FC, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

Due to staffing and resource limitations, we cannot accept facsimile (FAX) copies of comments.

In commenting, please refer to file code HSQ-146-FC. Comments received timely will be available for public inspection as they are received, beginning approximately three weeks after publication of this document, in Room 309-G of the Department's offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202-245-7890).

FOR FURTHER INFORMATION CONTACT: Rhonda Whalen, (301) 966-6801.

I. Background

Multiple Laboratory Activities

Under the Medicare program, we cover diagnostic services furnished to beneficiaries by a variety of laboratories. These include a laboratory that is "hospital-based" (that is, it is located in or it is under the supervision of a hospital), located in a physician's office, or is "independent" (not hospital-based and not a rural health clinic, a group medical practice or a physician's office).

By statute, the definition of a hospital contained in Section 1861(e) of the Social Security Act (the Act) extends Medicare participation to hospital laboratories. The paragraph following section 1861(s)(11) and section 1861(s)(12) and (13) provide coverage for independent laboratory services.

Under provisions of the Clinical Laboratories Improvement Act of 1967 (CLIA '67), laboratories engaged in testing specimens in interstate commerce must meet the requirements of Section 353 of the Public Health Service Act (42 U.S.C. 263a) in order to be licensed or remain licensed for testing in interstate commerce. However, licensure under CLIA '67 to test specimens in interstate commerce should not be confused with licenses issued by the Food and Drug Administration authorizing the interstate shipment of blood and blood products.

Medicaid, under the authority of section 1902(a)(9)(C) of the Social Security Act, pays for services furnished only by laboratories that meet Medicare conditions for coverage. Because participation in the Medicaid program is governed by Medicare rules, henceforth when we refer to Medicare we are including Medicaid.

Various State laws govern licensure requirements for laboratories engaged in intrastate commerce. There are also Federal Medicare-Medicaid requirements that laboratories must meet in terms of personnel qualifications and accuracy of test results. Under existing Federal regulations in title 42, the laboratory requirements are integrated with other requirements applicable to the provider or supplier. Thus, for example, conditions of participation for a Medicare hospital-based laboratory are found in the hospital conditions of participation in 42 CFR 482.27. Also, laboratories in skilled nursing facilities must meet the same conditions of participation as laboratories in hospitals. Regulations found at 42 CFR part 74, Clinical Laboratories, implement section 353 of the Public Health Service Act, as enacted by CLIA '67, which sets forth requirements for laboratories engaging in interstate commerce.

A CLIA laboratory and any other entity identified as a laboratory under title XVIII of the Social Security Act that wishes to receive payment for its services from Medicare or Medicaid must meet Medicare's conditions of participation or conditions for coverage of services.

A laboratory that fails to meet the Medicare conditions for coverage for a given specialty is not approved for payment of services for that specialty. The loss (termination) of approval or failure to be approved initially results in no payment from Medicare or Medicaid for the services in the failed specialty. Failure to meet CLIA requirements for a category of services or a specific test results in the loss or denial of licensure for the category of services or that test. A laboratory may fail general conditions and fail to become approved for Medicare reimbursement for any specialty; similarly, a CLIA laboratory failing to meet general requirements would not be licensed for any tests.

Federal Oversight Activities

HCFA, under an interagency agreement and a memorandum of understanding (MOU) with the Public Health Service (PHS), has administrative responsibility for both the Medicare and CLIA programs. However, PHS (for the Food and Drug Administration (FDA)) has primary responsibility for the provision of technical advice on blood bank programs, including the revision of

regulations concerning blood and blood products. HCFA and the Centers for Disease Control (CDC) further delineated responsibilities by specifying that HCFA is responsible for developing regulations that relate to Medicare and CLIA and that CDC is responsible for assisting HCFA in obtaining technical and scientific expertise.

Consolidation of Regulations

On August 5, 1988, we published a proposed rule (53 FR 29590). In the proposed rule, we proposed to consolidate all CLIA and Medicare-Medicaid laboratory requirements in a new 42 CFR part 493. We proposed to remove outdated and overly prescriptive requirements. We intended to require laboratories to comply with the health and safety standards of other Federal, State and local agencies; our decisions to approve or license laboratories would be affected by their compliance with these laws. We also proposed to add provisions requiring facilities to develop and implement their own internal quality assurance programs, and we planned also to provide for increased reliance on outcome measures by using quality control and proficiency testing data in the assessment of laboratory performance.

We proposed to recodify and revise existing laboratory regulations to accomplish several goals.

- A major goal of the proposed regulation was to have, to the extent possible, the same requirements for both CLIA and Medicare and Medicaid laboratories. To this end, we proposed to revise requirements relating to applicability of the regulations, compliance with State and local laws, personnel, proficiency testing, recordkeeping, quality control, and inspection.
- We intended to revise our personnel standards so that personnel requirements are not focused principally on qualifications but on the accurate performance of laboratory tests. We added requirements specifying that each laboratory must have a qualified individual present when testing is performed.
- We proposed to impose a new quality assurance program on all laboratories. This provision would require a laboratory to be responsible for the quality of its services yet provide the laboratory with the flexibility to evaluate the competency of its technical staff.
- We intended to update current internal quality control requirements for each specialty and subspecialty, taking into consideration current and future technological advances. We proposed to emphasize the importance of quality control and to make failure of quality control in a specialty or subspecialty result in the loss of approval or licensure in that specialty or subspecialty.
- We intended to revise the current Medicare and CLIA proficiency testing requirements considerably. We would require every laboratory to enroll and participate successfully in an approved proficiency testing program for each specialty and subspecialty for which there is an approved program and for which the laboratory seeks or has Medicare approval or CLIA licensure. The proficiency testing programs would have to meet our requirements, including grading criteria, in order to be considered an approved program for purposes of our regulations.
- We proposed to update the licensure requirements applicable to CLIA only laboratories by eliminating overly-prescriptive requirements, such as those involved with annual license renewal.
- We proposed to require Medicare laboratories to comply with Federal laws concerning health and safety and CLIA laboratories to comply with Federal, State and local laws concerning health and safety.

II. Legislation

A. The Clinical Laboratory Improvement Amendments of 1988 (CLIA '88)

On October 31, 1988, the Congress enacted Public Law 100–578, which contains comprehensive changes to the CLIA '67 legislation by replacing section 353 of the PHS Act. The amendments apply to all laboratories, including physicians' office laboratories, that test human specimens. The law includes provisions for a self-financing certificate fee system and for recognition of accreditation programs and State licensure programs that have standards equivalent to the Federal requirements established under CLIA '88.

Historically, we have regulated laboratories by "location," rather than by the types of tests a laboratory performs. The most significant change from the historic "regulation by location" approach is the directive for us to "regulate by test," using what is commonly referred to as the "complexity model." Regulations would vary as a function of the complexity of the tests the laboratory conducts. The law contains a provision to exempt laboratories from standards enforcement and routine inspections if the tests performed are simple procedures which, as determined by HHS, have an insignificant risk of an erroneous result.

CLIA '88 requires the development of a separate rulemaking to establish standards based on tests performed. We plan to publish proposed standards subject to public comment with final rule publication thereafter. Development of CLIA '88 standards may, of necessity, result in revisions to these regulations. Thus laboratories subject to these requirements could, under CLIA '88, be subject to lesser standards or be exempt from standards if only simple, less complex low-risk tests are performed. On the other hand, the CLIA '88 requirements may result in more stringent requirements, if the testing performed warrants more rigorous Federal oversight.

Ultimately, we plan to establish uniform laboratory requirements based on the level of testing performed that would be applicable to all laboratories.

In the development of this regulation, we attempted to assure that the standards are in conformance with CLIA '88 if at all possible. Moreover, we have included those provisions of CLIA '88 that are self-implementing and do not require prior notice and comment.

B. Omnibus Budget Reconciliation Acts of 1987 and 1989

Section 4064 of the Omnibus Budget Reconciliation Act of 1987 (OBRA '87), Pub. L. 100–203, enacted on December 22, 1987, amended the sentence following section 1861(s)(11) of the Act by requiring that physicians' offices that perform more than 5,000 tests per year must meet conditions relating to the health and safety of individuals for whom such tests were performed. The amendment applied to tests performed on or after January 1, 1990. We did not propose any regulations to implement this provision in our August 5, 1988 proposed rule but we did solicit comments concerning the applicability of the proposed standards. (We received no comments.)

On December 19, 1989, Congress enacted the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101–239). Section 6141 removed the provision requiring that, in order to be subject to the conditions relating to health and safety of individuals for whom such tests are performed, physicians' offices must perform more than 5,000 test per year. This section specifies that *all* laboratories must meet the certification requirements of CLIA '88 and became effective December 19, 1989. This final rule does not implement section 6141, which will be addressed in a

forthcoming notice of proposed rulemaking.

III. Overview of Proposed Rule, Comments and Responses, Summary of Changes to Proposed Rule and CLIA '88 Changes

General Approach

We proposed to revise the standards for all laboratories participating in Medicare or Medicaid or licensed under CLIA to provide as much uniformity as possible within these programs. There are certain limitations on the extent to which the regulations can be unified because of differences in the Medicare and CLIA statutes.

Under the Medicare program, conditions of participation or for coverage are the requirements that an entity, such as a laboratory, must meet in order to participate and have tests paid for by Medicare or Medicaid. Each condition is usually comprised of one or more standards, which enumerate activities, outcomes, or other requirements that, upon evaluation by HCFA or a State survey agency under contract with HCFA, serve as the basis for determining that a particular condition has been satisfied. If the laboratory fails to comply with any condition for coverage, we initiate an adverse action to terminate the laboratory's participation in Medicare or revoke the laboratory's licensure under CLIA. The adverse action may be taken by terminating a laboratory's participation or licensure in a specialty or subspecialty if the deficiencies are limited to particular categories of testing, or the laboratory's approval for all services may be terminated if the deficiencies are pervasive, affecting the overall services offered by the laboratory.

We proposed that the new part 493 would have ten subparts, dealing with general provisions, administration, proficiency testing, proficiency testing programs, patient test management, quality control, personnel, quality assurance, inspection, and requirements unique to CLIA laboratories and CLIA licensure procedures. The regulations affecting other facilities that have requirements for laboratory services would be modified by cross-referring them to the new regulations.

More than 1,600 commenters wrote in response to our proposal. Many comments consisted of form letters or otherwise virtually identical comments. Notwithstanding the large number of comments, many of our proposed provisions received no comments.

Readers are encouraged to consult the preamble to the August 5, 1988 proposed rule for the rationale or explanation pertaining to final provisions of this rule not specifically explained in this preamble.

Note: In the CLIA '88 proposed rule under development we intend to include specific requirements necessary for the implementation of CLIA '88 in subparts B through F. This change necessitates our recodifying the content of proposed subparts B through J as subparts G through O. As an aid to readers, we show the final subpart letters and section numbers in parentheses after those we had proposed in the August 1988 notice of proposed rulemaking.

Subpart A—General Provisions

1. Section 493.1, Basis and scope.

Proposed Rule Overview

In a new § 493.1, Basis and scope, we proposed to indicate the sections of the laws that apply to the new part—sections 1861(e) and (j), the sentence following section 1861(s)(11), sections 1861(s)(12) and (13) and 1902 of the Social Security Act and section 353 of the Public Health Service Act. We intended for this part to apply to all independent and hospital-based laboratories, intermediate care facilities for the mentally retarded, skilled nursing facilities and ambulatory surgical centers that perfrom laboratory services, rural health clinics that perform tests on referral, and physicians' offices that perform any tests on referral.

Many of the commenters supported the attempt to consolidate the Medicare and CLIA requirements into one regulation.

Comments and Responses

Comment: Several commenters expressed concern that the proposed requirements would not be applicable to rural health clinics and physicians' office laboratories that do not receive tests on referral.

Response: The Omnibus Budget Reconciliation Act of 1987 required that physician office laboratories performing more than 5000 tests a year be regulated effective January 1, 1990. The Omnibus Budget Reconciliation Act of 1989 specifies that all Medicare laboratories, regardless of test volume, will be subject to CLIA '88; CLIA '88 applies to all laboratories, including rural health clinics and physicians' office laboratories. The requirements for CLIA '88 will be implemented through separate rulemaking.

Summary of Changes to Proposed Rule

In the final rule we made no changes to the section. By the dates the requirements of this rule go into effect, we expect the standards of organizations that currently accredit laboratories under Medicare, Medicaid and CLIA '67 to meet the requirements of Section 1865 of the Social Security Act. That is, those standards should be such as to reasonably assure the Secretary that the accredited laboratories meet federal requirements. In the area of proficiency testing, if an accrediting organization does not have a proficiency testing program equivalent to that provided for in this regulation, we will direct the State survey agencies to conduct proficiency testing in the accredited facilities.

In addition, by the effective dates of this rule's requirements (i.e. by September 10, 1990 or by January 1, 1991 in the case of proficiency testing requirements), it is our intention to evaluate each accrediting organization's entire set of laboratory standards and make determinations as to whether the standards meet the requirements contained in these rules. Should we determine that we are not reasonably assured that an accrediting organization's standards do meet the federal requirements, we intend to withdraw deemed status from the accredited facilities and place them under State agency oversight.

2. Section 493.2, Definitions

It is our practice to define terms whose meanings may not be clear from their context or where we apply an interpretation that may not be commonly used. The proposed section contained definitions that are applicable to both Medicare and CLIA. We proposed to eliminate requirements of present regulations that we feel are unnecessarily prescriptive; hence, many definitions found in current §§ 405.1310 and 74.2 are no longer necessary.

Proposed Rule Overview

• Currently, "independent laboratory" is defined in § 405.1310(a). We proposed to delete the definition of "independent laboratory" from the definition section because it placed emphasis on location and ownership, conditions no longer considered relevant under the proposal. We proposed to define "laboratory" instead and to remove the exception in the present definition for laboratories maintained by physicians that accept no more than 100 specimens on referral in any category during any calendar year because our experience has not shown that the definition is effective in assuring that physician office laboratories limit testing of specimens received on referral. We intended to maintain the exception for physician office and rural health clinic laboratories that perform no tests on

referral. Under the proposed rule for CLIA '88 these rural health clinics and physician office laboratories that perform any tests on referral would be required to meet the requirements for implementing CLIA '88.

Our proposed definition of a clinical laboratory removed the word "clinical". It does not add anything to the definition and may create confusion, since we also pay for the services of independent laboratories, hospital laboratories, etc., which perform anatomic services, provided they are in compliance with the Federal health and safety standards, which are generally not considered part of clinical laboratory services.

- We also proposed minor changes to the definition of "clinical laboratory" but using the term "laboratory". We proposed to delete several terms that are redundant or unnecessary in the definition of "laboratory".
- We proposed a definition of "authorized person" as the person authorized to order and receive tests.

Under Medicare that person is a physician as defined in section 1861(r) of the Act. We would permit other individuals, including patients, to be "authorized persons" when State law and Medicaid allows. This would reduce the conflict between Federal and State law over who can order and receive tests and would defer to the States for Medicaid purposes as well as to the State where Federal funding under Medicare or Medicaid is not involved.

- We would define "challenge" and "target value," which are related to the proficiency testing requirements.

Comments and Responses

Comment: We received several comments on the definition of "laboratory." Pathologists noted that anatomic examinations are included and argued that these tests are physician services and, as such, should be exempt from these requirements. It was also pointed out that Medicare reimburses anatomic pathology services as physician services; thus, there is inequity between the Medicare approval requirements and the Medicare payment policy.

Response: In accordance with our definition of a laboratory, a physician's office laboratory would not be exempt from these requirements if tests, including anatomic services, are received on referral. Moreover, CLIA '88 specifies that a laboratory is a facility providing pathological services. Therefore, these requirements apply to anatomic pathology services.

Comment: We received several comments from proficiency testing organizations that our definition of "target value" needed to be expanded to include the use of reference or definitive methods as well as comparative methods in establishing an analyte's target value.

Response: The definition of "target value" in this final rule reflects the addition of reference or definitive methods as well as comparative methods for the establishment of target value.

Summary of Changes to the Proposed Rule

Because we decided to maintain the current personnel requirements (see comments and responses on subpart L below), we are retaining the definition of "independent laboratory" that appears in § 405.1310(a). It will appear at 42 CFR 493.2. We eliminated the provision permitting physician office laboratories to accept on referral 100 specimens in a category per calendar year.

Since we are maintaining the current personnel requirements for independent laboratories, we are adding definitions to the independent laboratory personnel standards in subpart L. The definition section includes "subsequent to graduation", "substitution of education for experience" and "technician trainee", terms used in the independent laboratory personnel requirements. The definitions of "authorized person" "accredited laboratory", "sample" and "challenge" in the proposed rule were not changed and therefore are adopted as final.

Added to § 493.2 is a new definition of "kit" and the definition of "run". "Run" had been defined at proposed § 493.237(b)(1) (current § 493.1217), but was moved to the definition section to be consistent with other terms defined. "Kit" is used in current § 493.1209.

The definition of "referee laboratory" has been amended to allow a PT program to nominate a laboratory as a referee laboratory for HHS approval.

Also amended is the definition of "target value". Alternatives to the establishment of the mean are noted in the definition, including definitive or reference methods acceptable for use in the National Reference System by the National Committee for Clinical Laboratory Standards. When definitive or reference methods are not available, a comparative method may be used.

CLIA '88 Changes

We are adding "biological" and "biophysical" to the definition of "laboratory," to conform with CLIA '88. In the definition of accredited laboratory, we are changing the term national accreditation organization to private non-profit organization to conform to section 353(e)(2) of CLIA '88.

Subpart B(G)—Administration

Proposed Rule Overview

As indicated earlier, material we proposed at subpart B of part 493 is being redesignated to subpart G under the same heading, Administration. For the reader's convenience we provide the citation of the proposed rule followed in parentheses by the redesignated section.

Present Medicare requirements in § 405.1311 relating to compliance with State and local laws do not include compliance with Federal laws related to health and safety nor do current requirements under CLIA. We do not believe that a laboratory should be certified if it is not in compliance with applicable Federal requirements concerning health and safety. New § 493.11 proposed to include this requirement. This revision will make these regulations consistent with the requirements for nursing homes, intermediate care facilities for the mentally retarded, hospitals and end-stage renal disease facilities.

Comments and Responses

There were no unfavorable comments on this subpart. We are adopting the content of the proposed rule as final.

Summary of Changes to the Proposed Rule

No changes were made to subpart B(G)—Administration.

Subpart C(H)—Participation in Proficiency Testing

Proposed Rule Overview

Present regulations at 42 CFR 405.1314(a) and part 74, subpart E, require laboratories to participate successfully in a proficiency testing (PT) program acceptable to the State and HHS. We proposed to expand these requirements. A new subpart C was to contain the general requirements a laboratory must meet for PT and would elevate current requirements for enrollment and successful participation to the condition level.

The proposed new PT requirements emphasized the increased importance of achieving a passing score on samples of known contents that are tested as patient samples and serve as a measure of laboratory quality.

Our proposed revisions would focus on assessing the quality of laboratory tests that are commonly performed or have results critical to the patient's health (e.g., an incorrect result has a

moderate to high risk of an error in diagnosis, treatment or death), or both. In the proposed rule we indicated that in the future we hope to include additional tests in areas such as histopathology, clinical cytogenetics and testing for drugs of abuse. We also proposed to exclude from the proposed PT program those test areas for which no performance problems are evident, such as routine urinalysis, and to continue to reevaluate the necessity for PT for other test areas in the future.

The tests and analytes we selected for challenge are representative of the laboratory's ability to perform in each specialty and subspecialty.

We proposed a specialty and subspecialty grading system as the most reasonable and appropriate mechanism to monitor quality of testing Since our intent is to make the Medicare and CLIA programs as consistent as possible and to provide an overall assurance of quality, we proposed to require identical mechanisms of assessing PT performance for CLIA and Medicare laboratories. We proposed that the Medicare State survey agency or HCFA would make a uniform assessment of PT performance in determining the licensure and Medicare approval status of a laboratory by specialty and subspecialty. A laboratory failing the PT requirements for a testing event would have to enroll in an enhanced PT program or it would lose Medicare approval for the specialty or subspecialty. Similarly, a CLIA licensed laboratory would be notified of any PT testing event failure and would be instructed to enroll in enhanced PT or a license revocation action would be initiated.

We proposed requirements for an enhanced PT program for laboratories that failed routine PT. Laboratories with failing scores in a testing event would avoid loss of Medicare approval and/or CLIA licensure by enrolling in an enhanced PT program. The enhanced PT program would provide more samples per testing event in order to afford the laboratory more challenges to determine performance over time. In the proposed requirements, if the laboratory also fails the enhanced PT, we would initiate termination of Medicare approval or/and revocation of CLIA licensure, as applicable, for the failed specialty or subspecialty.

We did not propose enhanced PT for cytology but proposed different remedial actions that a laboratory failing PT in cytology would have to take to remain approved or licensed.

In the proposed rule, we planned to establish an evaluation system based on satisfactory participation for each testing event of PT at approximately quarterly intervals. Under current Medicare practice we disapprove a facility if three out of four testing event scores are unsatisfactory. Currently, if a laboratory has three unsatisfactory shipments out of four, it takes over a year to initiate a termination. Under the proposed revision we could decrease this time interval to as short as two months if the laboratory did not enroll in enhanced PT. (The PT program has one month to notify us of PT results; we notify the laboratory of its loss of approval within one month.)

The proposal for revision of the PT requirements also included a provision for action against a laboratory when there is unsatisfactory performance for the same single analyte in any PT shipment or testing event or when there is unsatisfactory performance for one of two challenges for the same analyte in each of two consecutive testing events. We proposed to terminate Medicare approval of the entire specialty or subspecialty in which the failed analyte is categorized unless the laboratory requested enrollment in the enhanced PT program.

We also proposed to institute an overall PT evaluation by specialty in chemistry, immunology and microbiology. Poor performance in one subspecialty would result in the laboratory failing the specialty as well and the laboratory being unable to obtain approval for any of the other subspecialties in the same category.

Laboratory Requirements

• General

In new § 493.21, Condition; Enrollment and testing of samples, we proposed two standards: (1) If a PT program has been approved under proposed Subpart D for a specialty or subspecialty for which a laboratory seeks or has approval or licensure, a laboratory must enroll in an approved PT program for each specialty and subspecialty for which it seeks approval (Medicare or Medicaid) or licensure (CLIA); and (2) the laboratory must test or examine the PT samples in the laboratory's routine manner.

This section required the laboratory to notify HHS of the PT program it has chosen, it would be able to designate no more than one PT program per specialty (in specialties without subspecialties) or subspecialty for the purposes of meeting the PT enrollment requirements. A laboratory could change its selection of PT programs after four quarterly shipments but would have to notify HHS before any change is made. The laboratory would have to agree to allow all PT programs to release any data to us that we need to evaluate the laboratory's performance.

Section 493.21 would contain a standard specifying how the laboratory is to test or examine the PT samples it receives from the PT program. The laboratory would have to test the PT samples with its patient specimens and by personnel who ordinarily perform the laboratory's testing; it could not perform tests in replicate unless it usually tests patient specimens in replicate; and it could not send the samples to another laboratory for analysis.

In § 493.22, Condition: Successful participation, a laboratory that does not successfully participate in PT for a given specialty and subspecialty would be able to request enrollment in an enhanced PT program within 15 days of notification of unsuccessful performance to prevent immediate termination of approval or institution of license revocation proceedings for the failed specialty or subspecialty.

In § 493.24, Reinstatement after failure to participate successfully, we proposed that a laboratory failing PT in any specialty or subspecialty that does not enroll in enhanced PT or demonstrate successful performance for three consecutive testing events of enhanced PT in that failed specialty or subspecialty would be terminated for a period of no less than six months.

We proposed to extend the successful performance period for reinstatement from the current requirement of two testing events to three testing events to assure that the laboratory demonstrates sustained improvement.

• Proficiency Testing by Specialty and Subspecialty

• General

Sections 493.31 through 493.63 proposed to contain the criteria for acceptable performance a laboratory would have to meet to participate successfully in a PT program for each specialty and subspecialty. The specialties and subspecialties named in these proposed regulations were microbiology (bacteriology, mycobacteriology, mycology, and parasitology), diagnostic immunology (syphilis serology and general immunology), chemistry (routine chemistry, endocrinology, and toxicology), hematology, pathology (including cytology for gynecologic examinations) and immunohematology.

Whenever possible, we determined a composite performance score for specialties and subspecialties. We considered a grade of 80% for an overall specialty or subspecialty of testing to be

a reasonable, achievable level of performance. In immunohematology in which even one error may have serious and immediate consequences, we required a performance level of 100% for subspecialties of testing.

Whenever changes in the regulations for PT participation are necessary, we would expedite the rulemaking process to ensure the most rapid implementation in order to have dynamic requirements to respond timely to new testing procedures and methodologies as well as refinements in performance and evaluation criteria.

Also, whenever changes are necessary, we proposed to publish a notice in the **Federal Register** before revising PT program requirements.

• Cytology

Currently, most PT programs do not test cytology services. As a result, we had less information for assessing cytology PT than we had for assessing other areas of PT. We therefore proposed three options (on-site testing, mailed shipments of specimens, and a combination) for interested parties to comment upon. All options include ranges for accuracy rates, number of challenges per testing event and number of testing events per year. We requested comments concerning which accuracy rate in each range commenters prefer (and why) as well as which PT option is preferred (and why).

We proposed to require PT in cytology only for gynecologic preparations. We proposed that Cytology: Gynecologic examinations, be a subspecialty under the specialty of pathology.

We proposed that satisfactory performance for each individual would be based on a 80 to 100 percent correct response on each PT survey. Successful performance for the laboratory, which includes all individuals engaged in slide examination, would also be based on 80 to 100 percent correct responses on each testing event. A correct response would be 95 percent consensus agreement. We were interested in receiving comments regarding instances when a graded response may be close to the consensus but not exact.

• Remedial actions for cytology (Gynecologic preparations only)

The principal purpose of any PT program is to identify areas of performance that need correction or improvement and to ensure that good preformance is maintained over time. Because examination of slides in cytology involves the skill and judgment of individuals viewing slide preparations, we proposed that laboratories take remedial actions to improve the performance of individuals who failed the cytology PT program.

We proposed remedial actions applicable to individuals who do not demonstrate satisfactory performance and penalties applicable to laboratories that fail to maintain overall successful performance in a cytology PT program. We invited comments on this proposal.

1. Remedial actions concerning individuals. We proposed that the first time an individual fails any part of a cytology PT survey, the laboratory would have to provide the individual with immediate remedial training and education in the area of the failure and a review in those areas passed. If the individual's score is 50 percent or less in each of two testing events, we would require a more stringent form of remedial action up to prohibiting the individual from reporting negative slides until the individual has been retrained and demonstrates necessary accuracy by scoring 100 percent on two consecutive PT testing events. If either two or more or ten percent or more of the individuals in a laboratory, whichever number is greater, fail any PT testing event, all individuals engaged in the examination of slides would have to undergo additional training and education in addition to that required in the personnel requirements *and* the laboratory would have to participate in a retrospective PT program until the laboratory achieves an overall score of 95 percent or more correct responses over three subsequent consecutive PT testing events. The 95 percent score for the laboratory represents the composite score of all individuals examining gynecologic slides in the laboratory.

2. Fiscal penalties for laboratories. We proposed that if the laboratory fails to take required remedial actions (as described above) when an individual fails the PT program or if either two or more or ten percent or more of the individuals in a laboratory, whichever number is greater, fail two or more of PT testing events, we would terminate the laboratory's Medicare approval for the subspecialty of gynecologic examinations, revoke its CLIA licensure, or both, as applicable.

Comments and Responses

Section 493.21 (§ 493.801) Condition: Enrollment and Testing of Samples

Comment: Several commenters opposed enrollment in proficiency testing programs by specialty or subspecialty designations of the subpart. They felt that there was lack of alignment between these categories and current PT programs.

Response: We cannot approve laboratories by tests performed because it is not feasible for the insurance companies that pay Medicare/Medicaid bills to program approval by test. Presently, laboratory tests are reimbursed using the Health Care Financing Administration common procedure coding system, which is based on the Physicians' Current Procedural Terminology of the American Medical Association. Each of these tests categorized by code is further categorized by specialty or subspecialty of service used as part of the survey and certification process for Medicare approval. Moreover, it would not be feasible for HHS to maintain current records of tests performed by laboratories since procedures are added or deleted on a daily, weekly, or monthly basis. Enrollment in PT by specialty and subspecialty of services is based on the current categorization of tests both for Medicare approval for payment and licensure under CLIA. Tests are selected for PT based on widespread use and appropriateness for assessment of areas of test performance. These tests are most representative of methodologies used in a specialty or subspecialty to provide proper patient care. PT organizations revise tests offered in program modules on an annual basis, and we anticipate that PT programs will provide test specimens in modules that are analogous to the type of tests required under proposed subpart D.

Comment. Numerous commenters agreed that PT samples should be tested and examined in the same manner as patient samples but thought that the requirement was not practical and was unenforceable. An even greater number of commenters noted "special handling" and attention given to PT samples currently; they stated that the more emphasis given to PT sample results, the more extraordinary treatment the samples will be given.

Response: We agree with these commenters and have added a provision under paragraph (b) of this standard requiring that the individual performing the testing or examination of PT samples attest that the samples are tested as closely as possible to patient specimens:

Section 493.22 (§ 493.803) Condition: Successful Participation

Comment: A very large number of commenters strongly objected to losing licensure for a specialty or subspecialty if a laboratory perform unsuccessfully for the challenges on a given analyte; the commenters also opposed the loss of licensure in the respective specialty if

the laboratory performed unsuccessfully in a given subspecialty.

Response: We agree with the commenters that loss or limitation of a laboratory's approval or license is a heavy penalty. However, the importance of PT in the evaluation of a laboratory's performance cannot be compromises. Throughout subparts C and D (now H and I), we intended to make the regulations more comprehensive.

After evaluating comments we have retained the definition of unsuccessful performance as unsatisfactory performance in two consecutive or two of three PT events. However, we have increased the number of PT samples in the testing events for most specialties in response to suggestions from a number of commenters. Also, we have eliminated the proposed section basing the loss of the specialty of service on unsuccessful performance for a subspecialty. We do require that unacceptable performance for a given analyte or challenge result in the loss of a subspecialty of service, since approval or licensure is not granted on a test basis. However, when the final regulations are established invoking the intermediate sanction provisions of OBRA '87 and CLIA '88, we plan to include provisions for invoking an intermediate sanction for inaccurate test performance, as appropriate, as opposed to terminating approval or revoking a CLIA license for the entire subspecialty.

Section 493.23 (§ 493.805) Condition: Successful Participation Before Initial Approval of Licensure

Comment: A large number of commenters opposed the requirement of three successful PT events before initial Medicare or Medicaid approval or CLIA licensure for each specialty or subspecialty. These commenters felt that the time period required to complete three successful PT events, which they felt would represent a minimum of nine months to one year, was too long. Several commenters indicated that a new laboratory would not survive economically for this length of time.

Response: We agree with the commenters and have reduced the number of successful PT events required from three to one before initial Medicare or Medicaid approval or CLIA licensure.

Section 493.24 (§ 493.807) Reinstatement After Failure to Participate Successful

Comment: Many commenters felt that a waiting period of not less than six months from the date of termination of Medicare approval or CLIA licensure was too long a period of time to wait for reinstatement, particularly if problems relating to the termination had been corrected. Many commenters wanted to institute remedial action first and be allowed an opportunity to correct problems before any adverse action.

Response: We feel that laboratories should correct problems in testing immediately after notification of a PT failure, and we are requiring laboratories to document remedial action taken. Correction of the problem(s) should be demonstrated by improved performance in the next two proficiency testing events, and if not, adverse action is necessary because the problem(s) is not resolved. Following termination of Medicare approval or CLIA licensure, a laboratory need time for reflection and correction of problems relating to unsuccessful performance and the time period should be sufficient to accomplish complete rectification and also demonstrate sustained successful performance through three consecutive PT events. In view of the large numbers of commenters that attested to the "special and extraordinary handling" given PT specimens and that laboratories would fraudulently report that PT samples were tested in the same manner as patient samples, we have determined that at least one of the three PT events required for reinstatement will be conducted on-site.

Section 493.25 (§ 493.809) Condition: Enhanced Proficiency Testing

Comment: A very large number of commenters expressed strong opposition to the concept of enhanced PT as an immediate sanction. Specifics mentioned by the commenters in reference to enhanced PT were that it is too punitive, too complex and overly burdensome. Many commenters were concerned that the enrollment fee for enhanced PT would be excessively high.

Many proficiency testing program providers felt enhanced PT would be extremely difficult to administer. They anticipated that a large number of laboratories would be subject to enrollment in enhanced PT and expressed great concern about the dramatic increase in volume of PT material that they would be responsible for obtaining, validating, and distributing.

Response: We agree with the commenters that requiring enhanced PT as a separate program would be too complex, costly and burdensome. With the increased number of samples in routine PT, enhanced PT should not be necessary to identify poorly performing laboratories. Consequently, we have assimilated the increased number of samples into the routine PT program in this final rule and withdraw the proposed requirement for a separate enhanced PT program. In accordance with CLIA '88, we are requiring that laboratories that perform unsatisfactorily on a PT event undertake training and employ the technical assistance necessary to correct the problems associated with the PT failure.

Sections 493.31 through 493.57 and 493.61 through § 493.63 (§§ 493.21–493.851, 493.55 and 493.865) Conditions and Standards For Specific Specialties and Subspecialties

Comment: Many commenters were opposed to setting the score for satisfactory performance at 80 percent and noted that the 80 percent score was higher than necessary to demonstrate satisfactory proficiency testing performance. Some took particular exception to the 100 percent score requirement in immunohematology.

Response: We consider an 80 percent score for satisfactory proficiency testing performance as a reasonable requirement. Since we are requiring five PT samples in testing, less than an 80 percent score in most specialties would mean the laboratory tested only three, or 60 percent, accurately. The require a higher score would require the laboratory to test all samples correctly.

We have revised the proposed standards, usually located at (d) of the various standards, to include the requirement that following an unsatisfactory testing event, laboratories must obtain the necessary training and assistance to correct problems associated with PT failures. In addition, we specify delaying adverse actions until laboratories demonstrate unsatisfactory performance on two consecutive testing events or two out of three consecutive testing events. We do, however, accept the views of commenters stating the overall 100 percent score in immunohematology should be amended. We agree that it is unrealistic to expect laboratories to score 100 percent in unexpected antibody detection and antibody identification; therefore, the acceptable score for both have been reduced to 80 percent. The other areas of immunohematology have not been changed in recognition of their importance.

Comment: Several commenters felt a score of "O" for failure to participate was unfair if instrumentation was not functioning during the proficiency testing event.

Response: In response to these comments, we are revising the requirement, usually located at paragraph (b) of the various standards,

to permit laboratories to submit to the inspecting agency and the PT program for consideration any situation or circumstances that prevented the laboratory from performing tests.

Comment: Many commenters noted the omission of some form of remedial action to be taken in the event of a PT failure. Suggestions made by the commenters included education, training, and technical assistance to the degree necessary to identify and rectify problems responsible for the failure.

Response: We agree with these commenters and have included a requirement, usually at paragraph (d) of the various standards, for the laboratory personally to provide or obtain the technical assistance and training necessary to correct problems associated with a proficiency testing failure. This training and technical assistance must be initiated as soon as possible after the initial failure and should allow sufficient time to correct testing problems before participation in the next testing event.

Comment: An overwhelming number of commenters expressed concerns regarding the proposed enhanced PT program. They felt that there was insufficient time to correct problems associated with an unsuccessful PT event before enhanced proficiency testing would be imposed. They vehemently opposed the provision for penalizing laboratories that failed a single analyte with the loss of an entire specialty or subspecialty.

Response: We understand the commenters' concerns; however, proficiency testing as an evaluation tool must be given the serious consideration it warrants in assessing test performance. We have deleted the section on enhanced PT in response to the concerns raised by the commenters. Instead of the proposed requirement for immediate enrollment in enhanced PT in response to an unsatisfactory testing event, we are requiring that laboratories with one unsatisfactory testing event undertake training and corrective action necessary to improve performance. As stated now, a laboratory will not be penalized for a single unsatisfactory testing event, but an adverse action will be initiated for failure of two consecutive or two out of three PT events. An adequate time period is thus being given to remedy problems causing such failures. We feel that without the opportunity to identify and correct these problems, inaccurate testing may be perpetuated.

Section 493.63 (§ 493.855) Standard: Cytology: Gynecologic Examinations

Comment: Many individuals and organizations offered suggestions on the number of times a year a PT event should be required for individuals examining gynecologic preparations. The suggestions ranged from once every five years to four times a year. The majority of the commenters favored requiring annual or semi-annual cytology PT events.

Response: CLIA '88 (Section 353(f)(3)(A) of the PHS Act) requires that proficiency testing be conducted quarterly unless HHS determines for technical and scientific reasons that a particular examination or procedure may be tested less frequently (but not less often than twice per year). In as much as cytology proficiency testing has not been conducted routinely on a national basis, the testing materials or slide preparations needed to evaluate slide examination performance currently are not readily available. It will take time for proficiency testing programs to collect the appropriate slides, evaluate and reference the slides by reportable result or diagnosis, and assemble slide sets for testing. Administering the program will require coordination betweeen the State survey agencies and the proficiency testing program to obtain the test sets and schedule the testing events. The State agencies will have to arrange to conduct cytology proficiency testing at the time of the on-site survey. In addition, the laboratories will be responsible for insuring that all individuals are tested, requiring in some instances days off for individuals to be tested and loss of laboratory time in examining patient slides.

For all these reasons, we have decided to require cytology proficiency testing no less than twice annually, at least one of which will be on-site.

Comment: A large number of commenters favored on-site proficiency versus mailed specimens as the most ideal mechanism that would most fairly evaluate individual performance because participants would be tested in familiar surroundings using their own microscopes. Small laboratories were in favor of on-site PT for evaluating each individual as opposed to assessing the overall or collective laboratory performance through mailed PT. Several commenters suggested proficiency testing events be administered at regional testing sites where the PT could be monitored and administered to many individuals simultaneously. They also suggested that after testing the individual's performance, a review of the PT material could be used as a continuing education tool.

Response. We agree with the commenters that on-site PT is the ideal situation and CLIA '88 mandates periodic confirmation and evaluation of the proficiency of individuals involved in examining or interpreting cytologic preparations, including announced and unannounced on-site PT. We have included in the regulations provisions for an annual, unannounced on-site PT event, as well as announced testing events conducted at regional testing centers in order to afford each individual and/or laboratory the opportunity of a testing event that will be the most convenient and the least disruptive to the laboratory.

These two testing methods ensure that each individual is tested and eliminates the potential advantage for larger laboratories to submit a collective opinion or diagnosis based on more than one individual's input to proficiency testing challenges.

We recognize the value of continuing education but have not specified any particular number or type of courses that may be beneficial to the individual or laboratory. Rather, we leave the enrollment and participation in continuing education exercises to the individuals, laboratories and professional organizations.

Comment: The majority of those who commented on passing scores recommended 80 percent as passing, although some commenters suggested passing scores in the range of 70–100 percent as alternative scores for each PT event.

Response: In as much as standards of practice for cytology are not established and uniform nomenclature for reporting cytology results has not been universally adopted, we are initially requiring a passing score of 80 percent of acceptable responses for a PT event. We and the majority of commenters believe that at this time a score of 80 percent is a reasonable and achievable level of performance. Following the evaluation over time of proficiency testing performance, higher grading criteria may be developed.

Comment: Most of the commenters were in favor of immediate remedial training and education by the laboratory after a single testing event failure. Many commenters objected to reviewing the areas in which cases were satisfactory and several commenters requested that remedial training and education only be required after failing two testing events.

Response: We agree with the commenters stating that the laboratory must provide remedial training and

education after failure in a single testing event. Cytology PT will assess an individual's performance in the examination of gynecologic material; therefore, it is critical that problems identified through PT be corrected immediately. The laboratory must provide remedial training and education in the area of failure to upgrade the performance of individuals providing diagnosis on patient specimens.

Comment: An overwhelming number of commenters objected to the proposed requirement for additional training and education of all individuals engaged in the examination of gynecologic preparations when two or more individuals or ten percent of the individuals engaged in the examination of gynecologic preparation failed a PT event.

Many commenters objected to the proposed requirement that the laboratory must participate in a retrospective PT program until the laboratory achieves 95 percent correct responses over three consecutive PT events.

Response: We agree with the commenters and are not making final the proposed requirement for remedial training and education of all individuals engaged in slide examination when one or more individuals fails. Also, we are not including in this final rule the proposed requirements for retrospective proficiency testing.

Comment: A few commenters agreed that each individual who failed a testing event should be required to achieve a score of 100 percent on two consecutive PT testing events; however, many commenters expressed the opinion that an 80 percent retest score on one PT testing event was adequate.

Response: We agree with the majority of commenters and have changed the regulations to require a passing score of at least 80 percent on a single testing event as adequate for reinstatement after failure.

Comment: The commenters offered a variety of suggestions for remedial actions for individuals failing a PT event from a 25 percent review of the case work to the permanent cessation of the examination of slides by an individual examining gynecologic slides.

Response: We have added a provision to the regulations requiring the laboratory to provide immediate remedial education and training in the failed area and re-examination of all subsequent gynecologic slides until the individual is retested and scores at least 80 percent on a testing event. For an individual examining gynecologic preparations who is not qualified as a technical supervisor and who fails a testing event, we are requiring the re-examination of the last 500 negative gynecologic slides evaluated before the failed testing event. The re-examination must be performed by an individual who had a passing score for the last testing event. For technical supervisors who fail a testing event, we are requiring the re-examination of the last 500 gynecologic slides evaluated before the failed testing event. The re-examination must be performed by a qualified technical supervisor who achieved a passing score for the last testing event.

Comment: Many commenters agreed that the laboratory should take the responsibility for remedial action when an individual failed a testing event; however, the majority of those commenting disagreed with the termination of a laboratory's Medicare approval for gynecologic cytology testing and/or revocation of its license under CLIA for failure to take remedial actions when an individual fails a proficiency testing event.

Response: The laboratory is ultimately responsible for all patient test results reported by its employees and thus it is appropriate to terminate a laboratory's Medicare approval and/or revoke its license under CLIA if it fails to take the required remedial action.

Summary of Additions and Changes to Proposed Rule

Section 493.801 Enrollment and Testing of Samples

To the proposed requirement for testing PT samples in the same manner as patient specimens, we have added the requirement for the individual testing the PT samples to attest on the PT request form that PT samples are tested using the laboratory's routine procedures for handling and testing patient specimens. Laboratories, including those with separate locations, may not engage in discussions pertaining to PT results. Additionally, if a laboratory receives PT samples for testing from another laboratory, HHS must be advised of the receipt of the sample(s).

Section 493.803 Successful Participation

Unsuccessful participation in PT is now defined as two consecutive or two out of three unsatisfactory testing events or two consecutive or two out of three unsatisfactory scores for the same analyte.

Section 493.805 Satisfactory Participation before Initial Approval or Licensure

Laboratories must participate in one PT event and achieve a satisfactory score before initial Medicare approval or CLIA licensure.

Section 493.807 Reinstatement after Failure to Participate Successfully

Three consecutive satisfactory PT events, one of which must be on-site, are required before a laboratory is reinstated after termination of Medicare approval or revocation of CLIA licensure.

Section 493.25 Enhanced Proficiency Testing

We withdraw the proposed requirement for enhanced PT in § 493.25 but significantly increased the number of samples in a routine proficiency testing event in the final rule. This has the effect of assimilating the enhanced proficiency testing program into the routine proficiency testing events.

Sections 493.821 through 493.851 and 493.857–493.865 Proficiency Testing by Specialty and Subspecialty

The provisions of the proposed rule are adopted as final with the following exceptions/additions:

- If a laboratory fails to perform successfully for a given subspecialty, termination of CLIA licensure or disapproval of Medicare will occur only for that subspecialty. If a laboratory fails to perform successfully for a given analyte(s), termination of CLIA licensure or termination of Medicare approval will occur for the subspecialty of the failed analyte(s).
- If a laboratory fails to participate in a PT event, consideration may be given before automatic failure if the laboratory has participated in the last two PT events and notifies the PT program and inspecting agency of cessation of patient testing and the circumstance causing the non-participation.
- In § 493.861, the percentage of acceptable responses required for each analyte and each testing event for unexpected antibody detection is reduced from 100 to at least 80 percent.

Section 493.855 Cytology

Once a year, unannounced proficiency testing will be conducted on-site in each laboratory. In addition, at least four times a year, proficiency testing will be conducted on an annual basis at designated testing sites. Each individual examining slides must participate in two testing events a year.

Also, an individual must score 80 percent or higher on a PT event to achieve a satisfactory score. If an individual fails a PT event, immediate remedial training and education in the area of failure must be provided, and all subsequent gynecologic slides must be re-examined until the individual achieves at least an 80 percent score on the next testing event. At least the last 500 slides examined by an individual who failed a testing event must be re-examined by an individual who achieved a satisfactory score in the most recent PT event.

CLIA'88 Changes

1. We are including in § 493.801(b)(4) a statement to the effect that a laboratory found to have intentionally referred proficiency testing sample(s) to another laboratory for analysis will lose its approval and/or licensure for at least one year. This partially implements section 353(i)(4) of the PHS Act, as modified by CLIA'88, which, as of January 1, 1989, requires revocation of a laboratory's certificate (currently referred to as license) and which involves fines and penalties (which will be implemented later). We are including Medicare approvals as revocable, since all Medicare laboratories are subject to CLIA'88 in accordance with the Omnibus Budget Reconciliation Act of 1989.

2. In accordance with section 353(f)(3)(E) of the PHS Act (as modified by CLIA '88), we are requiring laboratories failing one PT event to investigate and correct problems causing the failure. CLIA '88 states that HHS may require training and assistance and/or enhanced proficiency testing when laboratories fail to achieve satisfactory performance. We are requiring that laboratories with one failure to institute training and assistance to remedy the problem. This was recommended by several commenters, in addition to their opposition to enhanced PT.

Subpart D(I)—Proficiency Testing Programs

Proposed Rule Overview

We proposed a new subpart D that would contain the requirements a PT program would have to meet before a laboratory could use it to meet the PT requirements of subpart C. Subpart D would indicate for each specialty and subspecialty: (a) Program content and frequency of challenge; (b) the number of challenges per quarter; and (c) how to evaluate analytes or test performance.

Basically, we proposed that programs wishing to qualify as a PT program under the proposed regulations would have to offer a minimum of at least two challenges per quarter for each test or analyte for the subspecialty of general immunology, the specialty of hematology, and the subspecialties included in the specialties of chemistry and immunohematology; six challenges per quarter for the specialty of microbiology; five challenges per quarter for the subspecialty of syphilis serology. For the enhanced PT program, in which a laboratory failing PT would have to participate, we proposed to require six challenges per shipment for each test or analyte in the specialty of hematology and the subspecialties included in the specialties of diagnostic immunology chemistry, and immunohematology, and twelve challenges per shipment for the specialty of microbiology.

As proposed, subpart D described criteria for acceptable performance. The criteria for grading was developed through an evaluation of the current criteria in use by States and private sector programs and an evaluation of data CDC had for the performance characteristics of laboratories.

A PT program as proposed would evaluate a laboratory in a manner that reflects the scope and level of services the laboratory offers.

After the PT program has been in operation for two years we proposed to consider revisions to the program based on the performance of laboratories. We planned to solicit comments from all concerned groups regarding the need to modify the PT program requirements. Changes in the PT program might be made to incorporate new analytes, tests, or organisms of clinical significance, to delete obsolete or well-performed tests, or to improve the evaluation scheme based on new data describing actual distributions of test scores, and the relationship of test errors to physician practices and patient outcomes. We proposed that when we decided to include new challenges or evaluation criteria in future PT, we would expect these changes to be provided by approved PT programs within two years of our approval and announcement. We would review the standards for PT programs on a regular basis, make such changes as are necessary and provide notice of these changes to all affected.

The requirements for program content and number of challenges per quarter would be implemented through an expedited rulemaking process to enable us to drop or add tests in a timely manner to reflect current technologies.

• Cytology (Gynecologic examinations)

As noted above in the discussion concerning subpart C, we proposed three options for cytology (onsite testing, mailed shipments of specimens, and a combination). For all options, we proposed one to four PT testing events per year, with five to 12 slide preparations per individual per testing event. We proposed that the type of challenges include "normals," infectious agents, benign reactive processes, pre-malignant processes, and malignant processes.

We would require the program to provide previously "referenced" slides: "positive" slides that have been confirmed by tissue biopsy and "negative" slides that have been confirmed by 95 percent consensus agreement.

Comments and Responses

Section 493.91 (§ 493.901) Approval of Proficiency Testing Programs

Comment: It was noted by a few commenters that the option for proficiency testing program providers to purchase proficiency testing material was not included in the proposed regulations.

Response: We agree with these commenters and have included this option for proficiency testing program providers. We stipulate, however, that the proficiency testing material be purchased only from manufacturers who follow the FDA Good Manufacturing Practice requirements.

Comment: One commenter felt the definition of "referee laboratory" needs to be revised to allow the proficiency testing program to choose qualified referee laboratories rather than have HHS determine referee laboratories.

Response: Although we encourage proficiency testing programs to elect referee laboratories, we retain the right to disapprove the selection.

Comment: Several commenters stated the definition of target value was overly restrictive, needed expansion with more flexibility, and that it precluded other valid methods of determining target value.

Response: We have expanded the definition of target value (see § 493.2) to include its establishment based on definitive, reference or comparative methods accepted for use in the National Reference System by the National Committee for Clinical Laboratory Standards.

Comment: Numerous commenters agreed that proficiency testing samples should be tested in the same manner as patient samples but that the requirement was unenforceable.

Response: We agree with the commenters that enforcement without

direct oversight is difficult and we address this issue more fully in the comments and response section concerning § 493.21(b) (§ 493.801(b)(1)) of proposed subpart C. In an attempt to insure that proficiency testing samples will not receive special handling, we will ask some States to conduct unannounced on-site proficiency testing in a sample of laboratories. This will provide a benchmark measurement of laboratory performance on proficiency testing and also will enable us to assess the usefulness and feasibility of on-site proficiency testing. The requirement for proficiency testing programs to include a signature block for this attestation statement is a part of the regulation designed to assure that proficiency testing samples are treated similarly to patient samples.

Comment: Several commenters suggested that proficiency testing program providers be required to make allowance for damaged or lost proficiency testing samples and to resupply such samples.

Response: We agree with the commenters and require program providers to replace lost or damaged samples. The proficiency testing participant must notify the program provider within seven days from the scheduled date of shipment to be eligible to receive a replacement sample.

Comment: Many individuals commented on the requirement that proficiency testing results be issued within thirty days from the date by which the laboratory must report proficiency testing results to the program. A few suggested a two week time period; others recommended six to eight weeks and one suggested fifteen days before the expected receipt of the next proficiency testing shipment.

Response: In view of the increased number of proficiency testing specimens stipulated in these regulations, we are extending the time period required for proficiency testing program providers to issue proficiency testing reports to laboratories. We have changed the proposed time period from thirty days to forty-five days from the date by which the laboratory must report proficiency testing results to the program.

Comment: One State noted it would be possible for a laboratory to pass the HHS approved proficiency testing program but fail proficiency testing conducted by the State. Further, the State questioned who would evaluate the State's laboratories if the State's proficiency testing program were not approved by HHS.

Response: Both the State and HCFA must make their own determinations with regard to compliance with their respective laws and regulations. We anticipate approval of proficiency testing programs offered by both States and professional organizations. If a State's program is not approved, the laboratories within that State will be required to enroll in an HHS-approved proficiency testing program and the laboratories' performance will be monitored by HHS. The State has the option of recognizing the HHS approved proficiency testing program. In the event a State does not recognize an approved PT program, theoretically, it would be possible for a laboratory to be in compliance with the Federal proficiency testing program but not in compliance with a State program, resulting in the laboratory's loss of Medicare approval and/or CLIA licensure based on noncompliance with State requirements. Conversely, a laboratory could be in compliance with a State's proficiency testing program requirements but fail to participate successfully in an HHS-approved PT program, resulting in loss of Medicare approval and/or CLIA licensure. In such a case, the laboratory will be banned from testing Medicare/Medicaid or interstate speciments but, under State law, allowed to test intrastate patient specimens.

Section 493.96 (§ 493.907) Process For Updating Proficiency Testing Programs

Comment: A few commenters requested that well-performed tests not be deleted from PT programs to assure that acceptable PT performance is established for newly regulated laboratories.

Response: We agree with the commenters. For these final regulations, we will not delete PT for any tests specified in subpart H. However, in the future, based on PT performance review of all laboratories, we will reconsider whether to retain specific well-performed tests.

Section 493.129 (§ 493.945) Cytology: Gynecologic Examinations

Comment: A State health department requested that HHS permit laboratories to donate cytology slides to proficiency testing programs for the assembly of slide sets for proficiency testing.

Response: We have revised the record retention requirements for cytology laboratories to allow those laboratories with HHS approval for slide release to loan slides to PT programs. However, PT programs must insure that the slides will be available upon request by the donating laboratory.

Comment: Many commenters offered suggestions on the number of slide preparations to be included in each test set for a PT event. The suggestions ranged from one slide (to insure every one was tested fairly) to 60 slide preparations per slide set.

Response: We have selected 20 slide preparations per test set as a reasonable number of challenges that may be used to evaluate an individual's performance on a variety of challenges without resulting in undue penalty for the testing event if the individual has minor problems in slide interpretation. This number is large enough to include a good representation of the types of slide preparations an individual will encounter in the examination of patient specimens.

Comment: Many commenters favored requiring participation in a proficiency testing event by each individual examining gynecologic preparations; however, they questioned whether the intent of proficiency testing was to evaluate the cytotechnologist, the pathologist or a combination of the cytotechnologist and pathologist.

A few commenters felt the examination should determine the ability of the cytotechnologist to report negatives, identify unsatisfactory slide preparations, locate and mark abnormal cells and infectious disease conditions for referral to the technical supervisor or pathologist.

A few commenters felt an individual taking the examination should be penalized for reporting a negative result when the slide preparation is a premalignant or malignant condition but not for reporting results that indicate a premalignant or malignant condition on negative slide preparations as these are reviewed by the technical supervisor or pathologist.

Response: Participation in proficiency testing is required for all individuals, cytotechnologists and pathologists, engaged in the examination of gynecologic slides. As part of their responsibilities in slide examination, cytotechnologists routinely distinguish abnormal morphology during their evaluation of patient specimens. Therefore, it is appropriate to evaluate a cytotechnologists' performance through a proficiency testing program that assesses the individual's ability to identify unsatisfactory preparations, abnormal processes and infectious agents. CLIA '88 (section 353(f)(4)(B)(iv) of the PHS Act) also requires the evaluation of the proficiency of individuals screening or interpreting cytological preparations (slides).

Comment: One professional organization recommended that unsatisfactory slide preparations be included in the proficiency testing slide set.

Response: We agree with the commenter and have added unsatisfactory slide preparations to the type of slide preparation challenges that might be included in each test set.

Comment: It was suggested that the exact type of challenges to be included in each test set not be stipulated in the regulations as this affords the individual taking the proficiency testing examination the opportunity of identifying a slide preparation by the process of elimination, which does not accurately assess the individual's ability to identify cells in each slide preparation.

Response: We agree with the suggestion and have not required that each test set include all of the different challenges.

Comment: A few commenters suggested a standard or universal nomenclature system be used for reporting results on the cytology PT examination.

Response: We agree with the commenters. In an effort to assure effective communications between the laboratory and patients' physicians, a December 1988 cytology conference was sponsored by the National Cancer Institute and resulted in consensus on a uniform reporting system for cytology known as the Bethesda System. We are specifying in § 493.945(b)(2) that the Bethesda System NIC, 1986, be used for reporting gynecologic results on proficiency testing samples. Since at the time of the August 5, 1988 rulemaking the cytology community was not in agreement on a standardized reporting system, we did not propose nomenclature for reporting cytology results on patient samples. We determined that it would not be appropriate to establish such a requirement in the final rule without the benefit of soliciting public comment. In the implementation of CLIA '88, we are considering soliciting public comment on a proposed requirement for laboratories to use the Bethesda System for reporting cytology results.

Comment: Many inividuals commented on Option 1 (on-site proficiency testing), Option 2 (mailed proficiency testing), and Option 3 (combination of Options 1 and 2) and indicated preferences for glass slides, video discs, or kodachromes. Option 1, on-site proficiency testing utilizing glass slides, was preferred by the majority of those who commented on the options. Several commenters noted that the ideal system for evaluating performance was through blind proficiency testing slides.

Response: We agree with the commenters who prefer on-site proficiency testing using glass slides. We are requiring at § 493.945(a) that proficiency testing programs use glass slides and at § 493.855 that at least one on-site PT event in cytology take place each year. This option provides a testing situation which most closely resembles the actual examination of patient samples. Although blind proficiency testing would be preferable, it is not practical or feasible on a large scale basis at this time. However, we do support an individual laboratory developing a "blind" proficiency program to evaluate individual's competency as specified in subpart M.

Summary of Changes to the Proposed Rule

Section 493.901 Approval of Proficiency Testing Programs

- PT programs may purchase PT material from manufacturers conforming with the Good Manufacturing Practices required in 21 CFR 606 and 640.
- Each PT program must provide HHS with a description of samples that it plans to include in its annual program for each specialty and subspecialty of services.
- Each PT result form must now contain an attestation statement and signature block to be completed by the individual performing the test(s).
- The PT program must have a mechanism for participants to notify the program when shipments are not received when due or are received in a condition unacceptable for testing. In addition, the PT program must have a mechanism to provide replacement specimens.

Section 498.903 Administrative Reponsibilities

The PT program must issue PT result reports in an approved format on each laboratory within 45 days after the date for reporting PT results on the testing event.

Section 493.907 Process For Updating PT Testing Programs

The program updating process will not include the removal of well-performed tests but will incorporate new analytes, tests or organisms of clinical significance, delete obsolete tests and improve the evaluation scheme.

Sections 493.909–493.959 PT Programs By Specialty and Subspecialty

The notable general and specific additions and changes to specialties and subspecialties within this final rule follow.

- With the exception of immunohematology, the determination of accuracy of a laboratory's response for each PT sample will be made by the PT program comparing the laboratory's response with the response of either 80 percent of ten or more referee laboratories or 80 percent or more of all participants. In immunohematology, the percentage used for comparison to determine the accuracy of a laboratory's response is 100 percent; the percentage for unexpected antibody detection and antibody identification is 95 percent agreement.
- We are including virology as a subspecialty of microbiology and urinalysis as a subspecialty of chemistry. (Several commenters suggested other subspecialties to be added, such as viral serology within diagnostic immunology, or drugs of abuse, erythrocyte protoporphyrins and/or blood lead in chemistry. Because these subspecialties were not proposed initially and including them would be a substantive change, we prefer to propose any such changes to everyone in a new proposed rule. We are also not prepared at this time to add or revise specialty categorization of tests because the insurance carriers responsible for payment of Medicare claims will need to reprogram to accommodate the new codes created by changes in subspecialties. Moreover, the specialty certification of all Medicare-approved laboratories would need to be reviewed and revised to reflect the addition or changes in specialties and subspecialties. However, we will consider revisions in the categorization of tests by specialty and subspecialty as part of another rulemaking to implement CLIA '88.)
- Inadvertently, we did not include in the proposed rule the current subspecialty categorization for the specialty of immunohematology. We have included in the final rule the subspecialties of immunohematology with clarification as to types of tests included.
- Individual tests have been added to some subspecialties; total protein is included under routine chemistry, and under endocrinology the additions of T_3 uptake, Triiodothyronine, free thyroxin and quantitative human chorionic gonadotropin should be noted. The specimen types (serum, plasma, or blood) for endocrinology PT samples have been expanded to include urine.
- We made adjustments to criteria for acceptable performance of specific tests; these are aspartate aminotransferase, pCO_2, calcium, creatinine, glucose, potassium and sodium in the subspecialty of routine chemistry, lithium in the subspecialty of toxicology, and hemoglobin, leukocyte count, and

cell differentiation in the specialty of hematology.

• The number of proficiency testing samples per quarter was slightly reduced throughout microbiology, and the number of samples in all other specialties and/or subspecialties was increased. The total number of samples for each analyte per testing event has been adjusted to five throughout.

• The subspecialties of mycobacteriology, mycology and parasitology now have more concisely defined types of laboratories. We revised the types of laboratories under immunohematology, discussed more extensively under the comments and responses concerning § 493.153 (§ 493.959).

• The criteria for acceptable performance for qualitative tests in bacteriology, mycobacteriology, general immunology, routine chemistry, endocrinology, toxicology, hematology, and immunohematology have been specified.

• We have added grading formulas to all applicable specialties and subspecialties; the formulas state precisely how the program is to determine an individual analyte score for the testing event and the overall testing event score. The addition of these formulas fulfills to the extent possible the requirement of CLIA '88 (section 353(f)(3)(B) of the PHS Act) that states that the standards established by a PT program shall include uniform criteria for acceptable performance.

• In bacteriology, § 493.99(c)(4) (§ 493.911(c)(4)) the evaluation of a laboratory's performance for susceptibility testing has been made more definitive. The example used under § 493.99(c)(5) (§ 493.911(c)(5)) illustrating how a sample's score would be determined was corrected. Also, under § 493.959(c) (§ 493.153(c)), Immunohematology, the analyte ABO grouping has been clarified to exclude subgroups.

• The finalized version of cytology has more extensive inclusions:

—Each individual's testing event will consist of 20 slides for interpretation.

—Each individual must be tested twice annually.

—A 95 percent consensus agreement of the diagnosis must be made on PT slides that are negative, unsatisfactory, benign reactive, or infection.

—Premalignant or malignant slides used for PT must be confirmed by tissue biopsy. That biopsy must be confirmed by an 80 percent consensus agreement of at least 5 pathologists.

—The grading system has been established through a modification of the New York State grading scale. We are requiring PT programs to establish the correct response or target diagnosis for PT slides, using the nomenclature developed at the National Cancer Institute Workshop in Bethesda, Maryland in December, 1988, and known as the Bethesda System.

We appreciate the responses of the very large number of commenters who offered their perspectives on the PT sections. The public has become more aware of laboratory quality and proficiency testing as a demonstrable indicator of the laboratory's ability to furnish accurate tests results. Through the combined efforts of all involved, the requirements now in place for a proficiency testing will identify laboratories whose performance needs improvement and provides all laboratories the opportunity to demonstrate their levels of performance over time.

CLIA '88 Changes

1. Section 353(f)(3)(C) of CLIA '88 specifies that HHS shall approve PT programs offered by private nonprofit organizations or a State. This language has been added to the regulation to assure consistency between the current requirements and CLIA '88 in the evaluation of PT programs for approval.

2. The proposed rule stated in § 493.93 (§ 493.903), without specifying the purpose or frequency of the data, that the PT program must furnish HHS with additional information and data upo request. CLIA '88 (Section 353(f)(3)(C) of the PHS Act) requires us to evaluate each PT program annually; therefore, we are requiring in § 493.903 that program providers submit such information as is necessary for us to determine whether the PT program continues to meet our approval.

Subpart E(J)—Patient Test Management

Proposed Rule Overview

We proposed to establish a new subpart E and a new condition—§ 493.201, Condition—Patient test management. This condition would provide a uniform set of requirements for all laboratories (CLIA and Medicare) for test requisition and specimen submission and would more clearly define the actual records that must be kept and why they are required.

The proposed requirement was to be based on current Medicare requirements dealing with clincial laboratory management (§§ 405.1316 (e), (f) and (g)), quality control (§ 405.1317(a)(7)), and CLIA '67 laboratory requirements dealing with reports and records (§§ 74.53 and 74.54).

In the proposal, the existing requirements would be modified to allow for electronic ordering of laboratory tests to keep pace with modern technology and the advances that follow with the increasing use of computer systems. We expected these computer systems to be provided with security systems with "keys" or passwords to assure that only authorized persons can order tests. In addition, we would add to the specimen requisition requirement for cytology examinations, in § 493.201(b)(5), the provision that pertinent clinical information necessary for accurate diagnosis of cytology specimens must be provided to the laboratory, including, for Pap smear testing, an indication of whether the patient is at risk for developing cervical cancer or its precursors.

The existing requirement for retention of reports in pathology would be increased from two years to ten years because a two-year time period is insufficient to assure adequate patient tracking for cancer screening, diagnosis and followup.

The proposed standard on specimen records would indicate that the critical requirement is for the laboratory to have a system that ensures identification of the specimen being tested through all stages of testing.

The proposed rule removed the restrictive standards under Medicare that only persons authorized under the Medicare program to request or receive results could request and obtain such results even if they were not seeking Medicare payment.

The laboratory would have to determine or verify normal ranges used for reporting patient test results through validation studies required in § 493.235.

The proposed new section also would require the laboratory to make available to clients, information on factors that may affect the interpretation of test results (if they are known), including interferences, detection limits, sensitivities, specificity, accuracy, precision and validity of these test measurements. In addition, laboratories would be required to notify clients whenever changes occur in testing methodology that affect test results or interpretation of test results.

We proposed to add a requirement on test referral (standard (e)) to indicate that each laboratory performing tests either directly or on referral must have its name and other identifier on the report to the individual requesting or receiving test results so that the individual receiving the report will know

which laboratory actually performed the test.

Under the proposed requirements the laboratory must maintain a legally reproduced copy, rather than an exact duplicate as is required by current § 405.1316(g), to make these regulations consistent with other Medicare recordkeeping requirements and to allow for the use of new technologies in the storage and transmittal of data.

Comment and Responses

Section 493.201 (§ 493.1101) Condition: Patient Test Management

Comment: The majority of the commenters agreed with requirements specified for specimen collection and requiring laboratories to establish policies for specimen rejection. A few commenters questioned the need for requiring the laboratory to have such policies.

Response: Laboratory testing is dependent on the condition of the specimen to be analyzed or examined; thus, we maintain the requirement as written.

Comment: One commenter requested a provision to allow oral requests for laboratory tests, provided written authorization is obtained within forty-eight hours.

Response: We agree that oral requests for laboratory tests should be permitted provided that the laboratory subsequently obtains written authorization. However, we are requiring that the written authorization be obtained within 30 days, to ensure that one is obtained and allow a reasonable timeframe for receipt of written authorization.

Comment: Several commenters disagreed with the requirement that test requisitions must be maintained for two years.

Response: All records of testing must be maintained for two years to assure a complete record of patient testing.

Comment: Several commenters expressed concern with allowing individuals to order tests and receive test results. A few commenters were in favor of allowing this.

Response: These regulations permit individuals to order tests and receive results only when such practices are not in conflict with State and local law. In addition, only tests ordered by persons authorized by the Social Security Act to order laboratory tests will be reimbursed under Medicare.

Comment: Commenters raised the concern that omission of one or more of the items listed in paragraphs (b) (1) through (8) concerning patient or specimen data would require them to reject a specimen.

Response: Laboratories must establish their own policies to ensure proper specimen identification, patient information, and specimen rejection criteria.

Comment: Many commenters agreed that the patient and specimen data requirements in (b) of this section would be very useful and may be pertinent to testing. However, the commenters were concerned that the laboratory would be ultimately responsible for obtaining any information omitted by the clinician.

Response: We agree with the importance of this information as outlined in this paragraph and, therefore, maintain this requirement as proposed. It is our intent that the laboratory make provisions for obtaining this information on a requisition, provide instructions for completing this requisition, and demonstrate reasonable attempts to obtain the information.

Comment: An overwhelming number of commenters expressed concern for identifying patients at risk for developing cervical cancer.

Response: We appreciate the commenters' concerns that including this type of information on specimen requisitions implies that clinicians must categorize all women either as "at risk" or "not at risk" for developing cervical cancer. To avoid this, we have eliminated this specific item requiring the identification of patients "at risk" for cervical cancer. However, we hope that physicians will provide this information in the pertinent clinical information section.

Comment: The majority of the commenters agreed with the information required under specimen records, but a few individuals felt these requirements were too specific.

Response: With the exception of the source of specimen and time of receipt of the specimen in the laboratory, all of these items are included in the current laboratory requirements and represent the minimum information that the laboratory should obtain and maintain for specimen records. Maintaining records of the source of the specimen is critical to laboratory testing, particularly in microbiology and pathology. Documenting the time of specimen receipt in the laboratory is essential in many instances to assure specimen integrity.

Comment: The majority of the commenters agreed with the requirement of maintaining cytology reports for ten years. However, several of the commenters asked why histopathology reports should be maintained for a lesser period of time.

Response: We agree with the commenters and are specifying that all pathology reports are to be maintained for ten years.

Comment: A few commenters expressed concern that the requirement concerning reporting results within established timeframes mandated that laboratories define "turn-around times" for all tests performed.

Response: It is not our intent to establish through regulations test "turn-around times." However, the laboratory must establish and adhere to its own policies defining timeframes in which the tests it performs should be completed and reported.

Comment: Concerning our proposed requirement that legally reproduced copies of test reports must be filed in the laboratory in a manner that permits ready identification and accessibility, several of the commenters requested clarification of "legally reproduced copy", "ready identification and accessibility" and whether reports may be stored away from the laboratory premises.

Response: A legally reproduced copy of a test report is the exact duplicate of the patient test report issued to the authorized person requesting the test. If the test report was computer generated, it must be produced in the same manner as the original report, duplicating exactly all information issued to the authorized person who requested the test(s). This flexibility will allow laboratories utilizing computer systems to maintain computer records of reports, as opposed to the exact duplicate provided the computer generated report contains all information required of reports. Regarding ready identification and accessibility, our operating policy is to require that all laboratory records should be retrievable within two hours of request and permits storage of records on other premises if the two hour requirement for retrieval of records is met.

Comment: Several commenters suggested the use of the manufacturers' criteria for the laboratory's "normal" ranges.

Response: See comments and responses concerning § 493.1215 in subpart K.

Comment: Several commenters expressed concern about the requirements for the laboratory to alert the individual requesting the test of "panic" values. The commenters indicated that the requirement should be reworded to require that laboratories notify the medical personnel responsible

for the care of the patient of "panic" value results.

Response: We agree with the commenters and have added the phrase "or the individual responsible for utilizing test results" to § 493.1101(d)(5).

Comment: A few commenters objected to including information regarding the condition of specimens that do not meet the laboratory's acceptability criteria on the test report. One commenter favored the inclusion of this information. One commenter felt the final report should note when incomplete information was submitted by the clinician.

Response: The information on the test report regarding the condition of specimens that do not meet the laboratory's acceptability criteria is in the current laboratory requirements and is maintained to assure that laboratories notify the individuals ordering tests when specimens are unsatisfactory for analysis. In addition, section 353(f)(4)(B)(v) of the PHS Act, as amended by CLIA'88, requires the inclusion of this information for cytology specimens. The current laboratory requirements represent the minimum information that should be included on the patient test report. The laboratory may include any other information it finds necessary to qualify patient test results.

Comment: Many commenters expressed concerns regarding the provision of information required in § 493.1101(d)(7) to clients when the clinical impact was negligible or minor changes occurred. The commenters requested the phrase "upon request" be added to this paragraph.

Response: We have added the phrase "upon request" to this requirement in § 493.1101(d)(7).

Comment: A few commenters opposed the requirement for the interpretation of pathology cases to be performed at a laboratory that is approved and/or licensed and objected to indicating on the report form where the slide preparations are examined.

Response: A Medicare-approved laboratory may refer specimens for testing *only* to a laboratory in the same State that meets the Federal health and safety standards and is Medicare approved for the appropriate specialty or subspecialty. A CLIA licensed laboratory may refer specimens for testing *only* to a laboratory that meets Federal health and safety standards and is CLIA licensed (or exempted from CLIA licensure) for the appropriate specialty or subspecialty. The laboratory report must reflect the name and address of the laboratory performing the test.

Comment: A few commenters indicated the proposed regulations allowed in § 493.201(e) the use of Medicare approved and CLIA licensed laboratories interchangeably as reference laboratories.

Response: We agree with the commenters that this paragraph was misleading and we have reworded it to reflect that a Medicare-approved laboratory may only refer specimens to another laboratory that is a Medicare-approved laboratory within the State. Test referrals to a laboratory in another State require that the referral laboratory be licensed or exempted from license in the specialty or subspecialty in which the test is categorized. A CLIA-licensed laboratory may only refer interstate specimems to another laboratory that is CLIA-licensed (or exempt from CLIA licensure) for the appropriate specialty or subspecialty.

Comment: A few commenters asked whether nonapproved research facilities, such as Federal and State laboratories, could be used to refer esoteric tests and communicable disease specimens.

Response: Specimens may be referred to Federal and State laboratories for testing. These regulations are not currently applicable to Federal laboratories. With respect to State laboratories, if tests are performed on Medicare/Medicaid patients, and the State laboratory charges for its services, the State laboratory is subject to Medicare requirements. If a State laboratory accepts specimens in interstate commerce, it is subject to CLIA requirements for licensure.

Comment: A few commenters questioned whether interpretations of test results and consultations concerning laboratory tests were the same and under which circumstances the testing laboratory should be notified.

Response: In 42 CFR 405.556 and section 4142 of the Medicare Carriers Manual (HCFA Pub. 14-3), consultations are defined as services requested by the patient's physician, related to a test result that exceeds the clinically significant normal or expected range in view of the patient's condition, result in a written report and require the exercise of medical judgment by the consultant physician. Interpretations have not been defined in regulations or policy manuals. However, if the laboratory issues a written interpretation of a test result, the interpretation report, like the consultation report, should specify the name and address of the laboratory performing the service. If the interpretation or the consultation results in revisions of the laboratory report, the individual requesting the test and the laboratory that performed the test should be notified.

Summary of Changes to Proposed Rule

Section 493.1101 Patient Test Management

Minimal additions have been made to this subpart and include:

- The laboratory must make available to clients written instructions for specimen labeling.
- The laboratory must assure that the requisition includes the name or identifying laboratory code number of test(s) ordered as well as patient sex, and pertinent clinical information, and age or date of birth.
- The items required and documentation necessary for a specimen identification system have been expanded.
- A legally reproduced record of preliminary laboratory reports must be preserved for at least two years after the reporting date.
- The retention time of all pathology reports is ten years from the reporting date.
- The laboratory must establish reporting procedures for imminent life-threatening results (panic values) and alert the requesting individual or the individual responsible for utilizing the test results.

Subpart F(K)—Quality Control

Proposed Rule Overview

Existing quality control requirements are in § 405.1317 and part 74, subpart C. We proposed to revise and move them to part 493 and form separate conditions. New § 493.221, Condition: General quality control, would be applicable to all the specialties and subspecialties. New § 493.241, Condition: Quality control—specialties and subspecialties, would specify that failure to meet the condition unique to a particular specialty or subspecialty would result in the loss of Medicare approval or CLIA licensure (or both) of that specialty or subspecialty.

The revision of these regulations would reflect changes in technology as well as clarify the specific requirements for each standard. The clarifications would reflect the current Medicare guidelines and would more explicitly inform the laboratories of their responsibilities under the regulations.

1. General quality control requirements: § 493.221 through § 493.240 (§ 493.1201 through § 493.1221).

The general quality control regulations in §§ 405.1317(a) and 74.20 were to be combined into one uniform condition as § 493.221. We made the

general quality control a condition to indicate its importance. We proposed to divide the requirements in current §§ 405.1317(a)(1) and 74.20(a) into several standards in new sections in order to define more clearly what the requirements are and to separate the various requirements in the current regulatory factor into several distinct and related categories so that each is equal in importance.

New § 493.221 would elaborate on what such items as "adequacy of equipment" and "test systems" consist of beyond the descriptions in the current § 405.1317(a).

We proposed to add a requirement that the laboratory specify the procedure the staff is to follow in case quality control results or patterns do not follow the expected patterns established by the laboratory. There would also be procedures for reporting patient results when test method limitations are exceeded. These are critical elements in the performance and reporting of test results and are necessary to assure that accurate and reliable results are obtained and reported. Since these factors are essential, the laboratory staff should be aware of these procedures. The quality assurance program (described in proposed § 493.451) would assure that these procedures are in place and followed.

We also proposed to require the laboratory to verify the validity of its procedures. This requirement is contained in the current regulations in § 405.1317(a)(1) but we would spell out in detail what constitutes the validation of each test method.

We also proposed to add a requirement that the laboratory have a mechanism in place to verify the accuracy and reliability of data management and reporting systems to assure that the data is accurately analyzed, processed and reported. We also would revise the regulations to indicate the importance of detecting errors in test results and reporting and promptly correcting these errors since the detection of the errors is a critical element in assuring accurate and reliable test results.

We proposed to add a requirement under the general quality control condition for the frequency of running quality control materials. The frequencies are currently indicated in § 405.1317(b). This revision would also reflect the changes in laboratory technology. We would also add provisions to these regulations to allow for lesser frequencies a changes in technology lead to improvements in test systems.

Our new requirements on equipment maintenance and function checks would indicate that the laboratory must define its own program based on the manufacturer's instructions. This is a revision from current requirements in § 405.1317(a). The laboratory would have to demonstrate that its procedures produce accurate and reliable test results. We sought comment on the appropriateness of relying on manufacturers' protocols. The new requirement would also provide for technological change. We would not specify performance characteristics but would specify that the laboratory must determine its own performance characteristics based on validation studies and must adhere to these established performance characteristics. We would require the laboratory to make the performance characteristics available upon request to individuals ordering and receiving test results. The quality assurance subpart, Subpart H, would require the laboratory to adhere to its quality assurance program and established protocols.

We proposed to define validation of methods and remedial actions and specifically indicate what is required. The requirements would match our current guidelines and would better inform the laboratories of their responsibilities.

Whenever possible we placed similar requirements in the general section that apply to more than one specialty area. In addition, because of the advent of certain new technologies, we would no longer require daily instrument verification separate from quality control checks. Rather, we would specify the basis and frequency for performing instrument checks, which correspond to our current guidelines in this area.

We also proposed to define the timeframes in which control samples must be tested with patient specimens to assure accurate results. The current requirement for including controls with each test run of patient specimens is clarified in these proposed requirements. We included alternatives to the use of two standards or two controls since these materials are not always available.

2. Specific quality control requirements: § 493.243 through § 493.315 (§ 493.1225 through 493.1285).

We proposed to transfer the contents of current § 405.1317(b), Standard; Quality control system methodologies, to this new subpart and create for each specialty a new condition and for each subspecialty a new standard. A laboratory must meet the conditions corresponding to the specialties and the standards corresponding to the subspecialties for which it wishes to be approved or licensed. These conditions and standards appeared in proposed §§ 493.243 through 493.315. Any laboratory found out of compliance with a condition for a specialty or standard for a subspecialty would not become or remain approved or licensed for that specialty or subspecialty.

In § 493.243 we proposed to include revised microbiology requirements to indicate that the frequency of performing controls has been changed to reflect standards for current technology and state of the art developed by HCFA and CDC working with the National Committee for Clinical Laboratory Standards (NCCLS).

We also proposed to revise (in § 493.255) the syphilis serology (diagnostic immunology) requirements to reflect that CDC no longer publishes a reference manual on tests for syphilis serology. We would also add the hepatitis testing and human immunodeficiency virus test requirements for facilities performing this testing on blood and blood products used for transfusions. We would consolidate the requirements for serologic testing of the blood and blood products in this section since they relate to this area and we would not require reference laboratories performing this testing for blood banks to obtain an additional certification in immunohematology. The requirements would coincide with the PT categories being developed for these regulations.

We proposed to revise the chemistry regulations (in § 493.261) by adding requirements for three subspecialty areas: routine chemistry, endocrinology and toxicology.

The revised hematology section (proposed § 493.269) would reflect the fact that most of the requirements have been moved to the general quality control section. We would not retain current provisions for allowing an exemption from running specimens in duplicate for coagulation tests such as prothrombin time since there is no scientific evidence at this time available to justify retaining the current provisions. When criteria are available they would be published.

We proposed to revise the requirements for cytology to assure that the laboratory has a quality control program to detect errors and assure accurate diagnosis. We would specify that gynecologic preparations must be stained using the Papanicolaou stain because it is the stain of choice for demonstrating abnormal cells. We would impose requirements for staining

procedures to protect slide preparations from cross-contamination from other specimens.

We sought comments on whether we should establish workload requirements for individuals examining cytology slides. Our deliberations on establishing workload requirements resulted in consideration of several options.

One option we considered was setting a limit on the number of slides that may be reviewed by each cytotechnologist in a day. A second option we considered is setting an annual volume limit based on reasonable staffing patterns for cytology laboratories. The third option we considered specified a Federal workload limitation for cytotechnologists by placing with the technical supervisor responsibility for determining the number of slides that can be reviewed competently and accurately by each full-time cytotechnologist in an eight hour day or for part-time cytotechnologists in a lesser time period.

We proposed to revise our current requirements for rescreening of gynecologic or Pap smears interpreted to be negative from our current requirement of a ten percent random sample to either a ten percent rescreen of all negative cases screened by each cytotechnologist or a rescreen of all cases from women who are at risk for developing cervical cancer or its precursors. We specified that the laboratory must complete the rescreening before it issues final reports in order to detect and correct any false-negative results in timely manner. Also, the laboratory would not have to report Pap smear examinations immediately except in cases of viral infections in pregnant patients, dysplasia or abnormal results.

We proposed that laboratories document specified annual data to develop a statistical approach to evaluate their performance and to evaluate an individual's performance against the laboratory's overall statistics.

We proposed to specify information that must be on the laboratory report to assure that the individual ordering the cytology examination has all of the facts needed to interpret the results reported.

We proposed to increase our requirements for retention of slides and reports to assure that laboratories are able to correlate previous diagnosis with current findings.

The proposed requirements for histocompatibility testing (§ 493.277) were the same as those that already apply to Medicare laboratories but would now also apply to CLIA laboratories. We proposed to update technical requirements now in Medicare regulations and include the explicit requirements for which HLA antigens are to be identified. We proposed not to retain certain frequency checks for the components of the serum trays found in current regulations. We also proposed to make the requirements more explicit with regard to what is required under each section of the regulation.

In proposed § 493.281 we would revise the immunohematology requirements now in § 74.24 to make them consistent with the Medicare requirements. We also cross-referred this standard to 21 CFR part 606 (with the exception of § 606.20(a) Personnel) to provide total consistency between Medicare and FDA regulations and to assure that any changes in the FDA regulations are reflected in the Medicare regulations. We also proposed to add a requirement that laboratories collecting, processing and transfusing blood and blood products meet the requirements in 21 CFR part 606 to make the Medicare regulations consistent with the FDA regulations on this subject.

We also proposed to add explicit requirements for cytogenetics testing because of the importance of this area in testing for genetic defects and the fact that the existing general quality control requirements do not adequately address this area.

It was our intent for the condition on blood banking and transfusion service to apply to all facilities in which these services are offered. Therefore, we did not propose to retain in proposed § 493.303 the hospital-specific language contained in § 482.27(d) and would move the remainder to subpart F and cross-refer all other applicable regulations to this subpart. Facilities not offering these types of services would not have to comply with these requirements. We proposed that all laboratories performing testing, processing and storage of blood and blood products comply with the FDA regulation at 21 CFR 610.53 for dating periods.

We also proposed to cross-refer the condition on bloodbanking and transfusion services to all of 21 CFR part 640 rather than just certain sections, as does § 405.1317(b)(4)(ii).

We would also include the reference in this new condition since it contains the specific FDA recordkeeping requirements for this area.

Comments and Responses

Comment: Several commenters believe that quality control requirements are too costly and detailed. Two commenters suggested eliminating subpart F in its entirety, leaving subpart H—Quality Assurance to cover these requirements.

Response: We established subpart H (now M), Quality Assurance Requirements, to assure that laboratories monitor and evaluate their individual operations. We provide flexibility to a laboratory in determining its own program for assessment but these requirements do not supersede the specific minimum requirements necessary in each area of laboratory test results outlined in subpart F (now K)—Quality Control. We are maintaining the proposed requirements in the final rule to keep the important safeguards that the quality control requirements provide to assure accurate results.

Section 493.223 (§ 493.1203), Standard: Facilities

Comment: Two commenters believe that more specificity was needed in defining "adequate" space in a facility and another commenter agreed with the section as written.

Response: It is not feasible to define the amount of space needed specifically since laboratories vary in the services provided and equipment or instrumentation utilized. In general, space is determined to be not adequate when testing is adversely affected due to space limitations.

Section 493.225 (§ 493.1205), Standard: Adequacy of Methods and Equipment

Comment: Several commenters believe that paragraphs (b) and (c) of § 493.225 concerning test methods and instrumentation should be eliminated and that a laboratory may rely entirely on a manufacturer's specifications. Two commenters agreed with these paragraphs as written.

Response: Every laboratory is ultimately responsible for establishing and supporting its basis for performing and reporting tests. Manufacturers' protocols provide excellent guidance in establishing performance characteristics and a laboratory may use these protocols to assist in establishing its own performance characteristics based on the equipment, methods, reagents and intended use of the tests for the patient population serviced. Therefore, we require each laboratory to establish its performance characteristics.

Comment: Three commenters believe that the examples of types of equipment included in § 493.255 were inappropriate and confusing.

Response: We agree with the commenters and have eliminated the examples.

Comment: Two commenters noted that paragraph (d) of § 493.225 concerning adequate reporting systems

was redundant since it was also addressed in subpart E and subpart H.

Response: We agree with the commenters and have not included this paragraph in the final rule.

Section 493.229 (§ 493.1209), Standard; Labeling of testing supplies

Comment: Concerning § 493.229, labeling of testing supplies, several commenters believe that exceptions should be considered for using reagents that have passed the expiration date, providing the reactivity of such reagents has been validated. One commenter requested the ability to use rare antisera that had passed their expiration date.

Response: We recognize that it may be appropriate to permit the use of rare antisera in certain circumstances when the reactivity of such reagents has been validated. However, for licensed biological products, product dating requirements specified in 21 CFR 610.53 must be met. Any exceptions to these product dating requirements are granted by the Food and Drug Administration in accordance with 21 CFR 610.53(d).

Comment: Several commenters believe that we should require laboratories to comply with manufacturers' specifications in regard to not "mixing" reagents from kit to kit in the use of reagents.

Response: We agree with the commenters and have added a requirement to cover kit reagents in new § 493.1209(c). This new paragraph prohibits the interchange of kit components with those of another with a different lot number unless specified by the manufacturer. A definition of "kit" has been provided and included in § 493.2 of this part.

Section 493.231 (§ 493.1211), Standard; Procedure Manual

Comment: One commenter noted the omission of test calculations when reporting patient results in § 493.231(a).

Response: We recognize this omission and have added it in paragraph (a)(9) of § 493.1211.

Comment: Several commenters believe that the supervisors rather than the director should be responsible for approving procedures and changes in procedures. One commenter noted that a requirement for annual review of procedures was omitted.

Response: As the person ultimately responsible for all services of the laboratory, the director must initially approve procedures and all changes in procedures. In view of the requirement that all changes in procedures be approved by the director, we do not believe a requirement for annual review is necessary.

Comment: Two commenters thought the retention of records of procedures for "up to two years" was not a long enough time to retain these records of procedures when the procedure was in use for longer than two years.

Response: We agree with the commenters and have specified that the procedure records are to be retained for two years after the procedure has been discontinued.

Comment: Several commenters requested to use manufacturers' package inserts as supplements to written procedures.

Response: Manufacturers' package inserts are acceptable in lieu of other written procedures, providing policies and procedures listed in § 493.1211(a) (1) through (11) are available; therefore, there has been no change to this paragraph.

Comment: Several commenters noted that documentation of corrective action when quality control results deviate from expected values or patterns was not required in this section.

Response: We agree and have added this requirement under § 493.1219, Standard; Remedial action of this subpart.

Comment: Comments were equally divided in support of and in opposition to maintaining the requirement for quality assurance policies for each laboratory procedure.

Response: The requirement for quality assurance policies allows a laboratory to establish procedures for monitoring the quality of its testing to assure that the laboratory performance is within established acceptable criteria. § 493.233 (§ 493.1213), Standard; Equipment, maintenance, and function checks.

Comment: Several commenters believed that preventive maintenance should not be performed less frequently than the manufacturer recommends. Several commenters agreed with the laboratory defining its preventive maintenance program and one commenter opposed the laboratory defining its preventive maintenance program because laboratories will not follow manufacturer's protocols and will establish inappropriate frequencies for maintenance.

Response: We agree that preventive maintenance should not be performed less frequently than the manufacturer recommends. However, a laboratory may establish more frequent maintenance, if needed.

Comment: Several commenters believed that the requirement in § 493.233(b)(1) concerning function checks mandates a complete calibration or recalibration each day of use.

Response: We have restated existing language in § 493.1213(b) to emphasize that this requirement refers to activities and checks that are performed on a daily basis to ensure that an instrument device or test system is functioning correctly and is properly calibrated but does not require a full calibration, recalibration, or calibration check unless specified by the manufacturer. It should be noted that in many cases the performance of daily quality control as specified in § 493.1217 serves as a function check, since the testing of quality control samples checks all of the operating characteristics of a test system, including instrument stability and calibrations.

Comment: Three commenters believed that required function checks should not be performed at a lesser frequency than the manufacturer recommends.

Response: This requirement allows the laboratory to use the manufacturers' recommended frequency for instrument function checks.

Comment: One commenter noted the omission of a frequency requirement for baseline or background checks on applicable equipment in § 493.233(b)(3).

Response: We acknowledge this omission and have specified checks each day of use. (This is not a change from current requirements.)

Section 493.235 (§ 493.1215), Standard; Validation of Methods

Comment: Many commenters provided recommendations on this standard. The commenters were evenly divided between a desire to maintain the requirement for laboratories to validate methods and to delete the requirement in lieu of the manufacturer's method validation.

Response: While we recognize that manufacturers provide useful information in support of method validity, the laboratory's circumstances of test performance may not mimic the manufacturer's test conditions. Each laboratory must demonstrate, within reason, its basis for performing and reporting tests.

Comment: One commenter had questions with regard to method validation versus test procedure calibration.

Response: We have clarified this misunderstanding and have made § 493.1215 compatible with calibration requirements specified in § 493.1217 (formerly § 493.237).

Comment: Many commenters expressed concern that the requirement for the laboratory to provide documentation of precision, accuracy,

sensitivity and specificity for each method was too burdensome.

Response: We understand the commenters' concern for the extent to which a laboratory must investigate and provide documentation of precision, accuracy, sensitivity and specificity. Depending on the test methodology, the manufacturers' data may specify these criteria; however, the laboratory must evaluate and verify these characteristics because the laboratory is ultimately responsible for all tests performed. We are maintaining the requirement for laboratories to establish and document their performance characteristics for test methodology.

Comment: Two commenters disagreed with the requirement in § 493.235 for defining the basis for reporting test results and the preclusion from reporting patient test results in the absence of verifying test performance characteristics.

Response: In our view it is not in the best interest of patient care nor is there scientific support for issuing test results in the absence of supportive documentation of test parameters and reporting limits.

Section 493.237 (§ 493.1217), Standard; Frequency of Quality Control

Comment: Several commenters noted that the term "run" was defined by a period of time only and should encompass qualitative testing.

Response: We agree with the commenters and are including a separate requirement at § 493.1217(e) for the frequency of testing quality control samples with qualitative tests.

Comment: One commenter requested clarification of a "procedural calibration" versus "calibration" as required in this paragraph.

Response: We acknowledge the confusion created with the word "procedural" in § 493.237(a)(1), Frequency of quality control, and have eliminated it.

Comment: One commenter requested the inclusion of "calibration verification" in § 493.237(a)(1).

Response: We agree with this commenter and have included "calibration verification" in § 493.1217(a).

Comment: Two commenters requested the deletion of the requirement in § 493.237(a)(1)(i) concerning performance of calibration or recalibration when a complete change of reagents for a procedure is introduced, while four individuals commented favorably.

Response: Any time reagents in a test system are changed, it is necessary to reestablish calibration since a complete change in reagents can alter calibration. Therefore, we agree with the majority of the comments and have made no change to this section.

Comment: One commenter requested the deletion of the requirement for a laboratory to perform calibration or recalibration of each automated and manual method when major preventative maintenance is performed on any instrument, at § 493.237(a)(1)(ii), believing that it was included in § 493.237(a)(1)(iii), which requires calibration, calibration verification or recalibration when controls begin to reflect an unusual trend or are outside acceptable limits.

Response: There is a specific and distinct difference in each of these requirements. Major maintenance may cause variation in calibration and it is necessary to reestablish calibration before testing. Checking control values verifies only two points as opposed to calibration that gives at least a three point check. Therefore we have made no changes to this section.

Comment: Several commenters disagreed with the requirement for multiple point calibrations in § 493.237(a)(2)(i) and (ii) and recommended that the manufacturers' specifications be followed.

Response: We have provided in § 493.233(b) (now § 493.1213(b)) for the adherence to manufacturers' specifications with regard to requirements for verification of calibration of equipment and instruments each day of use. However, it is necessary for laboratories to demonstrate at least every six months that accuracy, precision, sensitivity and specificity of the test system is maintained within acceptable limits. Therefore, enhanced calibration requirements (standard curve) are necessary as outlined in paragraphs (a)(2)(i) and (ii) of § 493.1217.

Comment: Several commenters asked for clarification of "expected patient values" in § 493.237(a)(3), noting that calibrators were not avalable to cover the entire possible expected range of patient values. One commenter recommended that we allow for the dilution of patient specimens as part of this requirement.

Response: We agree with the commenters. The initial statement was too restrictive. In § 493.1217(a)(3) we have deleted the word "expected" from patient values and have included a provision for the dilution of patient specimens.

Comment: Several commenters noted that the term "linear range of the method" in § 493.237(a)(4)(ii) was too broad because the linear range may not be the laboratory's range for reporting test results.

Response: We agree with commenters and have revised the terminology to more closely reflect the laboratory's reportable range.

Comment: Several commenters noted that instrument and reagent stability and operator variance were not addressed when determining the frequency of quality control.

Response: We agree with commenters and have added paragraph (b) to this section. This paragraph requires the laboratory to evaluate instrument and reagent stability and operator variance in determining the frequency of testing quality control samples in accordance with the definition of a "run" in § 493.2.

Comment: Several commenters offered suggestions when two calibrators should be required, when two controls should be required and when one calibrator and one control should be used.

Response: Although we appreciate these suggestions, we prefer that our requirements specify that each laboratory determine the frequency of quality control and the material to be used based upon its documented validation of each test procedure. This allows the laboratory maximum flexibility in determining the appropriate quality control program for each test.

Comment: One commenter noted that § 493.237(b)(3) allowed a laboratory to report test results without checking the test system with quality control specimens when calibrations and controls are not available for a specific test or instrument. The commenter also noted that this paragraph is incompatible with paragraph (b)(2)(iv) and suggested that every laboratory must have some mechanism for monitoring and evaluating test systems.

Response: We agree with the commenter and do not include the paragraph in this final rule because every laboratory must take responsibility for monitoring and evaluating its tests, as specified in a new paragraph (d)(3) of § 493.1217.

Comment: One individual requested clarification in § 493.237(c) with regard to establishing acceptable limits for unassayed controls.

Response: We agree with the commenter and provide clarification with the insertion of "over time" in what is designated as § 493.1217(f) of this final rule.

Comment: Three commenters noted that the word "microorganisms" in § 493.237(e) implied that this requirement was limited to microbiology staining reagents. One commenter

suggested we change "microorganism" to "sample of appropriate reactivity."

Response: We agree with the commenters and in § 493.1217(h) have excluded "by concurrent application to smears of microorganisms with" and have changed this language to "to ensure predictable standing characteristics."

Comment: Several commenters noted that § 493.237(d) conflicts with § 493.263, which only addressed reagents for qualitative urinalysis tests.

Response: We have revised this paragraph (now designated as (g)) to include semi-qualitative and qualitative tests with the inclusion of the language "as well as graded reactivity if applicable".

Comment: In commenting on proposed § 493.237(f) (now § 493.1217(j)) several commenters noted that for direct antigen tests it is unreasonable and unnecessary to check all phases of a system with positive control organisms.

Response: The ideal quality control system for direct antigen tests would include known positive and negative control organisms or bacterial cell suspensions in a matrix similar to patient specimens such as ready prepared dried swabs for identification of group A streptococcus. However, for viral direct antigen tests, live virus control in infected cells are not achievable. Therefore, viral antigen extracts are acceptable for monitoring viral detection phase although they do not demonstrate the leeching of antigen from cells. As more appropriate controls become available they should be employed to meet this requirement.

Reliable quality control systems for direct antigen tests are currently under review and evaluation for determination of appropriate and necessary requirements.

Comment: One commenter suggested adding "when labeled sterile" to the requirement in § 493.237(g) for checking media for sterility since all media may not be manufactured as sterile.

Response: We agree with the commenter and have included the suggested language in redesignated § 493.237(k).

Section 493.239 (§ 493.1219), Standard; Remedial Actions

Comment: One commenter requested more specificity in § 493.239 with regard to remedial actions to be taken when patient results are reported in error.

Response: We have provided additional specificity and clarification through the addition of paragraphs (c)(2) and (c)(3) to this section.

Section 493.240 (§ 493.1221), Standard; Quality Control—Records

Comment: One commenter noted that proposed § 493.240(a), which contained record-keeping requirements, was redundant and contains items already required and specified throughout this subpart.

Response: We agree with the commenter and have deleted paragraph (a) of this standard. We have also deleted paragraph (c) from this section, but add "and document" to § 493.239 (§ 493.1219), Standard; Remedial action. This eliminates the redundancy between these two standards.

Section 493.241 (§ 493.1223), Condition: Quality Control—Specialties and Subspecialties

Comment: One commenter requested a definition of the word "failure" in sentence three of § 493.241 which describes the consequences of failure to meet conditions or standards. Another commenter did not believe that a failure to meet quality control requirements should result in the loss of approval, licensure or exemption from licensure.

Response: We equate failure with noncompliance with applicable requirements. Quality controls are essential to assure accurate and reliable test results; therefore, we believe that we should not allow laboratories with quality control problems to continue to provide test results that have the potential to affect the diagnosis and treatment of patients adversely.

Comment: Several commenters expressed concern that quality control requirements were omitted in § 493.241 for specific specialty and subspecialty areas.

Response: These quality control requirements were not omitted. We call the commenters' attention to the second sentence of this paragraph, where it is stated that the laboratory must meet the general quality control requirements specified in §§ 493.221 through 493.240. These general quality control requirements are applicable to all specialties and subspecialties and are redesignated in this final rule as §§ 493.1201 through 493.121.

Section 493.243 (§ 493.1225), Condition: Microbiology

Comment: Several commenters requested less frequency quality control requirements in microbiology in § 493.243.

Response: We have reviewed this section, which is consistent with our minimal requirements that were developed over time with the assistance and input of laboratory professionals as well as professional organizations; therefore, we believe that currently these are appropriate for the services offered in this area. We are working with the National Committee for Clinical Laboratory Standards to review quality control frequencies in microbiology to determine appropriate quality control intervals to insure quality patient test results.

Comment: One commenter requested that laboratories be permitted in § 493.245 to report patient results when one drug—microorganism combination for reference organisms exceeded established limits.

Response: We agree with the commenter. This exception is currently authorized in the guidelines published May, 1986 in appendix C of the State Operations Manual (HCFA Pub. 7). The exception is based on adherence to The National Commitee For Clinical Laboratory Standards publications and antimicrobial disc susceptibility tests and dilution antimicrobial susceptibility tests.

Comment: Several commenters requested less specificity with regard to methodology-specific requirements in § 493.245.

Response: We agree with the commenters on the specificity applied to radioisotope methods for DNA probes. Consequently, we are omitting that specificity from § 493.1227(a)(2).

Section 493.251 (§ 493.1233), Condition: Quality Control—Parasitology

Comment: One commenter noted that in § 493.251 we omitted the requirement for including a fecal control sample with parasites when performing checks on permanent stains.

Response: We agree with the commenter and have included the requirement for a fecal control sample to check staining characteristics in § 493.1233(c).

Section 493.253 (§ 493.1235), Standard; Virology

Comment: Two commenters expressed concern that proposed § 493.253 could be read in a way that, if a laboratory performs isolation and/or identification of a single virus, it would be responsible for evaluating viruses that are etiologically related.

Response: We agree with the commenters but do not believe the regulation must be changed. However, in appendix C of the State Operations Manual we will clarify the testing situations in which laboratories will need to evaluate viruses that are etiologically related.

Section 493.259 (§ 493.1241), Standard: General Immunology

Comment: Two commenters noted that § 493.259(d) as written implies that transfusion facilities would have to repeat HIV and hepatitis tests that were already performed on the blood or blood products.

Response: We agree with the commenters. It was not our intent to require retesting if testing was performed in an appropriately approved and/or licensed facility. We have changed this paragraph to be consistent with the Food and Drug Administration terminology, which provides that HIV and hepatitis tests can be referred to a laboratory that is approved and/or licensed to perform HIV and hepatitis tests.

Section 493.261 (§ 493.1243), Condition: Chemistry.

Comment: One commenter expressed concern that these requirements for chemistry quality control do not apply to CLIA-exempt laboratories.

Response: Once final regulations are established to implement all the provisions of CLIA '88, we will be evaluating those formerly CLIA-exempt laboratories engaged in low volume testing. The granting of exemptions under CLIA '88 will be based on HHS' determination that the tests the laboratory performs are simple, accurate, and safe procedures that pose no reasonable risk of harm to patients if performed incorrectly.

Section 493.263 (§ 493.1245), Standard: Routine Chemistry

Comment: Several commenters requested specific requirements in § 493.263 for blood gas analyses and deletion of the requirement to include a calibrator or control each time patients are tested for blood gases.

Response: We specify requirements for blood gases with the addition of (a) through (c) of this standard and have specified when a calibrator or control must be included. We also include provisions for automated instrumentation. These requirements are based on the guidelines of the National Committee For Clinical Laboratory Standards.

Comment: Many commenters requested that urinalysis be removed from the routine chemistry standard and made a separate subspecialty.

Response: We have removed urinalysis from the routine chemistry standard; it now appears alone in § 493.1251.

Section 493.269 (§ 493.1253), Condition: Hematology

Comment: Many commenters objected to the requirement for running automated coagulation tests in duplicate and one commenter suggested that control frequency should be based on each group of patients tested at the same time.

Response: We agree with the commenters and have revised this section. Requirements for coagulation have been separated out from other hematology tests for purposes of clarification and we have added a requirement to include two levels of control each time a change in reagents occurs. Section 493.1253(c) requires duplicate testing only for manual coagulation tests.

Section 493.270 (§ 493.1255), Condition: Pathology

Comment: Two commenters noted the absence of a subspecialty for dermatopathology and one commenter questioned the inclusion of oral pathology as a separate subspecialty.

Response: Dermatopathology is included within the subspecialty of histopathology and oral pathology has been a separate subspecialty since 1974 because testing in this area is specialized and requires special expertise for technical supervision. While we did not propose to add specialities or subspecialties in the proposed rule, we will consider revising the subspecialties and specialties when issuing proposed rules to implement changes made by CLIA '88.

Section 493.271 (§ 493.1257), Standard: Cytology

Comment: Many comments were received regarding the requirement that all gynecologic smears be stained by a Papanicolaou staining method. The commenters were equally divided on the advisability of restricting the requirement to a Papanicolaou staining method and to the use of other methods such as DNA probes, H&E stain and special stains.

Response: At present, a Papanicolaou stain is the best stain for gynecologic slide preparations, affording better differentiation in the cytoplasm of cells; therefore, until better staining methods are developed, we support a Papanicolaou technique as the stain of choice for routine cytodiagnosis of gynecologic smears. Other staining methods may be used as adjuncts, but not as a replacement for a Papanicolaou staining procedure.

Comment: Many individuals favored the separate staining of cytologic specimens to prevent cross-contamination. A few commenters objected to separate staining of cytologic specimens and the filtering or discarding of the stains after processing non-gynecologic specimens.

Response: We have clarified which cytologic specimens must be processed separately from other specimens and how staining solutions must be handled to avoid cross-contamination.

Comment: A few commenters noted that the proposed regulations did not address the rejection of unsatisfactory smears.

Response: On the basis of these comments and the provision of CLIA '88 (section 353(f)(4)(B)(v) of the PHS Act) that requires that no cytological diagnosis be reported on unsatisfactory smears, we are amending our rule at § 493.1257(a)(4) to require that diagnostic interpretation not be reported on unsatisfactory smears.

Comment: Many comments were received from professional organizations, pathologists, cytotechnologists and other health care professionals in regard to the number of slides each individual may examine in a particular time period. A daily workload figure (option I) was favored by the majority of the commenters with a range of 80–100 slides per person per 24 hour period as the most frequently suggested workload limit. Many of the commenters agreed that the daily workload figure should be prorated for part-time workers.

The majority of pathologists recommended that the technical supervisor should establish workload limits as opposed to the establishment of a Federal standard for workload. Alternatively, cytotechnologists noted that the current regulations permit each laboratory and/or technical supervisor to determine individual workload limits, which has resulted in the present situation of individuals examining an excessive number of slides and incorrectly reporting negative results on unsatisfactory smears or smears with infectious agents or premalignant or malignant conditions. Some individuals noted the workload limit should not include quality control slides; others felt that any established workload limits would of necessity have to include every type of slide examined.

Many individuals opposed a workload limit of 30 slides for nongynecological specimens and suggested that the workload limit for nongynecological material should be based on the type of specimen, including both gynecological and nongynecological specimens. A few individuals noted that a workload limit

should be established for the examination of previously unevaluated cyological slides by all individuals including pathologists.

Response: After evaluating these comments and in accordance with CLIA '88 (section 353(f)(4)(B) (i) and (ii) of the PHS Act), which is effective January 1, 1990, we have established a workload limit specifying the maximum number of slides that any individual may examine in a 24 hour period. This workload limit is established for an individual using standard microscopic technique without any device or instrument that assists in locating or identifying cells. As technology is developed to expedite and improve the process of evaluating cytology slides, we will review the requirements to determine the appropriate workload limits. The maximum number of slides to be examined in 24 hours is 120 slides, which includes all slides evaulated, including all initial examinations, quality control and quality assurance activities, evaluation of proficiency testing specimens and nongynecological slide evaluations. The 120 slide limit represents an absolute maximum number; however, a laboratory may not automatically use the 120 slide limit for each individual. In each laboratory, the technical supervisor must evaluate each individual's performance and establish the individual's workload limit based on performance. We recognize that all individuals do not possess the same capabilities with respect to slide examinations and that every laboratory's caseload is different with respect to degree of difficulty in interpretation and to numbers and types of gynecological and nongynecological preparations processed. Therefore, we are specifying that laboratories must evaluate their own operation and determine appropriate workloads that do not exceed 120 slides per 24 hours for each individual, including the technical supervisor in cytology when he or she performs initial gynecological interpretations and/or participates in the 10 percent rescreen of cases interpreted to be negative for premalignant or malignant changes.

In addition, we are aware that populations and clients change, resulting in different types of cases to be evaluated and an individual's ability to examine a certain number of slides accurately may be altered, resulting in lower or higher workload limits. Thus, we have specified that workload limits for individuals are to be reassessed monthly. As part of the workload limit determination, we are changing the proposed requirement to include all slides examined and have not established a separate workload limit for nongynecological preparations. Moreover, we agree with the workload limit most frequently suggested by the commenters of 60 slides for initial evaluations and maintain that any other slides examined in the 24 hour period must be related to quality assurance, quality control and proficiency testing activities.

We are aware that some individuals may devote much of their time to the rescreening of previously examined slides. For these individuals, a workload limit not to exceed 120 slides for a 24 hour period must be established by the technical supervisor to include all slides examined with any combination of evaluated and unevaluated slides, provided the number of unevaluated slides does not exceed two-thirds of the established workload limits.

In response to the commenters that notified us that cytotechnologists frequently examine slides on a part-time basis, we have prorated the number of slides that an individual may examine in less than eight hours. We have added a provision to assure that no individual will examine the maximum number of slides in less than six hours to assure that an individual's entire workload will not be conducted in a shorter time period.

The workload limit is applicable to all individuals examining cytology slides, including technical supervisors. However, the workload limit for technical supervisors includes only those gynecologic or nongynecologic slides initially examined and reviews of benign slides previously evaluated by another individual. Previously examined premalignant and malignant gynecologic slide preparations as defined in § 493.1275(a)(1), previously examined nongynecologic preparations, and tissue pathology slides examined by the technical supervisor are not included in the workload limit for technical supervisors.

Based on section 353(f)(4)(B)(ii) of the PHS Act as modified by CLIA '88, we have established a requirement that laboratories maintain a record of the number of cytology slides screened during each 24 hour period by each individual who examines cytology slides and that laboratories have documentation of the number of hours during each 24 hour period devoted to screening cytology slides by each individual.

Comment: Many commenters agreed with the confirmation of the review of all gynecologic smears interpreted to be in the premalignant or malignant category as defined in § 493.1275(a)(1) and review of all nongynecologic cytologic preparations by the technical supervisor. However, one individual thought review of gynecologic smears interpreted to be in the premalignant or malignant category by a cytology supervisor with five years experience was adequate. Several commenters approved of the use of electronic signatures.

Response: We agree with the majority of the commenters that gynecologic smears interpreted to be in the premalignant or malignant category must be reviewed by a technical supervisor and that the report must be signed or reflect an electronic signature authorized by the technical supervisor to document the review. Therefore, we have not changed the rule as proposed.

Comment: Two-thirds of the individuals commenting on the provision for documenting and evaluating each individual's slide examination performance agreed with this requirement.

Response: We agree with the majority of the commenters on the importance of documenting and evaluating each individual's slide examination and performance and, therefore, we have not changed the rule as proposed.

Comment: The majority of the commenters supported the concept of reexamining gynecologic cases that are interpreted to be normal or negative for malignant or premalignant conditions and that are from patients who are identified as "high risk" but many of the commenters expressed concern regarding the identification of a patient as "high risk". Many commenters indicated that clinicians would not identify their patients in this manner. Laboratories that screen mostly high risk patients expressed concern over the requirement of rescreening a large portion of their patients. Several commenters indicated the laboratory should have the option of selecting a random 10 percent of cases interpreted as normal and negative or reviewing those cases from patients identified as "high risk" and interpreted as normal or negative. Several individuals suggested a reexamination of a percentage of the patients identified as "high risk" as opposed to all "high risk" patients. Several individuals requested we delete the phrase "a high probability of developing cervical cancer" as defined in § 493.201(b)(5)(iii) and substitute "a postabnormal slide or a history of an abnormality".

Response: We understand the commenters' concern in obtaining the information to identify patients as

having a high probability of developing cervical cancer, but insofar as the clinicians and laboratories cooperate in obtaining this information, the laboratory must implement a system of focused reexamination on this patient population. We agree with the commenters' suggestion that we not require the reexamination of all "high risk" patients and have revised the quality control requirements at § 493.1257 to reflect a reexamination of 10 percent of the cases reported as normal and negative, which must include some cases from patients if identified as "high risk." Therefore, we are retaining the requirement at § 493.1101(b)(8) that the laboratory's requisition includes, if available, information indicating whether the patient is at risk for developing cervical cancer or its precursors.

Comment: Many commenters supported the requirement for re-screening at least 10 percent of the normal and negative gynecologic cases examined by each cytotechnologist should be reviewed by a second cytotechnologist or the technical supervisor. A few commenters suggested the use of a sliding scale for determining the precise number of cases for rescreening and a few individuals suggested the cases should be reviewed by a supervisor with five years' experience or by a cytotechnologist with a minimum of three years of experience.

Response: We agree with the majority of the commenters that for each individual examining slides at least 10 percent of the gynecologic slides interpreted to be normal and negative must be reexamined by a second person or the technical supervisor in cytology. We have provided the laboratory with the flexibility of determining the qualifications and experience required of the person who performs the reexamination of the slides.

Comment: Many commenters support the comparison of clinical information with cytology reports, the comparison of the cytology report with the histology report and the determination of the cause of any discrepancies; however, it was suggested that the laboratory should demonstrate that it has made an effort to obtain the histologic information.

Many commenters agreed with the review of prior cytologic specimens for each premalignant and malignant cytology result; however, they requested that the regulations be modified to require only a review of the prior normal and negiative gynecologic specimens for the previous two to five years. Many pathologists objected to documenting the statistical data required in § 493.271(c)(4), especially error rates, unsatisfactory specimens and complaints; however, most cytotechnologists were in favor of this requirement. A few commenters noted that documentation of unsatisfactory specimens and complaints was covered in other areas. A large number of commenters were evenly divided on the requirement to evaluate each individual's case reviews against the laboratory's overall statistical values.

Response: The regulations at § 493.1257(d)(2) now require the comparison clinical information with cytology reports and the comparison of the cytology report with the histology report and the determination of the cause of any discrepancies. The regulations (§ 493.1257(d)(3)) now require that only normal and negative gynecologic specimens within the last 5 years, if available in the laboratory, be reviewed for those patients with a currently premalignant or malignant cytology result. These requirements were predicated on the premise that these records and specimens are available in the laboratory (either on-site or in storage) and biopsy-confirmed cases of cervical cancer will be available through the State health department registry.

We have added the qualifier "number of" before gynecologic cases where premalignant or malignant cytology and available histology are discrepant and before gynecologic cases where any routine rescreen of a normal or negative specimen results in a reclassification as premalignant or malignant. In addition, we have changed the term "rates" to "cases" in response to the comments that the actual number of cancers in the population is unknown. In response to the commenters we have deleted the reference to documenting complaints in this section, as it is covered in § 493.1501. In view of the CLIA '88 requirement for periodic confirmation and evaluation of the proficiency of individuals involved in screening or interpreting cytological preparation, we are maintaining the requirement for documenting the evaluation of each individual's case reviews compared with the laboratory's overall statistics.

Comment: With a few exceptions, most commenters were in favor of the requirements concerning the cytology laboratory report. A few commenters noted the absence of a requirement for uniform terminology, classification and reporting system.

Response: We agree that specifying nonmenclature for reporting cervical cytology results would improve reporting practices by ensuring uniformity and would support the efforts of the National Cancer Institute in the development of the Bethesda System (previously discussed). In the development of rules to implement CLIA '88, we will consider proposing for public comment a regulation that would require laboratories to report cervical cytology results using uniform nonmenclature, such as the Bethesda System. It should be noted that CLIA '88 (Section 353(f)(4)(B)(v) of the PHS Act, effective January 1, 1990) mandates the addition of the requirement that appears in § 493.1257(e)(6) specifying notification to referring physicians if specimens and/or smears are unsatisfactory for diagnostic interpretation.

Comment: Many commenters agreed that corrected reports issued by the laboratory must indicate the basis for the correction. A few felt this was not necessary and should not appear on the corrected report.

Response: We agree with the majority of these commenters and have required the basis for a corrected report to be indicated on that report.

Comment: Many of the commenters agreed with the slide retention times required by the regulations; however, several commenters suggested lesser retention times be required because of the storage expense and the extremely rare requests for retrieval of slides. Several commenters suggested revisions in the regulations to require longer retention times.

Response: We believe that all premalignant and malignant preparations should be retained for 10 years, and that normal, negative, and unsatisfactory slide preparations should be retained for five years.

The quality control regulations specified in proposed § 493.271 define these time periods for slide retention. These are minimum quality control requirements and are essential to provide accessibility of previous abnormal slides for review with subsequent biopsied specimens. This is but one facet of a broad spectrum quality control program we feel is needed to assure accurate results for proper patient care and management.

We also believe the availability of previous slide preparations is critical as a reference point for future slide interpretations and potential diagnoses. We feel the laboratory's inconvenience related to slide storage is far outweighed by the potential benefit to the patient of having previous slide history retrievable for diagnostic reference and tracking patient treatment.

We allow laboratories the flexibility to retain slide preparations for longer

time periods if they feel this will aid in the provision of better patient care.

Section 483.273 (§ 493.1259), Standard; Histopathology

Comment: In commenting on § 493.273, several commenters believed that patient slide preparation and specimen blocks should be maintained for up to twenty years and one commenter requested that remnants of tissue specimens be maintained for one week after reporting.

Response: We are retaining the requirement that laboratories retain patient slide preparations at least ten years from the date of examination and specimen blocks for two years from the date of examination. In addition, a laboratory must be in compliance with State and local laws where such laws mandate a longer retention time. These requirements are intended to be a minimum and laboratories are not precluded from retaining slides and blocks for a longer time period. Although we do not object to increasing the retention of tissue remnants to one week after reporting, we prefer not to change the requirement based on only one comment. However, if other comments are received indicating that this revision should be made, we will consider this for future changes to the regulations.

Comment: One commenter requested a requirement for electronic signature authorization to be included in § 493.273 (now § 493.1259) (histopathology) to provide continuity with § 493.271(b) (1) and (2).

Response: We agree with the commenter and have added paragraph (d) to this standard to show that computer generated reports must reflect a signature by a qualified individual.

Comment: One commenter noted that there is a variety of recognized systems of disease nomenclature for reporting tissue pathology results and requested the deletion of proposed § 493.273(d), which requires the laboratory to use acceptable terminology of a recognized system of disease nomenclature in reporting results.

Response: The current requirement provides flexibility for the laboratory to choose a recognized system for reporting tissue pathology. In the proposed regulations to implement CLIA '88 we will accept recommendations from commenters on the appropriateness of establishing a disease nomenclature for reporting histopathology results.

Comment: Many commenters disagreed with the requirement to report cervical cancer cases to a registry in § 493.273(e) and requested its deletion since a specific cancer registry was not specified. Commenters noted that some States do not have a cancer registry and other commenters noted that some States have several registries. Many of the commenters felt that reporting to a cancer registry was the responsibility of the clinician and not the laboratory. Commenters also questioned the reporting of cervical cancer as opposed to other types of cancer.

Response: We agree with the commenters that many States have not established a single cancer registry and some States do not have a cancer registry; therefore, we have revised the standard to require laboratories to report cervical cancer cases to the State health department. This requirement is established to assist laboratories in tracking and obtaining results of follow-up biopsies from the client physicians who submit Pap smears. Many physicians send cytology smears to one laboratory, but many submit a follow-up biopsy to another laboratory. Moreover, patients themselves may often change doctors or move to another community and thus become lost to laboratory follow-up.

Since laboratories are required in § 493.1257 to make various correlations between cytology and histology reports, this regulation will enhance a laboratory's capacity to make timely correlations, to identify false negative and false positive cases, and to make statistical evaluations of performance based on outcome measures. A central repository containing laboratory reported biopsies will provide a mechanism by which all laboratories could practice better quality control as well as comply with the standards. The gynecologic Pap smear is the most effective, non-invasive screening tool currently available for the early detection of asymptomatic malignant and premalignant cervical lesions and this requirement provides the critical link required for public health prevention and control of cervical cancer.

Section 493.275 (§ 493.1263), Condition: Radiobioassay

Comment: One commenter requested the deletion of the condition on radiobioassay and suggested its inclusion with routine chemistry or endocrinology.

Response: This is a separate condition because it addresses in vivo testing, instead of in vitro testing.

Section 493.277 (§ 493.1265), Condition: Histocompatibility.

Comment: Three commenters recommended the deletion of the word "cells" from the requirement at § 493.277(a)(10) concerning typing of potential transplant recipient cells, indicating that the inclusion of the word implies that the laboratory must type "all cells of the transplant recipients".

Response: We agree with the commenters and have eliminated the word "cells".

Comment: Three commenters noted that there are many HLA specificities currently known for which reagents are unavailable or extremely difficult to obtain.

Response: We agree with the commenters and have modified § 493.1265(a)(15) to add "for which reagents are readily available".

Comment: Three commenters noted that screening is performed on recipient serum and that typing of living or cadaver donors may not coincide with receipt of a serum specimen from the recipient.

Response: The requirement has been reworded to provide clarity and accuracy by specifying that potential transplant recipient sera are screened for antibody content at the time of the recipients' initial HLA typing, and, thereafter, at monthly intervals or following a sensitizing event.

Comment: Three commenters questioned the wording of our proposed requirement concerning compatibility testing for cellularly-defined antigens. Commenters further stated that mixed lymphocyte culture (MLC) tests are only necessary for bone marrow transplants.

Response: We have changed this requirement now at § 493.1265(a)(20) to clarify the various techniques, including but not limited to the MLC test, that must be used when a laboratory peforms compatibility testing for cellularly-defined antigens.

Comment: Three commenters noted that all histocompatibility laboratories may not directly perform ABO blood grouping and Rh typing. Commenters further noted that, as stated, this requirement applied to recipients but not donors.

Response: We agree with the commenters and have restated this requirement as suggested.

Comment: Three commenters noted that ABO grouping was not performed to purify cells but that ABO agglutinins were utilized.

Response: We have reworded this requirement to provide the clarification needed as noted by the commenters.

Comment: One commenter suggested that histocompatibility laboratories participate in a proficiency testing program rather than a cell exchange program.

Response: At this time we have not defined requirements for proficiency testing programs with respect to histocompatibility. This is an area of testing in which we may develop the necessary criteria for approval of proficiency at a later date.

Comment: Three commenters noted that mixed lymphocyte cultures are necesary for bone marrow transplantation.

Response: We agree with the commenters and have established a separate requirement (§ 493.1265(b)(2)) for laboratories performing histocompatibility testing for bone marrow transplantation.

Comment: Three commenters noted that there is currently no conclusive evidence to support the necessity of pre-transplant crossmatches in transplantation of non-renal organs if the recipient is non-sensitized. Also, it was noted that donor organs remain viable for a very short time and the crossmatch may not be completed before transplantation.

Response: We agree with the commenters and have added a new requirement (§ 493.1265(b)(3)), with regard to presensitized recipients only, to address requirements for laboratories performing histocompatibility testing for non-renal solid organ transplantation.

Comment: One commenter suggested that requirements for laboratories that perform HLA typing for disease associated studies be extended to those laboratories that perform HLA typing for parentage testing.

Response: We agree and have added parentage testing to this requirement.

Comment: Three commenters noted that histocompatibility laboratories do not typically perform HIV tests and suggested restating this requirement for those laboratories that perform HIV tests for organ transplantation.

Response: This requirement was not meant to address only those laboratories that routinely perform HIV tests but rather to require that all laboratories that test organs for transplantation tests the donor for HIV reactivity.

Section 493.279 (§ 493.1261), Condition: Clinical Cytogenetics

Comment: Two commenters noted that routine sex determination is no longer conducted by X and Y chromatin counts in most laboratories. One commenter suggested confirmatory testing be performed on all atypical results since this analysis is not state-of-the-art technology.

Response: We have restated this requirement and have included a requirement in § 493.1267(a) for confirmatory testing.

Section 493.301 (§ 493.1271), Condition: Transfusion Services and Blood Banking

Comment: One commenter requested a definition of "readily available" in § 493.301, which requires a facility that provides services for blood and blood product transfusions have blood and blood products "readily available".

Response: We have deleted the term "readily available" and substituted language specifying that blood and blood-products must be available to meet the needs of the physicians responsible for the diagnosis, management and treatment of patients.

Section 493.303 (§ 493.1273), Standard; Immunohematological Collection, Processing, Dating Periods, and Distribution of Blood and Blood Products

Comment: One commenter noted that there were multiple sections in the regulations that address immunohematology and blood bank and requested these requirements be deleted and/or condensed.

Response: This codification represents a dramatic condensation of regulations from the Food and Drug Administration, which includes 21 CFR Part 606 (excluding 21 CFR 606.20(a)), 21 CFR 610.53, and 21 CFR Part 640, Interstate Licensure and Medicare. We do not believe it is possible to codify the requirements in fewer places than we proposed, or to delete requirements, because of differing requirements for blood services in different types of facilities.

Summary of Changes to the Proposed Rule

Section 493.1203 Facilities

We have added a requirement for laboratories to maintain adequate ventilation for the performance of tests and the reporting of test results.

Section 493.1205 Adequacy of Methods and Equipment

Deleted from § 493.225 (now § 493.1205) is the requirement for laboratories to determine test methodology by considering factors such as utilizing the appropriate test system to achieve the performance characteristics specified by the laboratory, and to assure a statistically valid number of counts to provide accurate and reliable test results for systems such as particle counters, radioactive counters, spectrophotometers, and other equipment for which this is a critical variable. We moved this requirement, excluding a statistically valid number of counts for spectrophotometers, to § 493.1215, Validation of methods.

Section 493.1207 Temperature and Humidity Monitoring

We have added "tissue" to the list of items that must be maintained at a controlled temperature and humidity.

Section 493.1209 Labeling of Testing Supplies

We have added to this section a requirement that laboratories must not interchange components of a kit with reagents of another kit with a different lot number unless otherwise specified by the manufacturer.

Section 493.1211 Procedure Manual

The laboratory must now include in the procedure manual instructions for adequate slide preparation and calculations.

Section 493.1213 Equipment Maintenance and Function Checks

- We have added a requirement that the laboratory must document its preventive maintenance and function checks on equipment.
- Each day of use, baseline and background checks of instruments and equipment must be within acceptable limits. We are adding to the section a requirement that these checks must be completed before patient testing is initiated.

Section 493.1217 Frequency of Quality Control

- We have added a requirement that the laboratory is to follow the manufacturer's recommendations for quality control or to determine the frequency of testing quality control samples based on the evaluation of instrument and reagent stability and operator variance, but in no event can quality control be performed less than each day of use;
- We have moved the term "microorganism controls" from the requirment for checking staining characteristics in order to provide a broader application of the requirement.
- With reference to the number of calibrators required to calibrate, re-calibrate, or verify calibration of non-linear procedures, we have added a provision allowing the laboratory to follow the manufacturer's specifications if more than five points and a zero are required by the manufacturer or the laboratory must document the validity of using fewer calibration points than required by the manufacturer, but no

less than 5 points and a zero may be used at least every six months to verify calibration.

• The requirement for quality control of fluorescent stains has been moved from the specialty of microbiology to the general quality control section applicable to all specialties, where appropriate;

• We have clarified that the control organisms used to check direct antigen detection procedures must evaluate all testing phases, including extraction and reaction, if appropriate;

• The requirement for checking media sterility has been qualified to require sterility checks only of the media that is labeled as sterile;

• We have added a requirement that laboratories must test control samples in the same manner as patient specimens.

Section 493.1219 Remedial Actions

• We have revised this section to require the laboratory to notify the individual responsible for utilizing the test results (rather than the individual ordering the test) when specimens cannot be analyzed within the laboratory's timeframe for testing.

• The requirement to maintain records of remedial actions taken when a testing system problem or problems occur that prevent the laboratory from analyzing specimens in its established timeframes has been moved from § 493.240, Quality control records to § 493.1219, Remedial action.

• We now require the laboratory to issue any corrected or amended laboratory report promptly to the authorized person who ordered the test.

• We also now require the laboratory to maintain copies of the original report as well as any corrected or amended report for a two year period.

Section 493.1221 Quality Control—Records

• Laboratories are now required to maintain immunohematology records for a period of five years as specified by the FDA in 21 CFR Part 606, Subpart I.

• The "list" of records laboratories must maintain (under § 493.240, now § 493.1221) has been removed, since maintenance of these records is specified under each standard.

Quality Control—Specialties and Subspecialties

Section 493.1227 Bacteriology

The frequency for including quality control specimens with DNA probe tests has been changed from each time of use to each day of use.

Section 493.1229 Mycobacteriology

We have added the requirement for fluorochrome acid-fast stains to be checked each day of use for positive and negative reactivity.

Sections 493.1227, 493.1231 Bacteriology and Mycology

Under the subspecialties of bacteriology and mycology we have added to the requirement stating that quality control results for susceptibility tests must be within established limits "before reporting patient results".

Section 493.1233 Parasitology

We have added a new stipulation that a fecal sample control must be used that demonstrates staining characteristics.

Section 493.1239 Syphillis Serology

Facilities manufacturing blood and blood products for transfusion or laboratories performing syphilis serology tests on referral from these manufacturing facilities are now required to meet the syphilis serology testing requirements of 21 FR 640.5(a).

Section 493.1241 General Immunology

The regulations now require facilities manufacturing blood and blood products for transfusion, or referral laboratories for these facilities, to meet the HIV testing requirements of 21 CFR 610.45 and the hepatitis testing requirements of 21 CFR 610.40.

Section 493.1251 Urinalysis

This new subspecialty of chemistry has been added at § 493.1251.

Section 493.1253 Hematology

• We are now requiring that only manual coagulation tests be run in duplicate.

• Each individual performing manual coagulation tests must test two levels of controls before testing patient specimens. This is an addition to the proposed requirements.

• Also added to coagulation quality control is the requirement that laboratories include two levels of controls each time a change of reagents occurs for all manual and automated coagulation tests.

Section 493.1257 Cytology

• All references to "abnormal" and "positive"slides have been changed to "premalignant" and "malignant" and references to "negative" cases have been changed to "normal and negative" or "normal or negative".

• We have added a requirement that laboratories must retain unsatisfactory slides for five years.

• We have clarified that the maximum number of slides to be examined in 24 hours for each individual refers to examination of slide preparations by nonautomated microscopic techniques. If technology is developed that improves the process of slide evaluation, HHS will evaluate the equipment to determine whether a workload limit needs to be established through proposed revisions to these regulations.

• We have added an option to allow laboratories to loan slides to an approved PT program in lieu of maintaining the slide preparations for the storage time required by these regulations if authorization is obtained from HHS.

• We are clarifying that, before staining body cavity fluids, the laboratory must assess their potential for cross-contamination of other non-gynecologic specimens. Body cavity fluids found to have a probability for cross-contamination must be stained separately and the stains filtered between staining batches of slides.

Section 493.1259 Histopathology

• Added to this section is an option for technical supervisors to use electronic signatures on computer generated reports.

• We have clarified that laboratories must report results of all biopsy confirmed cases of cervical cancer to the State health department for the State in which the laboratory is located instead of to a cancer registry.

Section 493.1265 Histocompatibility

• We are clarifying that reagents for typing recipients and donors must be adequate to define all major and International Workshop HLA—A, B, and DR specificities for which reagents are readily available.

• We also clarify that the laboratory must screen recipient serum for pre-formed antibodies at the time of the recipient's initial HLA typing and at monthly intervals thereafter and following sensitizing events.

• Added to compatibility testing for cellularly defined antigens is a requirement for laboratories to utilize techniques such as the mixed lymphocyte culture (MLC) test, homozygous typing cells or DNA analyses.

• We have revised this section to require donor and recipient ABO and Rh_o(D) group to be performed in accordance with § 493.1269 of this subpart.

• We added a requirement for the specificity of the ABO reagents to be

verified with control cells if the laboratory utilized ABO agglutinins to remove erythrocytes during lymphocyte isolation.

• We revised this section to require that all labortories performing histocompatibility testing for bone marrow transplantation must meet all of the histocompatibility testing requirements, including the performance of MLC.

• Results of a final crossmatch must be available before nonrenal solid organ transplantation when the recipient has demonstrated pre-sensitization by prior serum screening. This is an added requirement.

• Laboratories that perform HLA typing for parentage testing must now meet all of the requirements under the histocompatibility section, except the performance of MLC.

Section 493.1267 Clinical Cytogenetics

• Comfirmatory testing for all atypical results is now required when the determination of sex is performed by "X" and "Y" chromatin counts.

• We have clarified that the laboratory report must include:

—the summary of the observation;
—the interpretation of the observation;
—the number of cells counted and evaluated; and
—the use of appropriate nomenclature.

Section 493.1269 Immunohematology

Laboratories must now employ a control system capable of detecting false positive $Rh_o(D)$ test results if required by the manufacturer.

Section 493.1271 Transfusion Services and Bloodbanking

• We have clarified that facilities providing transfusion services and bloodbanking must be under the technical supervision of a physician who qualifies under Subpart L as a technical supervisor in Immunohematology, transfusion services.

• The proposed requirement for transfusion facilities has been reworded to specify that blood products are available to meet the needs of physicians responsibile for diagnosis, management, and treatment of patients.

Section 493.1273 Immunohematological Collection, Processing, Dating Periods and Distribution of Blood Products

• The standard has been amended to include collection, dating periods, and distribution of blood and blood products, while excluding testing and storage from this standard.

• We have included provisions for the labeling of blood and blood products in conformance with the FDA regulations in 21 CFR Part 606, Subpart G.

• The requirement for a technical supevisor has been withdrawn.

Section 493.1275 Standard; Facilities

• Blood storage facilities are now required to ensure that storage conditions, including temperature, are maintained to avoid deterioration.

CLIA '88 Changes

Section 353(f)(4)(A) of the PHS Act mandates us to establish standards for cytology services designed to assure consistent performance by laboratories of valid and reliable cytology services. The specific changes made to the proposed requirements to accommodate CLIA '88 are listed below. They reflect changes that are either self-implementing or represent a logical outgrowth of the proposed rule based on the comments we received.

1. Provisions of CLIA '88 (section 353(f)(4)(B)(i) of the PHS Act) require the Secretary to determine the maximum number of cytology slides that an individual may screen in a 24-hour period. We have added to this subpart on quality control in § 493.1257(b) (1) and (2) our determination of the number of cytological slides an individual may interpret and the related recordkeeping requirements.

2. CLIA '88 (section 353(f)(4)(B)(ii)) also requires records of the number of slides interpreted by an individual in 24 hours and documentation of the number of hours devoted to the examination of slides.

We require in § 493.1257(b)(2) that the laboratory maintain a record of the number of slides examined by each individual during each 24-hour period and the number of hours each individual spends examining slides in the 24-hour period.

3. Section 353(f)(4)(B)(iii) (I), (II) and (III) of the PHS Act as amended by CLIA '88 requires us to establish standards that include criteria for requiring rescreening of cytologic preparations, such as (a) random rescreening of specimens determined to be benign, (b) focused rescreening of the preparations in high risk groups, and (c) for each abnormal cytologic result, rescreening of all prior cytologic specimens for the patient, if available in the laboratory (either on-site or in storage). They reinforce our proposed requirements at § 493.271(c)(1) (i) and (ii) and (3) (now § 493.1257(d)(1) (i) and (ii) and (3)).

4. In §§ 493.271(b)(3) (now § 493.1257(c)(3)) and 493.451(f) (now § 493.1501(h)), we had proposed periodic evaluation of the performance of the individuals involved in screening cytological preparations through rescreening of previously examined cytologic preparations. CLIA '88 also requires laboratories to conduct rescreening of cytological preparations (section 353(f)(4)(B)(iii) of the PHS Act). These requirements will assure increased accuracy in slide examination and more careful slide evaluation by the individual responsible for reviewing slides. Each individual must be apprised of his or her slide examination performance in order to improve or maintain quality test reports.

5. CLIA '88 specifically mandates, at section 353(f)(4)(B)(v) of the PHS Act, the laboratory's responsibility for establishing procedures for detecting inadequately prepared cytology slides, assuring that no cytologic diagnosis is rendered on inadequately prepared slides and notifying the referring physicians of unsatisfactory slides. We have specified in § 493.1211(a)(2) that laboratories must establish the criteria for evaluating whether a slide is satisfactory and these criteria must be written and accessible to each individual interpreting cytology smears to assure consistent and repeatable decisions are made in rejecting and accepting slides for examinations. In § 493.1257(a)(4), we have included a provision for assuring that no cytological diagnosis is rendered on an inadequately prepared slide. In § 493.1257(e)(6), we include a requirement that the laboratory must notify referring physicians of any patient specimen that is received in the laboratory in an unsatisfactory condition making diagnostic interpretation inappropriate.

6. Section 353(f)(4)(B)(vii) of the PHS Act as amended by CLIA '88 requires us to have requirements for the retention of cytology slides by laboratories for each periods of time as we consider appropriate. Our proposed regulations at § 493.271 (f) and (g) required normal slides to be retained for 5 years and abnormal ones for 10 years; this final rule at § 493.1257 (g) and (h) adopts the same requirements with changes in the term "normal" to "normal and negative" or "normal or negative" and "abnormal" is changed to "premalignant and malignant".

Subpart G—Personnel Standards

Overview of Proposed Rule

The current Medicare independent laboratory regulations (§§ 405.1312, 405.1313, 405.1314(b) and 405.1315), and CLIA personnel standards (§§ 74.30 and

74.31) contain detailed education and experience requirements for individuals at the director, technical supervisor, general supervisor, technologist and technician level (CLIA does not have a technician level requirement). The Medicare conditions of participation for hospitals (42 CFR part 482) and conditions of participation for skilled nursing facilities (42 CFR Part 483) have specific requirements only for the laboratory director, who has responsibility for determining the qualifications of the supervisory personnel and the individuals performing the tests at the bench. These latter regulations provide the director with the maximum flexibility in the selection and utilization of personnel.

In the proposed rule we planned to establish the same personnel requirements for *all* laboratories that participate in Medicare and Medicaid or are licensed under CLIA. We proposed personnel standards for director, supervisor and cytotechnologist with technical supervision qualifications specified for blood bank, pathology, cytogenetics and histocompatibility services. Our decision to set standards for these categories of personnel was based partially on the model for the current hospital standards, which specify qualifications only for a laboratory director and allow the director to determine the qualifications of other laboratory personnel. However, we strengthened the hospital and nursing home personnel standards with the addition of requirements for supervisors and cytotechnologists.

The proposed rule contained the provision required by section 9339(d) of the Omnibus Budget Reconciliation Act of 1986 to accept for Medicare purposes individuals that meet State licensure requirements for laboratory directors. This provision specifies that if a State provides licensing or other standards with respect to the operation of laboratories (including those in hospitals) in the State and establishes qualifications under which an individual may direct a laboratory, title XVIII of the Act may not be construed as authorizing the Secretary of HHS to require other qualifications; this provision was effective January 1, 1987.

We would also include a provision to enable individuals who qualify as laboratory directors under current regulations to continue to qualify as such.

The proposed rule contained a provision to allow for the recognition of private sector certification programs for director level personnel as an alternative mechanism for qualification as currently contained in §§ 74.30 and 405.1312. This provision reduces the need for the program to evaluate the credentials of individuals who have already been evaluated by a private sector organization approved by HHS and provides recognition for many of the programs in existence.

We believed that it was important to retain technical supervisor qualifications for some specialty and subspecialty testing areas currently contained in the regulations. Therefore, we proposed qualifications for individuals providing technical supervision of tests in the area of pathology, which includes histopathology, including skin pathology, cytology and oral pathology. We also proposed to retain requirements for a technical supervisor in transfusion and blood banking services, as well as histocompatibility. In addition, we proposed requirements for technical supervisor of cytogenetics.

Since the laboratory director may not always be present when testing is performed, we specified personnel requirements for supervisors to assure that at least one individual with supervisor qualifications would oversee the processing, testing or examination of specimens and the reporting of patient test results.

We proposed qualifications for cytotechnologists because currently the testing is solely dependent on individual judgment and interpretation. Also, the risk factors associated with errors in slide examination or misdiagnosis are obvious and can be linked to individual expertise based on education and training. In addition, generally agreed upon personnel credentials have been established and represent agreement by the various cytology professional organizations.

We proposed to eliminate in independent laboratories the personnel requirements for technologists and technicians for the following reasons:

- It is necessary to emphasize responsibility of the director for assuring the quality of the services of the laboratory and to allow the director the maximum flexibility to choose the personnel required to achieve this goal;
- Changes in technology make it difficult to develop detailed specific standards and revise them as needed to cover the wide variety of instruments, methodology and test systems currently performed and to be peformed in the future in laboratories; and
- It is more reliable to depend on outcome measures such as quality control, proficiency testing and quality assurance programs, rather than detailed personnel standards, as mechanisms to assure the quality of testing.
- Although it is generally believed that degreed individuals are better prepared to assume technical responsibilities to assure quality, there is limited evidence available to correlate the degree level of education achieved by an individual with the quality of the test results produced.

There have been several studies on the relationship between personnel standards and quality of testing, including one commissioned by the Office of the Assistant Secretary for Planning and Evaluation of the Office of the Secretary of the Department of Health and Human Services, but definitive data correlating the relationship of specific standards to quality of testing does not exist. The available studies have been applied only to limited areas. Although evidence exists of some improvements in performance as a function of personnel credentials, these studies are limited in scope, and they are not all based on the same assessment techniques. They also do not indicate that inaccurate or medically unacceptable results were produced by any particular type of level of individual.

Our requirements in the proposed rule applicable to the personnel levels below the director and supervisor would provide for maximum flexibility for the director in choosing the laboratory staff, except for cytology in which specific personnel qualifications would be required to assure the quality of cytology results. The individuals employed in laboratories would still have to meet State standards, if any exist. This would place responsibility with the States to set specific criteria for personnel to meet local needs. The director would have to ensure that the personnel have the necessary training, experience, and continuing education and that they receive continuous evaluation and monitoring of performance levels as well as meet any State licensure requirements. The proposed personnel requirements would allow the flexibility to utilize the various private-sector credentialling programs, State licensure programs, and private-sector examinations as a guide in selecting individuals for employment purposes.

In proposed § 493.405 we specified the laboratory director responsibilities and emphasized the duties required of the laboratory director. The laboratory director would have the overall responsibility for the quality of testing performed by the laboratory and would be responsible for establishing and

maintaining a quality assurance program and establishing performance characteristics for the test systems employed by the laboratory. The director would also be responsible for providing evidence that the laboratory can maintain these performance levels: the director would assess factors such as staff performance, quality control results, proficiency testing results, validation of test procedures and methodologies, and assure that the laboratory corrects all problems before reporting test results. In addition, if errors are detected after results are reported, the director would be responsible for providing the necessary corrected information to the individual requesting or utilizing the test results.

We proposed in § 493.407 that a qualified supervisor be on the premises whenever routine testing is performed. In proposed § 493.411, we specified that laboratory supervisors would be responsible for supervision of laboratory personnel, test performance and test reporting.

In § 493.417, we proposed that cytotechnologists would be responsible for documenting the gynecologic and non-gynecologic cases examined and for recording slide interpretation results for each gynecologic and non-gynecologic cases reviewed.

Comments and Responses

Overview—of the 1,600 total comments received, an overwhelming majority expressed opinions regarding the proposed personnel standards. Almost 85 percent of these comments disagreed with what many perceived as diminished requirements for education, training, experience and/or credentials for technical personnel. Retention of existing personnel standards was requested by the majority of commenters. Some commenters, aware of existing personnel requirements for hospitals before the August 5th proposal, opposed the increased requirements for hospital laboratory personnel. Others requested the same personnel requirements for hospitals and independent laboratories. Some respondents stated that only independent laboratories should be regulated; however, several commenters expressed a collective desire to regulate hospitals, independent and physicians' office laboratories using the same standards for personnel.

Overview of Comments by Level of Technical Personnel

Director

With respect to laboratory director qualifications, commenters expressed disagreement with the following provisions of the proposed rule:

- Recognizing State licensure requirements for director if the State standards were less stringent than the Federal requirements. (It should be noted that this proposed regulation is required by law—the Omnibus Budget Reconciliation Act of 1987);
- Allowing individuals to qualify that did not have an M.D., D.O., or doctoral level degree;
- Permitting individuals to qualify as directors under the "grandfather" provisions without imposing additional requirements, although a few commenters supported the "grandfather" provisions as written;
- Qualifying individuals who were not board certified pathologists;
- Using the HHS examination to qualify laboratory directors;
- Recognizing certification boards as a means of qualifying individuals; however, a few commenters supported HHS recognition of professional organizations' certification programs.

Many commenters disagreed with the proposed laboratory directors' responsibilities with respect to allowing the director to determine personnel qualifications of the laboratory staff and making the director responsible for the non-scientific management of the laboratory.

Commenters suggested or agreed with the following:

- Retaining present Medicare regulations for qualification of the laboratory director;
- Using the laboratory director qualifications specified in § 483.460 (ICF/MR regulations);
- Allowing non-doctoral degree level directors such as those holding degree as masters of science or medical technology;
- Requiring pathologist, cytopathologist, M.D., D.O., and Ph.D level directors;
- Requiring more experience for directors who are not pathologists or cytopathologists.

Technical Supervision

The majority of the commenters who expressed an opinion on the requirements for technical supervision requested that we reinstate requirements for a technical supervisor in all the specialty areas of the laboratory. Several commenters suggested that we require more pertinent laboratory experience for the technical supervisor, especially in the subspecialty of cytology. Many commenters objected to the experience and training requirements proposed for the technical supervisor in the specialties of histocompatibility and clinical cytogenetics. A large number of pathologists requested that we qualify pathologists as technical supervisors in histocompatibility and clinical cytogenetics or allow those pathologists whose laboratories currently perform histocompatibility and/or clinical cytogenetics testing to "grandfather" as technical supervisors in their respective specialty(is) of testing. On the other hand, several individuals agreed with the proposed technical supervisor requirements for these areas.

Several commenters, having reviewed the proposed qualifications for the technical supervisor in clinical cytogenetics, requested the deletion of the requirement for experience in immunology and substitution of experience in clinical genetics in its place.

There were a few respondents who objected to requiring a technical supervisor in histopathology, dermatopathology and oral pathology.

Several comments were received requesting the retention of existing standards for technical supervisor and a few requested that we allow medical technologists to qualify as technical supervisors for all specialty areas.

General Supervisor

Opposition to the proposed requirements for general supervisor are summarized below.

- The majority of individuals commenting on the requirements for general supervisor disagreed with the proposed reduction to the number of years' experience required, with many qualifying their opinion by requesting a limit to the number of technologists and technicians these general supervisors should be allowed to supervise. Many other commenters stated the general supervisor should be experienced in the areas they supervise.
- Several commenters objected to general supervisor requirements of any type, and several more opposed requirements for general supervisors in hospitals, small laboratories and in rural hospitals.
- Many commenters were in opposition to the educational requirement of a bachelor's degree, especially for hospital laboratories.
- Many statements of opposition were received referring to the proposed provision requiring the general supervisor to be on-site during the laboratory's regularly scheduled hours of operation. Some felt the availability of the general supervisor by telephone was sufficient for the laboratory and staff's needs. A few thought a general

supervisor was needed in the work shifts during which "stat" tests are performed, because of the critical nature of such testing.

• Several commenters were opposed to allowing a medical technologist to qualify as a general supervisor in cytology.

• Other commenters requested an HHS examination be given to quality individuals as a general supervisor.

• A few commenters were opposed to requiring a medical technologist as a general supervisor in blood gas laboratories.

Technologist

An overwhelming number of commenters objected to the absence of personnel standards for technologists and technicians. Many commenters requested that we retain or increase the present personnel standards for Medicare certified laboratories. Many comments were received noting the need for personnel standards at the bench level for microbiology, hematology and blood banking because of the judgment calls involved in these specialty areas and the ramifications to patients' health when test errors occur.

Several commenters requested that we recognize certification by professional organizations as a qualification requirement for technologists. Many others stated that a bachelor's degree should be required to qualify as a technologist; however, several other commenters believed a bachelor's degree was not necessary and experience should be substitutable for education, especially for laboratories in rural areas or in financially burdened situations.

Several commenters agreed with the deletion of qualification requirements for branch level personnel but recommended the addition of language requiring appropriate education, training and experience to perform assigned duties properly.

A few commenters suggested we retain the present personnel standards in testing areas that are subjective in nature and require evaluation skills or a knowledge of quality control principles and practice or that educational requirements be established based on test complexity.

The comments we received concerning the elimination of personnel requirements for technologists and technicians in independent laboratories were overwhelmingly from individuals employed in hospitals who were against the elimination of the bench level personnel requirements.

We reached two conclusions based on our review of comments. First, individuals who work in other settings, such as nursing homes, and who would be subject to the same requirements as individuals currently in an independent laboratory setting, did not comment even though they would also have been affected by the new requirements. Second, approximately 1,000 commenters from hospitals expressed the view that the elimination of personnel requirements for technologists and technicians would weaken hospital laboratory personnel requirements even though they did not realize the hospital's regulations currently contain no such requirements. At present, the personnel requirements for hospitals specify only that the hospital must have a qualified laboratory director, and the director need not be present when testing is performed. In our proposed rule, we were attempting to strengthen the personnel requirements in nursing homes and hospitals by adding a requirement for supervision. We believed that each laboratory, including those in hospitals and nursing homes, should employ at least one individual with laboratory credentials who would be on the premises when testing is performed. We are pointing out these observations because when we again propose personnel requirements to implement CLIA '88, we urge affected individuals from all work settings to comment.

Cytotechnologist

Although the majority of individuals' comments on cytology personnel standards were in favor of the proposed requirement for cytotechnologists, the following recommendations were offered:

• Require a bachelor's degree to meet the education qualifications;

• Recognize professional organizations' certification programs;

• Develop performance standards to credential cytotechnologists based on capabilities and competency; and

• Establish a "grandfather" provision for individuals not meeting current qualification requirements for cytotechnologist that would qualify persons engaged in the examination of cytologic preparations who have been under the supervision of a pathologist from 1985 to the present.

A few commenters opposed requiring a cytotechnologist for the examination of all cytologic preparations, stating that cytotechnologists could be reserved for examining difficult or questionable slides, re-screening of slides for quality control purposes and for the provision of supervision.

A few commenters suggested we recognize two levels of cytotechnologist: those with a Bachelor's degree and one year experience who would perform all routine screening and provide supervision, and those individuals with two-year associate degrees and six months of training, who would be limited to screening gynecologic preparations only.

Many commenters objected to the responsibilities for cytotechnologists, which would require daily records of the number of gynecologic and non-gynecologic cases examined and the slide interpretation results, but several respondents agreed with these cytotechnologist responsibilities.

Summary of Changes to Proposed Rule Or Changes to The Current Personnel Regulations

We have decided to retain existing personnel standards in the final rule because CLIA '88 specifies that laboratory personnel qualifications should be established based on tests performed, and we intend to develop personnel standards to implement CLIA '88 in a separate rulemaking. As a result, we are not adopting the proposed changes that would make laboratory personnel requirements uniform from one type of facility to another, with three exceptions discussed below.

We have added requirements for technical supervisors in clinical cytogeneics. We proposed that the individual have a doctor of science degree or be a physician, and have 4 years of experience in immunology or genetics. In response to the recommendations, we are requiring experience solely in genetics, two years of which must be in clinical cytogenetics. This requirement will apply to cytogenetics technical supervisors in any setting (e.g. hospital, SNF).

Current hospital regulations do not delineate technical supervisor requirements in cytology, although current independent laboratories have such a rule. We are adopting as proposed the current independent laboratory requirement for technical supervisor in cytology to permit individuals qualified in independent laboratories as a cytology technical supervisor to function in that category in the hospital setting.

The final rule also includes the proposed provision implementing OBRA '87 at § 493.1403(a)(3), 493.1407(a)(3), and 493.1415(b)(6) that allows a person qualified under State law to direct the laboratory; however, we have slightly modified the proposed revision to follow

the statute more closely. The statute (section 9339(c)(1) of Pub. L. 99–509) clearly expects a director to meet the requirements of the State in which he or she is directing a laboratory. Our proposal may have implied that a director could qualify to be a director by meeting the requirements of any State.

We want the public to understand that since CLIA '88 requires HHS to set personnel requirements as a function of test complexity rather than location or type of laboratory, we will soon propose an approach to regulating personnel qualifications could be very different from the approach used in this final rule. We will urge commenters to assist us in the formulation of a regulatory scheme that is test-complexity based, rather than location/type of laboratory based. We cannot state whether the regulations implementing CLIA '88 will or will not be similar to the personnel requirements as written in this rule.

It is our intention that all of the personnel requirements for the various types of facilities be in part 493, subpart L. To assist in this organization, we are codifying the content of paragraphs and sections concerning personnel requirements found in various parts and subparts of title 42 in new subpart L.

In § 493.2, as discussed earlier, we define "independent laboratory". It reads substantively the same as current § 405.1310(a), except that we have deleted the provision allowing a physician office laboratory to accept 100 specimens per category in a calendar year from other physicians.

The independent laboratory personnel regulations in this rule at § 493.1413 reflect the current structure of § 405.1312, Condition: Laboratory director, which includes standards for laboratory director qualifications and responsibilities in the same condition. The requirements for technical personnel currently located in § 405.1315, specify standards for qualifications and responsibilities in the same condition; we have made no changes in these requirements, which appear in § 493.1431, Condition: Independent laboratories; Technical personnel, and the standards in §§ 493.1433 and 493.1435, which concern technologists' qualifications and responsibilities.

Revisions to the current regulations for general and technical supervision located at § 405.1313 and 405.1314 are necessary because § 405.1313, Condition—clinical laboratory; Supervision, contains the responsibilities for both types of supervisors and § 405.1314, Condition—Clinical laboratory, specifies requirements for proficiency testing participation. This rule will revise the current regulations to reflect a separate condition at § 493.1419 for technical supervision with standards for qualifications and responsibilities at §§ 493.1421 and 493.1423, respectively. The condition at § 493.1425 will contain the condition for general supervisor with the standard of § 493.1427 specifying the qualifications for a general supervisor and the standard of § 493.1429 listing the general supervisor responsibilities. Throughout subpart L, we will include the requirement for personnel to have a current State license, if such licensing exists. The requirement for personnel to be appropriately licensed by the State will also appear under subpart B, Compliance with Federal, State and Local Laws. We are adding this requirement to subpart L to unify all personnel requirements in one area.

We are maintaining the requirement at § 493.1439 for cytotechnologists to document cases examined to facilitate the requirement for evaluation of cytotechnologists' performance by the technical supervisor.

Section 493.1403, Hospital personnel, contains the current content of § 482.27(c) (1) and (2) with the addition of personnel requirements for technical supervision of histocompatibility (§ 493.1403(b)(5)), clinical cytogenetics at § 493.1403(b)(6) and cytology at § 493.1403(b) (proposed § 493.403), Standard; Laboratory director qualifications, paragraph (b).

Section 493.1407, ICF/MR laboratory services, contains the current content of § 483.460, Condition of participation: Health care services, paragraph (n)(2)(ii)(A)—(D), which concern the personnel requirements for ICF/MR laboratories.

CLIA '88 Changes

No changes were made because of CLIA '88 to subpart G(L), Personnel Standards.

Subpart H (M)—Quality Assurance

Proposed Rule Overview

In § 493.451 (now § 493.1501) we proposed to add a quality assurance condition for both the Medicare and CLIA laboratories to require the laboratories to establish and follow protocols that assess the effectiveness of their operations. The condition would require the laboratory to establish procedures for monitoring the quality of its testing and staff performance and to assure that the laboratory's performance is within established acceptable criteria. This section would add an additional level of quality control and place the burden on the laboratory to accept responsibility for monitoring its own performance as an adjunct to the checks placed on the facility by the regulatory agency. The laboratory would utilize its quality control and proficiency data and regular staff performance evaluations to monitor and assure the quality of testing and reporting.

The responsibility for establishing and implementing a quality assurance program would be placed on the laboratory director; it would serve as an additional outcome measurement of quality and would assure accurate and reliable test performance and reporting.

The director would also have the responsibility for having a program in place to monitor and control various health and safety hazards from a variety of biological, chemical, environmental and radiological materials or factors, which may affect testing as well as patient and worker safety. This requirement would place responsibility on the laboratory director for setting up and implementing an appropriate program, which would include assuring compliance with the existing Federal, State, and local laws.

As part of the quality assurance initiative, we would also encourage laboratories to enroll in PT programs for analytes other than those included in the current grading scheme. For the subspecialty of cytology, laboratories would be able to insert "blind samples" into their workload or exchange slides with another laboratory for retrospective screening and comparison.

We requested comments on alternate mechanisms of quality assurance that can be used in a Federal regulatory program. We solicited specific suggestions for changes in quality assurance requirements and data to support these changes.

Comments and Responses

Comment: Several commenters believe that this subpart is repetitious of subparts C and F; they are unclear of the differences and distinctions between quality assurance and the requirements specified in proficiency testing and quality control. On the other hand, many commenters believe that this subpart was the essential component of the regulations and should form the basis for all regulatory requirements.

Response: As noted in the original preamble we have added a quality assurance condition for both the Medicare and CLIA laboratories to establish and follow protocols that assess the effectiveness of their operations. The new condition requires the laboratory to establish procedures for monitoring the quality of its testing

and staff performance and to assure that the laboratory's performance is within established acceptable criteria. This section adds an additional level of quality control and places the burden on the laboratory to accept responsibility for monitoring its own performance as an adjunct to the checks placed on the facility by the requirements of Medicare or CLIA programs, or both. The laboratory utilizes its quality control and PT data and regular staff performance evaluations to monitor and assure the quality of testing and reporting.

Comment: One commenter noted that quality controls are no longer included with each group or batch of patient specimens but may be extended to a maximum frequency of twenty-four hours.

The commenter asked that clarification be provided to address the point at which patient test results should be evaluated for accuracy when a quality control failure has been identified.

Response: We agree with this commenter and have included a requirement under standard (c) of § 493.1501 of this subpart to clarify that all patient test results analyzed before a failure in quality control must be evaluated for accuracy and reliability.

Comment: Two commenters noted the absence of the evaluation of patient test results in these requirements.

Response: We agree with the commenters and have added standard (f) to § 493.1501 to require evaluation of patient test results when the results appear inconsistent with clinically relevant criteria such as the patient's age, sex, diagnosis or pertinent clinical data, distribution of patient test results, and relationship with other test parameters.

Comment: Comments were evenly divided in support of and in opposition to the requirement for assessing the performance and competency of employees. Some commenters believe that this function is best left to the laboratory's discretion and that Federal requirements should not be established to regulate this activity. Other commenters were vigorous in their support of this requirement, and some commenters suggested that continuing education units (CEUs) be considered in lieu of this requirement.

Response: We believe that it is essential for each laboratory to assess the competency of employees performing laboratory analysis to assure quality test results. CEUs may be used as an adjunct to this requirement but may not be used in lieu of these requirements because these courses are not equivalent to semester hours acceptable by a college or university as courses toward a degree. Continuing education courses are lectures or practical "hands on" instruction sessions to provide individuals with technical updates but generally are not indepth courses that require testing or assessment of comprehension or competency.

Comment: A few commenters indicated that the requirement of using blind proficiency test samples for evaluating employees may cause problems and create false files.

Response: The use of blind proficiency test samples as a mechanism to evaluate employees is one of several options provided to the laboratory as a means of meeting this requirement. Laboratories that anticipate difficulties in using blind proficiency samples may use another option to evaluate employees.

Comment: Several commenters requested more specificity as to the types of complaints that should be investigated by the laboratory.

Response: We have provided flexibility in this requirement by specifying that although all complaints must be documented the laboratory must establish its policies and procedures for which complaints will be investigated and the extent of the investigation.

Summary of Changes to Proposed Rule

Section 493.1501 Quality Assurance

- When a quality control failure occurs, the results of all patient specimens analyzed in the same run before the unacceptable quality control result must be evaluated for accuracy and reliability before release.
- The laboratory must have and use a procedure to evaluate the clinical relationship of each test result that appears inconsistent as it pertains to:
  —patient age
  —patient sex
  —diagnosis and/or clinical data
  —result distribution
  —other test parameters
- The laboratory must have an established program for providing orientation and in service training to employees to improve performances when problems relating to their competency to perform testing (as specified by the laboratory) are identified.
- The laboratory must document problems identified during quality assurance reviews.
- Complaints and problems reported to the laboratory must be documented and, if necessary, investigated; in addition, where appropriate, corrective actions must be instituted and documented.

CLIA '88 Changes

Subpart M, Quality Assurance, includes no self-implementing provisions of CLIA '88. Any changes necessitated by CLIA '88 will be implemented through separate rulemaking.

Subpart I(N)—Inspection

Proposed Rule Overview

We proposed to add a condition on inspection of the laboratories, § 493.501, which specifies the requirements a laboratory must meet for inspections and record retention and availability.

Under this proposal, we would require the laboratory to demonstrate satisfactory performance on quality control and PT before inspection or approval.

The proposed § 493.501 allowed us to inspect a laboratory during any hours of operation or business and stated that HHS has the right of access to all records required to make a determination of a facility's status. The proposed rule required that the laboratory make these records available to us within a reasonable period of time during the course of the inspection.

The regulations would extend our authority to require the laboratory to test either patient specimens or proficiency testing materials in the laboratory during the inspection to allow us to determine the competency of the personnel and ability of the laboratory to perform tests.

In addition to the subpart C (now subpart H) requirement for participation in a mailed PT program, we considered the development of a methodology for evaluating laboratory performance through onsite PT to enhance the survey process. As stated in our proposal, we plan to select in 1990 a limited number of States in which a random sampling of laboratories would be chosen for the State survey agencies to conduct unannounced onsite PT surveys to compare laboratory performance of on-site PT with performance on mailed PT and to evaluate the feasibility of this type of PT.

In addition, under the proposed requirements, DHHS would be able to reinspect the laboratories at such frequencies as are necessary to determine compliance or continued compliance with the regulations. We proposed to indicate that denial of access could result in revocation or denial of licensure, termination, or

denial of initial approval under Medicare.

Under this proposal the laboratory would also be required to notify us of changes in ownership, direction, location or services so that we can determine the status of the laboratory and its ability to provide reliable and accurate test results. These provisions would not add new requirements but would serve to clarify and unify the existing Medicare and CLIA requirements.

The proposed § 493.501 did not include a number of the requirements in § 405.1909. (Section § 405.1909 was redesignated as § 488.52 and modified on June 17, 1988, 53 FR 23100. For purposes of accurately repeating the proposed rule in this preamble, we retain references to § 405.1909 as codified in the Code of Federal Regulations, revised as of October 1, 1987.) What constitutes a laboratory test (in § 405.1909(a)) was not retained. The provisions relating to specialties and subspecialties for licensure and approval would be relocated in Subpart F, Quality Control, redesignated in these regulations as Subpart K. The content of § 405.1909(b) would be deleted since the date to which it refers has expired. The content of § 405.1909(c), the requirements for successful participation in proficiency testing, were revised and moved to subparts on participation in proficiency testing and proficiency testing programs.

In addition, the specific requirement in § 405.1909(c) for on-site PT would be revised in the subpart on proficiency testing programs. The proposed requirements on proficiency testing would clarify the conditions for successful and unsuccessful performance, and subpart I (now subpart N) would specify that HHS may perform whatever follow-up and inspections are required to determine a laboratory's compliance with the standards.

Comments and Responses

Comment: Many commenters objected to unannounced inspections without a specific cause. Other commenters suggested on-site inspections only with a specific cause.

Response: With the exception of hospitals, it is our policy to conduct unannounced inspections for all health care providers and suppliers, laboratories included. It is imperative that a laboratory be evaluated during its routine operation so that we have access to the daily services provided. Inspections are not necessarily conducted for the convenience of either the laboratory or the survey agency but rather serve as a mechanism to assess the quality of services routinely provided by the laboratory for use in the diagnosis and treatment of patients.

Comment: Many commenters objected to the use of on-site proficiency test samples, believing that this is disruptive to the operations of the laboratory.

Response: It is not our intent to disrupt the laboratory's operation. Every effort will be made to accommodate the laboratory's responsibility to meet patient care needs.

Comment: An overwhelming number of commenters noted that evaluating a laboratory's performance on the basis of mailed proficiency testing is not valid as the samples are not treated in the same manner as patient specimens in that they are given special treatment in the analysis process. In addition, New York State advocates on-site proficiency testing in addition to mailed proficiency testing to verify laboratory performance and bases its endorsement of this requirement on twenty years of experience in conducting on-site proficiency testing.

Response: It is our view, which was reinforced by the commenters, that on-site proficiency testing is one of the most meaningful mechanisms to evaluate a laboratory's true performance. This provides an assessment of the entire testing system process from receipt of specimens through result reporting. In 1990, on a pilot basis in a limited number of states, we plan to assess laboratory performance of on-site proficiency testing.

Comment: One individual noted the omission of the requirement to notify HHS of changes in supervisory staff and recommended that it be included.

Response: We agree with the commenter in view of the fact that supervisors are required to be present on the laboratory premises when testing is performed. We have included "supervisors" in the list of changes of which we must be notified in § 493.501(d), redesignated as § 493.1601(d).

Comment: Many commenters objected to the one year requirement specified in § 493.501(e) with regard to successful participation in an approved proficiency testing program before inspection for approval in Medicare or licensure under CLIA '67. In addition, commenters requested a mechanism for provisional approval and/or licensure to allow them to operate in this time period.

Response: We have changed the requirement for successful participation in an approved proficiency testing program, from "up to one year before inspection", to require successful participation for one testing event before inspection, approval or licensure can take place. We agree that one year is too long, because of financial considerations for those laboratories with a significant number of Medicare or Medicaid clients. This revision lessens the need for the provisional approval or licensing, which we cannot provide since we must determine a laboratory's compliance with the regulations before allowing it to perform tests for Medicare and Medicaid beneficiaries.

Comment: Many commenters expressed concern with regard to maintaining the integrity of on-site proficiency testing samples.

Response: We agree with the commenters that specimen integrity of all proficiency test specimens must be assured before any grading criteria can be applied. We will evaluate each proficiency testing program's criteria for on-site sample integrity during the annual review of each provider's PT program.

Summary of Changes to Proposed Rule

Section 493.1601 Inspection

- Unless otherwise specified in this part, approval of a laboratory may be denied for a period of at least one year for violation of any of the requirements of this part or by the Social Security Act, subject to the appeal rights specified in part 498 of this chapter.
- Upon request from HHS or its designee, the laboratory must provide all information and data needed to determine the laboratory's compliance with the requirements.
- The laboratory must notify HHS or its designee within 30 days of the effective date of all changes in supervisors.
- A laboratory applying for Medicare/Medicaid approval and/or CLIA licensure (or letter of exemption) must successfully participate in an approved PT program for one testing event for each specialty or subspecialty for which it seeks approval and/or licensure. The results of the PT event must be submitted to HHS or its designee before inspection.

CLIA '88 Changes

Section 353(g)(1) of the PHS Act, as amended by CLIA '88, permits us to conduct unannounced inspections. This reinforces our current policy and our statement in the proposed rule (§ 493.501) and we repeat that position in this final rule at § 493.1601.

Subpart J (O)—CLIA-Only Requirements

Proposed Rule Overview

We proposed to place requirements applicable only to laboratories engaged in interstate commerce in Subpart J. For example, the CLIA requirements concerning recognition of accreditation programs are different from those for Medicare laboratories due to differences in the two statutes; CLIA allows HHS more flexibility on the type and scope of information that can be requested.

We also proposed to make several modifications in the licensure procedures for laboratories under CLIA. Specifically, we proposed to revise the regulations to indicate that: (1) Licenses will be issued or revoked by specialty and subspecialty rather than by individual test procedures in order to achieve uniformity between programs; (2) we are placing increased reliance on overall outcome measures; and (3) only certain tests are subject to PT, because not all tests are currently included in PT programs.

We also proposed to revise the exemption applicable to certain physician office laboratories that examine specimens on referral so that we would grant exemptions in cases only in which the *total* number of tests performed annually is 100 or fewer rather than granting exemptions for each specialty or subspecialty in which 100 tests or fewer are performed. (It should be noted that we could not eliminate the test limit since the CLIA statute in effect at the time of our proposal required us to provide a low test volume. CLIA '88 amends this provision so that, effective January 1, 1990, a waiver may be granted to laboratories that perform tests that are determined by HHS to be simple, accurate tests which pose no reasonable risk of harm to patients if performed incorrectly. Our interpretation of this provision will be proposed in a separate Federal Register document.) We proposed to specify that HHS may determine that certain categories or types of tests pose a hazard to public health if performed incorrectly; therefore, no exemption will be granted in these cases.

We also proposed adding a provision (§ 493.704) that would allow us to issue a notice that a license can continue in effect for another year, rather than reissuing the formal license every year. This would meet the intent of the statute and still permit annual renewal without inordinate paperwork when no changes in licensure status have occurred.

Comments and Responses

Comment: In reference to § 493.701 (§ 493.1701), Basis and scope, one commenter requested that laboratories performing tests solely for the purpose of insurance policy eligibility should be subject to the same regulations as laboratories doing comparable testing.

Response: At this time, laboratories performing tests for the purpose of insurance policy eligibility are not subject to the regulations, provided that the results of such testing are not used for clinical, medical intervention. However, under CLIA '88, such testing could be subject to Federal regulations.

Comment: With respect to § 493.704 (§ 493.1704), Licensure application and issuance, a few commenters noted different termination periods in the proposed regulations; the six month termination period in the participation in proficiency testing, proposed § 493.24, Reinstatement after failure to participate successfully, differed from the one year termination period in proposed § 493.704(b)(4) in CLIA requirements.

Response: In subpart C of the proposed rule, we specified a six month termination period whereas in subpart J we indicated that, for laboratories that have had a license revoked in whole or in part, HHS would not consider a licensure application until one year after the effective date of termination unless the laboratory submits good cause for a waiver of the one year period. For laboratories whose licensure revocation was based on unsuccessful proficiency testing performance, we intended for the "good cause" provision to allow reinstatement after six months, if successful performance is achieved on 3 consecutive proficiency testing events. We have clarified § 493.1704(b)(4) to reflect our intent.

Comment: One commenter requested a definition of a physician's office laboratory.

Response: The applicability of these regulations is clearly specified in the basis and scope section and does not include physician's office laboratories; therefore, we have not provided a definition of the term "physician's office laboratory."

Comment: Referencing § 493.710 (§ 493.1710), a few commenters requested that the College of American Pathologists' letter of exemption be extended to include Medicare approved laboratories as well as CLIA licensed laboratories.

Response: Currently, there is a statutory provision in CLIA '67 recognizing the laboratory accreditation program of the College of American Pathologists (CAP). CAP has requested recognition of its laboratory accreditation program under the Social Security Act for Medicare laboratories. However, we could not act on the CAP request because we were in the process of revising our laboratory standards. We are not accepting requests for recognition of accreditation programs until we fully implement CLIA '88 because some additional changes may be made in the Medicare-Medicaid requirements as well as the standards of CLIA '88. Following establishment of the CLIA '88 standards enforcement program, we will establish requirements for recognition of State licensure and professional organizations' accreditation programs. Moreover, although CAP is currently recognized under CLIA '67, it will be necessary to re-evaluate CAP's program in terms of the new standards implemented under CLIA '88.

Summary of Changes to Proposed Rule

In § 493.704(b)(2), now § 493.1704(b)(2), we added the requirement for laboratories to notify HHS within 30 days of changes in ownership, location, name, director(s), supervisor(s), and/or deletion of specialties or subspecialties of service. Current regulations in Part 74 require laboratories to notify HHS within 10 days of a change in ownership and 30 days of a change in director or supervisor. In the proposed rule, we specified that HHS would issue a revised license when changes occurred but omitted the timeframe for laboratories to notify HHS of changes and failed to specify the changes in a laboratory operation that would affect licensure status.

We revised § 493.704(b)(4) (now § 493.1704(b)(4)) to be consistent with requirements in subpart H for reinstatement of the failure to participate successfully.

CLIA '88 Changes

No changes were made in this subpart. The entire subpart will be deleted when CLIA '88 is fully implemented because it will no longer be applicable. It should be noted that although we proposed to establish standards similar to the current CLIA '67 requirements for recognition of accreditation and State licensure programs (that is, a laboratory accredited or licensed by one of these programs is deemed to meet Medicare conditions of coverage), the broader implications of CLIA '88 have caused us to place a moratorium on recognition of private sector and State programs until the CLIA '88 standards are implemented. We feel this approach will be less

disruptive than evaluating programs under the revised standards and performing another evaluation when the CLIA '88 regulations are finalized. Therefore, under these regulations, the College of American Pathologists Laboratory Accreditation Program and the New York State licensure program will continue to be recognized for accrediting laboratories subject to CLIA '67. However, *all* programs, including New York State and College of American Pathologists programs, will have to be evaluated following the establishment of CLIA '88 standards.

IV. Other Revisions Affecting Laboratories

• We proposed to revise § 405.1909 (redesignated June 17, 1988 (53 FR 23100), as § 488.52). Special requirements applicable to independent laboratories, to delete the current paragraphs (b) through (d), as the comparable content would be in part 493, and to add a definition of "independent laboratory." We also proposed to revise the last sentence in paragraph (a), which currently indicates that diagnostic tests performed by an attending or consulting physician are physician's services rather than clinical laboratory services so that laboratory services furnished by physicians are paid for on a fee schedule basis. (See the discussion concerning § 405.1909, second column, page 29605 of the proposed rule for a fuller explanation).

• We proposed to revise the definitions found in current 42 CFR 405.2102, to clarify that histocompatibility testing determines compatibility between a potential organ donor and recipient and not between a donor organ and a recipient.

• We also proposed to revise current § 405.2171(d), Condition: Minimal service requirements for a renal transplantation center, to cross-refer it to the new unified regulations for clinical laboratories, including histocompatibility testing for renal transplantation centers. However, we would retain the requirement concerning 24-hour availability of services (§ 405.2171(d)(1)) as it would not apply to other laboratories.

• We proposed to revise current 42 CFR 416.49, Condition for coverage—Laboratory and radiological services, to require laboratories in ambulatory surgical centers to comply with the conditions of coverage of laboratory services in new part 493 except for urinalyses, hemoglobins, and hematocrits performed within a few days before, or on, the day of surgery.

We received several comments from individuals questioning the rationale for not regulating ambulatory surgical centers that perform hemoglobin and hematocrit tests and urinalysis. Ambulatory surgical centers, as well as other entities, performing laboratory services, will be subject to CLIA '88. Our rulemaking to implement CLIA '88 will include ambulatory surgical centers and that rule will specify which tests can be considered under the waiver provision of CLIA '88.

• Our proposed revisions to § 482.27 (the condition of participation concerning hospital-based laboratories) only deleted personnel requirements that would be in the new part and cross-referred to part 493 for requirements a hospital-based laboratory must meet. We intended to retain the requirements currently in § 482.27(a)(1) and (2) as they would continue to apply only to hospital-based laboratories. In this final rule, we transfer to § 493.1403 (rather than delete) the personnel requirements in § 482.27(a)(3) (ii), (iii) and (iv), and (c) through (f).

Summary of Changes to Proposed Rule

Except for the comments mentioned above, there were no other comments on these proposals. Therefore, except for a number of technical changes (to bring the coding up to date), we are adopting them as final.

CLIA '88 Changes

There were no self-implementing CLIA '88 changes affecting the regulations sections discussed as "Other Revisions" in section IV.

V. Regulatory Impact Analysis

A. Introduction

Executive Order 12291 (E. O. 12291) requires us to prepare and publish a final regulatory impact analysis for any proposed regulation that meets one of the E. O. criteria for a "major rule"; that is, that will be likely to result in:—

• An annual effect on the economy of $100 million or more;

• A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or,

• Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In addition, we generally prepare a final regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a final regulation will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we consider all hospital-based and independent laboratories as small entities. For purposes of this regulation, physician laboratories that perform any tests on referral from other physicians also are small entities. Individuals and states are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any final rule that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of Section 1102(b) of the Act, we define a small rural hospital as a hospital which is located outside a metropolitan statistical area and has fewer than 50 beds.

We do not believe that the provisions of this regulation constitute a major rule. However, because we expect that this regulation could have a significant impact on some laboratories, may affect some personnel employed by laboratories, and may have an effect on some States regarding State requirements, licensure and certification of laboratories, we have performed the following analysis voluntarily.

B. Anticipated Effects

1. Affected Entities

There are approximately 12,000 Federally regulated laboratories located in hospitals and independent settings. These facilities range from large medical centers and corporate-operated independent laboratories to small, independent laboratories and physician's office laboratories.

Although not small entities, we expect States to be affected by some additional administrative burden because they may have to adapt or establish a methodology for assessment of PT requirements and ensure compliance with these requirements. States may have to make more recommendations for termination of Medicare approval if the PT standards are not met.

We expect entities providing PT programs to be affected because of program changes that may be necessary in order to meet the criteria for an approved PT program and additional documentation required to perform in the Federal program.

2. Cost/Savings

We expect our standards to be achievable by the majority of

laboratories although some may have to incur costs to achieve the required compliance with PT standards. Depending upon the actual costs in upgrading a specific lab to meet PT standards, the charges of that laboratory for its services may rise to offset the costs of improvements. However, we believe that in an area with sufficient competition, including that from physicians' office laboratories, the charges for services will remain stable. Therefore, since charge increases are unlikely, we assume that laboratories will seek to minimize cost increases through increased efficiencies. The regulation provides increased flexibility over existing regulations to permit different approaches to achieving efficiencies.

This final regulation will expand Medicare coverage from physicians' office laboratories receiving 100 or more referrals to those laboratories receiving any test on referrals. This change may create a slight increase in the number of laboratories requiring Medicare approval.

We expect that some physicians' office laboratories will seek Medicare approval and thus comply with Medicare requirements to be reimbursed for referral tests. We also expect that those physician office laboratories that may incur a substantial increase in costs to meet these requirements may increase their charges or may elect to stop doing tests on referral.

There may also be additional increases in the purchase of automated laboratory equipment and computers by laboratories attempting to achieve satisfactory performance in proficiency testing.

3. Proficiency Testing Effects

This regulation establishes consistent PT requirements based on data from professional organizations that operate PT programs. We will require specific minimum PT passing scores for each specialty and subspecialty. Currently, passing levels for PT are set by each State and the levels vary. We expect the PT standards to enable us to identify and take consistent action against Medicare and CLIA laboratories whose PT performances are below the range of acceptability achieved by the vast majority of laboratories. A laboratory's poor PT performance would result in a denial of Medicare or Medicaid payment for a failed specialty or subspecialty of testing or in revocation of CLIA licensure.

Even though we lack definitive data, we do not expect this regulation to affect most laboratories adversely because most laboratories already participate in PT, both for their own benefit and because Medicare requires it. However, laboratories in States with less rigorous proficiency testing program standards than we will require would be the most likely to be adversely affected. We also expect the number of tests for which payment is denied by the Medicare and Medicaid programs for payment purposes to increase for those laboratories that do not improve to our designated performance level. This will occur as a result of the laboratory's approval being terminated for unsuccessful PT performance, which means that laboratories will not be paid for tests categorized in the terminated specialty or subspecialty of services.

Some laboratories may incur greater costs to achieve compliance with the required PT standards than others because of the costs that would be incurred to improve their quality control activities and quality assurance programs.

If a laboratory's PT performance is determined to be unsuccessful, payment will not be made for tests in the failed specialty or subspecialty. We expect the number of laboratories not receiving payment to increase. However, we also expect the quality of laboratory services to improve as a result of implementation of these standards.

At present, Medicare and CLIA laboratories are not required to participate in PT programs for cytology, because no such program has been established. This final regulation will establish national standards for cytology proficiency testing. This may mean additional expense for those laboratories that have to participate in a cytology PT program for the first time or incur additional costs in order to perform successfully in the cytology PT program.

4. Quality Control/Quality Assurance

This final regulation includes an update of quality control requirements to account for changes in technology and instrumentation that have occurred in the laboratory field since 1974. Laboratories would be required to implement their own quality assurance programs that they would be expected to follow. As a result of this regulation, laboratory directors will be required to assess laboratory performance and staff competency.

We expect this regulation to improve laboratory testing in terms of the quality of the end result or outcome while removing many of the process requirements that current regulations specify to achieve that outcome. The laboratory would have more discretion over what type of internal controls, methodology, and equipment (such as computerized rather than manual equipment) are necessary to ensure that the required quality control standards are met.

5. Personnel Standards

The final regulation makes no change in current personnel requirements related to qualifications of individuals. However, we have specified that laboratories must evaluate the competency of employees on an on-going basis. The additional requirement for laboratories to assess personnel performance should reduce laboratory testing errors and improve the quality of test results.

6. Conclusion

We believe that these changes will result in clearer, more uniformly applied criteria for determining acceptability of laboratory performance. We expect some laboratories to incur costs to upgrade their performance. We expect these costs to be somewhat offset by savings from removal of detailed process requirements. Overall benefits, in terms of consistent laboratory requirements and improved quality will increase benefits to patients and will more than offset the costs of upgrading and improvements.

We conclude, based on the analysis above, that the final rule is not a major rule under Executive Order 12291. Although some laboratories will be adversely affected, we believe that benefits to society will outweigh the adverse effects. We expect most laboratories not to incur substantial costs to comply with our conditions. The Secretary certifies that this final regulation will not have a significant impact on the operations of a substantial number of small rural hospitals.

VI. Paperwork Reduction Act

Sections 493.701, 493.801, 493.823, 493.825, 493.827, 493.829, 493.831, 493.833, 493.835, 493.837, 493.841, 493.843, 493.845, 493.847, 493.851, 493.859, 493.861, 493.863, 493.865, 493.901, 493.903, 493.911, 493.913, 493.915, 493.917, 493.919, 493.923, 493.925, 493.931, 493.933, 493.937, 493.939, 493.941, 493.945, 493.959, 493.1101, 493.1209, 493.1211, 493.1213, 493.1215, 493.1217, 493.1219, 493.1221, 493.1223, 493.1235, 493.1257, 493.1259, 493.1265, 493.1267, 493.1277, 493.1285, 493.1429, 493.1501, 493.1601, 493.1704, 493.1708, 493.1710 of this rule contain information collection requirements subject to the Paperwork Reduction Act. These sections are being revised and recodified into a new part in order to simplify and unify the health

and safety requirements, with a single set of regulations for the three programs. Reporting burden for these collections of information is estimated to vary from 0 minutes up to 4 hours per response. A notice will be published in the Federal Register when approval is obtained. Organizations and individuals desiring to submit comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, may submit them to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

VII. Response to Comments

Because of the impact these regulations will have on clinical laboratories and because of the Department's continuing regulatory responsibilities, we are interested in receiving additional comments on this final rule. We will accept these comments for 60 days after the date of publication.

Because of the large number of items of correspondence we normally receive on a Final Rule with comment, we are not able to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date and time specified in the "DATES" section of this preamble, and, if we proceed with a final rule, we will respond to the comments in the preamble of that rule.

VIII. List of Subjects

42 CFR Part 74

Administrative practice and procedure, Health, Laboratories, Reporting and recordkeeping requirements.

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Nursing homes, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 416

Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 440

Grant programs—health, Medicaid.

42 CFR Part 482

Hospitals, Medicaid, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 483

Grant programs—health, Health facilities, Health professions, Health records, Medicaid, Nursing homes, Nutrition, Reporting and recordkeeping requirements, Safety.

42 CFR Part 488

Health facilities, Survey and certification, Forms and guidelines.

42 CFR Part 493

Laboratories, Medicare, Medicaid, Health facilities, Reporting and recordkeeping requirements.

Title 42 of the Code of Federal Regulations is amended, as set forth below:

CHAPTER I—PUBLIC HEALTH SERVICE, DEPARTMENT OF HEALTH AND HUMAN SERVICES

PART 74—CLINICAL LABORATORIES

I. Chapter I is amended by removing part 74 and reserving it.

PART 74—[Reserved]

CHAPTER IV—HEALTH CARE FINANCING ADMINISTRATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES

II. Chapter IV is amended as set forth below:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

A. Part 405 is amended as follows:

Subpart E—Criteria for Determination of Reasonable Charges; Reimbursement for Services of Hospital Interns, Residents, and Supervising Physicians

1. Subpart E is amended as follows:

a. The authority citation for subpart E continues to read as follows:

Authority: Secs. 1102, 1814(b), 1832, 1833(a), 1842 (b) and (h), 1861 (b) and (v), 1862(a)(14), 1866(a), 1871, 1881, 1886, 1887, and 1889 of the Social Security Act as amended (42 U.S.C. 1302, 1395f(b), 1395k, 1395l(a), 1395u (b) and (h), 1395x (b) and (v), 1395y(a)(14), 1395cc(a), 1395hh, 1395rr, 1395ww, 1395xx, and 1395zz).

§ 405.556 [Amended]

b. In paragraph (c) of § 405.556, the cross-reference to § 405.1310(a) is changed to § 488.52.

2. Subpart K is amended as follows:

a. The authority citation for subpart K continues to read as follows:

Authority: Secs. 1102, 1814, 1832, 1833, 1861, 1863, 1865, 1866, 1871 of the Social Security Act; 42 U.S.C. 1302, 1395f, 1395k, 13951, 1395x, 1395z, 1395bb, 1395cc, 1395hh.

b. Section 405.1128 is revised to read as follows:

§ 405.1128 Condition of participation—laboratory and radiologic services.

The skilled nursing facility has provision for promptly obtaining required laboratory, x-ray, and other diagnostic services.

(a) *Standard: Provision for services.* (1) If the skilled nursing facility furnishes its own x-ray services, it must meet the applicable conditions established for certification of hospitals in § 482.26 of this chapter. If the facility does not provide x-ray services, it makes arrangements to obtain these services from a physician's office, a participating hospital or skilled nursing facility, or a portable x-ray supplier.

(2) If the skilled nursing facility furnishes its own laboratory services, it must meet the applicable conditions established for certification of hospitals and for approval of laboratories found in §§ 482.27 and part 493 of this chapter, respectively. If the facility does not provide laboratory services, it makes arrangements to obtain these services from a participating hospital or skilled nursing facility, or a laboratory meeting the requirements of part 493 of this chapter.

(3) All x-ray and laboratory services are provided only on the orders of the attending physician, who is notified promptly of the findings. The facility assists the patient, if necessary, in arranging for transportation to and from the source of service. Signed and dated reports of a clinical laboratoy, x-ray, and other diagnostic services are filed with the patient's medical record.

(b) *Standard: Blood and blood products.* Blood handling and storage facilities are safe, adequate, and properly supervised. If the facility provides for maintaining and transfusing blood and blood products, it meets the conditions established in §§ 493.301 through 493.315 of this chapter. If the facility does not provide its own facilities but does provide transfusion services alone, it meets at least the requirements of §§ 493.305, 493.307, 493.309, and 493.315 of this chapter.

Subpart M—[Reserved]

3. Subpart M (consisting of §§ 405.1310 through 405.1317) is removed and reserved and the table of contents is amended to reflect this change.

Subpart U—Conditions for Coverage of Suppliers of End-Stage Renal Disease (ESRD) Services

4. Part 405, subpart U is amended as follows:

a. The authority citation for subpart U continues to read as follows:

Authority: Secs. 1102, 1861, 1862(a), 1871, 1874, and 1881 of the Social Security Act (42 U.S.C. 1302, 1395x, 1395y(a), 1395hh, 1395kk, and 1395rr).

b. The definition of histocompatibility testing in § 405.2102 is revised to read as follows:

§ 405.2102 Definitions.

* * * * *

Histocompatibility testing. Laboratory test procedures which determine compatibility between a potential organ donor and a potential organ transplant recipient.

* * * * *

c. Paragraph (b) of 405.2163 is revised to read as follows:

§ 405.2163 Condition: Minimal service requirements for a renal dialysis facility or renal dialysis center.

* * * * *

(b) *Standard: Laboratory services.* The dialysis facility makes available laboratory services (other than the specialty of tissue pathology and histocompatibility testing), to meet the needs of the ESRD patient. Laboratory services are performed by a laboratory that meets the requirements of part 493 of this chapter.

d. Paragraph (d) of § 405.2171 is revised to read as follows:

§ 405.2171 Condition: Minimal services requirements for a renal transplantation center.

* * * * *

(1) (d) *Standard: laboratory services.* The Renal Transplantation Center makes available, directly or under arrangements, laboratory services to meet the needs of ESRD patients. Laboratory services are performed in a laboratory facility approved in accordance with part 493 of this chapter to participate in the Medicare program and, for histocompatibility testing purposes, also meets §§ 493.1201 through 493.1221, 493.1237, 493.1265, 493.1269 and 493.1421(j) of this chapter and, when services are furnished in the subspecialty of histopathology, §§ 493.1421(g) and 493.1259 of this chapter.

(2) Laboratory services for cross-matching of recipient serum and donor lymphocytes for preformed antibodies by an acceptable technique are available on a 24-hour emergency basis.

PART 416—AMBULATORY SURGICAL SERVICES

B. Part 416 is amended as follows:

1. The authority citation for part 416 continues to read as follows:

Authority: Secs. 1102, 1832(a)(2), 1833, 1863 and 1864 of the Social Security Act (42 U.S.C. 1302, 1395k(a)(2), 1395l, 1395z and 1395aa).

Subpart B—Ambulatory Surgical Centers: Coverage and Benefits

2. Section 416.49 is revised to read as follows:

§ 416.49 Condition for coverage—Laboratory and radiologic services.

The ASC must have procedures for obtaining routine and emergency laboratory services from a laboratory meeting requirements of part 493 of this chapter. The ASC must have procedures for obtaining radiologic services from a Medicare-approved facility to meet the needs of patients. The laboratory offering the services must be a laboratory approved in accordance with part 493 of this chapter.

PART 440—SERVICES: GENERAL PROVISIONS

C. Part 440 as amended as follows:

1. The authority citation for part 440 continues to read as follows:

Authority: 42 U.S.C. 1302.

Subpart A—Definitions

2. Section 440.30(a) is revised to read as follows:

§ 440.30 Other laboratory and X-ray services.

"Other laboratory and X-ray services" means professional and technical laboratory and radiological services—

(a) Ordered and provided by or under the direction of a physician or other licensed practitioner of the healing arts within the scope of his practice as defined by State law or ordered and billed by a physician but provided by an independent laboratory as defined in § 488.52 of this chapter.

* * * * *

PART 482—CONDITIONS OF PARTICIPATION FOR HOSPITALS

D. Part 482 is amended as follows:

1. The authority citation continues to read as follows:

Authority: Secs. 1102, 1814(a)(6), 1861 (e), (f), (k), (r), (v)(1)(G), and (z), 1864, 1871, 1883, 1886, 1902(a)(30), and 1905(a) of the Social Security Act (42 U.S.C. 1302, 1395f(a)(6), 1395x (e), (f), (k), (r), (v)(1)(G), and (z), 1395aa, 1395hh, 1395tt, 1395ww, 1396a(a)(30), and 1396d(a)).

Subpart C—Basic Hospital Functions

2. Section 482.27 is revised as follows

§ 482.27 Condition of participation: Laboratory services.

(a) *General.* The hospital must maintain, or have available, adequate laboratory services to meet the needs of its patients. The hospital must ensure that all laboratory services provided to its patients are performed in a facility certified in accordance with part 493 of this chapter.

(b) *Standard: Adequacy of laboratory services.* The hospital must have laboratory services available, either directly or through a contractual agreement with a laboratory, that meets the requirements of part 493 of this chapter.

(1) Emergency laboratory services must be available 24 hours a day.

(2) A written description of services provided must be available to the medical staff.

(3) The laboratory must make provision for proper receipt and reporting of tissue specimens.

(4) The medical staff and a pathologist must determine which tissue specimens require a macroscopic (gross) examination and which require both macroscopic and microscopic examinations.

PART 483—CONDITIONS OF PARTICIPATION AND REQUIREMENTS FOR LONG TERM CARE FACILITIES

E. Part 483 is amended as follows:

1. The authority citation for part 483 continues to read as follows:

Authority: Sec. 1102, 1819(a)–(d), 1861 (j) and (1), 1863, 1871, 1902(a)(28), 1905(a) and (c), and 1919 (a)–(d) of the Social Security Act (42 U.S.C. 1302, 1395(i)(3) (a)–(d), 1395x (j) and (1), 1395hh, 1396a(a)(28), and 1396d(c) and 1396r (a)–(d)), unless otherwise noted.

Subpart B—Requirements for Long Term Care Facilities

2. Section 483.75(l) is revised to read as follows:

§ 483.75 Level A requirement: Administration.

* * * * *

(l) *Level B requirement: Laboratory services.* (1) The facility must provide or obtain clinical laboratory services to meet the needs of its residents. The facility is responsible for the quality and timeliness of the services.

(i) If the facility provides its own laboratory services, the services must meet the applicable conditions for coverage of the services furnished by laboratories specified in part 493 of this chapter;

(ii) If the facility provides blood bank and transfusion services, it must meet

the requirements for laboratories specified in part 493 of this chapter.

(iii) If the laboratory chooses to refer specimens for testing to another laboratory, the referral laboratory must be approved or licensed to test specimens in the appropriate specialties and/or subspecialties of service in accordance with part 493 of this chapter;

(iv) If the facility does not provide laboratory services on site, it must have an agreement to obtain these services only from a laboratory that meets the requirements of part 493 of this chapter.

(2) The facility must—

(i) Provide or obtain laboratory services only when ordered by the attending physicians;

(ii) Promptly notify the attending physician of the findings;

(iii) Assist the resident in making transportation arrangements to and from the source of service, if the resident needs assistance.

(iv) File in the resident's clinical record signed and dated reports of laboratory services.

Subpart D—Conditions of Participation for Intermediate Care Facilities for the Mentally Retarded

3. Section 483.460(n) is revised to read as follows:

§ 483.60 Condition of participation: Health care services.

* * * * *

(n) *Standard: Laboratory services.* (1) For purposes of this section, "laboratory" means an entity for the biological, biophysical, immunohematological microbiological, serological, chemical, hematological, cytological, pathological or other examination of materials derived from the human body, for the purpose of providing information for the diagnosis, prevention, or treatment of any disease or the assessment of the health of human beings.

(2) If a facility chooses to provide laboratory services, the laboratory must meet the requirements specified in part 493 of this chapter.

(3) If the laboratory chooses to refer specimens for testing to another laboratory, the referral laboratory must meet the requirements of part 493 of this chapter.

PART 488—[AMENDED]

F. Part 488 is amended as follows:

1. The authority citation for part 488 continues to read as follows:

Authority: Secs. 1102, 1814, 1861, 1865, 1866, 1871, 1880, 1881 and 1883 of the Social Security Act (42 U.S.C. 1302, 1395f, 1395x, 1395bb, 1395cc, 1395hh, 1395qq, 1395rr and 1395tt).

2. Section 488.52 is revised to read as follows:

§ 488.52 Special requirements applicable to independent laboratories.

(a) The services of a qualified independent laboratory for which reimbursement may be made under the supplementary medical insurance program "relate only to diagnostic tests performed in an independent laboratory. Diagnostic laboratory tests for purposes of section 1861(s) (13) and (14) of the Act and for purposes of subparts A, B and C of this part shall include only those clinical and anatomical pathology diagnostic tests and procedures included in specialties and subspecialties listed in § 493.2 under "laboratory". Such diagnostic tests performed by out-of-hospital physicians whose primary practice is directly attending patients and/or consultation (i.e., furnishing an attending physician with an opinion about a patient's condition or diagnosis), even though conducted partly through diagnostic procedures, are not considered services of an independent laboratory except when they are done on referral.

(b) For purposes of this section, an independent laboratory is a facility meeting the requirements of part 493 of this chapter and maintained for the purpose of performing laboratory testing. An independent laboratory is not a facility that is controlled, managed or supervised by a hospital as defined by section 1861(e) of the Act, a hospital's organized medical staff, or the attending or consulting physician's office.

F. A new part 493 is added as follows:

PART 493—LABORATORY REQUIREMENTS

Subpart A—General Provisions

Sec.
493.1 Basis and scope.
493.2 Definitions.

Subpart B–F [Reserved]

Subpart G—Administration

493.701 Condition: Compliance with Federal, State and local laws.

Subpart H—Participation in Proficiency Testing

493.801 Condition: Enrollment and testing of samples.
493.803 Condition: Successful participation.
493.805 Condition: Satisfactory participation before initial approval or licensure.
493.807 Condition: Reinstatement after failure to participate successfully.

Proficiency Testing by Specialty and Subspecialty

493.821 Condition: Microbiology.
493.823 Standard; Bacteriology.
493.825 Standard; Mycobacteriology.
493.827 Standard; Mycology.
493.829 Standard; Parasitology.
493.831 Standard; Virology.
493.833 Condition: Diagnostic immunology.
493.835 Standard; Syphilis serology.
493.837 Standard; General immunology.
493.839 Condition: Chemistry.
493.841 Standard; Routine chemistry.
493.843 Standard; Endocrinology.
493.845 Standard; Toxicology.
493.847 Standard; Urinalysis.
493.849 Condition: Hematology.
493.851 Standard; Hematology.
493.853 Condition: Pathology.
493.855 Standard; Cytology: Gynecologic examinations.
493.857 Condition; Immunohematology.
493.859 Standard; ABO blood group and Rh_o (D) group.
493.861 Standard; Unexpected antibody detection.
493.863 Standard; Compatibility testing.
493.865 Standard; Antibody identification.

Subpart I—Proficiency Testing Programs

493.901 Approval of proficiency testing programs.
493.903 Administrative responsibilities.
493.905 Disapproved proficiency testing programs.
493.907 Process for updating proficiency testing programs.

Proficiency Testing Programs by Specialty and Subspecialty

493.909 Microbiology.
493.911 Bacteriology.
493.913 Mycobacteriology.
493.915 Mycology.
493.917 Parasitology.
493.919 Virology.
493.921 Diagnostic immunology.
493.923 Syphilis serology.
493.927 General immunology.
493.929 Chemistry.
493.931 Routine chemistry.
493.933 Endocrinology.
493.937 Toxicology.
493.939 Urinalysis.
493.941 Hematology (including routine hematology and coagulation).
493.945 Cytology: Gynecologic examinations.
493.959 Immunohematology.

Subpart J—Patient Test Management

493.1101 Condition: Patient test management

Subpart K—Quality Control

493.1201 Condition: General quality control.
493.1203 Standard; Facilities.
493.1205 Standard; Adequacy of methods and equipment.
493.1207 Standard; Temperature and humidity monitoring.
493.1209 Standard; Labeling of testing supplies.
493.1211 Standard; Procedure manual.
493.1213 Standard; Equipment maintenance and function checks.
493.1215 Standard; Validation of methods.

493.1217 Standard: Frequency of quality control.
493.1219 Standard: Remedial actions.
493.1221 Standard: Quality control—records.
493.1223 Condition: Quality control—specialties and subspecialties.
493.1225 Condition: Microbiology.
493.1227 Standard: Bacteriology.
493.1229 Standard: Mycobacteriology.
493.1231 Standard: Mycology.
493.1233 Standard: Parasitology.
493.1235 Standard: Virology.
493.1237 Condition: Diagnostic immunology.
493.1239 Standard: Syphilis serology.
493.1241 Standard: General immunology.
493.1243 Condition: Chemistry.
493.1245 Standard: Routine chemistry.
493.1247 Standard: Endocrinology.
493.1249 Standard: Toxicology.
493.1251 Standard: Urinalysis.
493.1253 Condition: Hematology.
493.1255 Condition: Pathology.
493.1257 Standard: Cytology.
493.1259 Standard: Histopathology.
493.1261 Standard: Oral pathology.
493.1263 Condition: Radiobioassay.
493.1265 Condition: Histocompatibility.
493.1267 Condition: Clinical cytogenetics.
493.1269 Condition: Immunohematology.
493.1271 Condition: Transfusion services and bloodbanking.
493.1273 Standard: Immunohematological collection, processing, dating periods, labeling and distribution of blood and blood products.
493.1275 Standard: Blood storage facilities.
493.1277 Standard: Arrangement for services.
493.1279 Standard: Provision of testing.
493.1281 Standard: Storage facilities.
493.1283 Standard: Retention of transfused blood.
493.1285 Standard: Investigation of transfusion reactions.

Subpart L—Personnel

493.1401 General.
493.1402 Definitions.

Hospital-Based Laboratories

493.1403 Hospital personnel.

SNF Laboratories

493.1405 Skilled nursing facility laboratory personnel.

ICF/MR Laboratories

493.1407 ICF/MR laboratory services.

Independent Laboratories

493.1413 Condition: Independent laboratories; laboratory director.
493.1415 Standard: Laboratory director, qualifications.
493.1417 Standard: Laboratory director responsibilities.
493.1419 Condition: Independent laboratories; technical supervision.
493.1421 Standard: Technical supervisor qualifications.
493.1423 Standard: Technical supervisor responsibilities.
493.1425 Condition: Independent laboratories; general supervisor.
493.1427 Standard: General supervisor qualifications.
493.1429 Standard: General supervisor responsibilities.
493.1431 Condition: Independent laboratories; technical personnel.
493.1433 Standard: Technologist qualifications.
493.1435 Standard: Technologist duties.
493.1437 Standard: Cytotechnologist qualifications.
493.1439 Standard: Cytotechnologist responsibilities.
493.1441 Standard: Technician qualifications.
493.1443 Standard: Technician duties.

Subpart M—Quality Assurance

493.1501 Condition: Quality Assurance

Subpart N—Inspection

493.1601 Condition: Inspection.

Subpart O—CLIA Requirements

493.1701 Basis and scope.
493.1702 Definitions.
493.1704 Licensure application and issuance.
493.1706 Revocation, suspension and limitation of licenses and letters of exemption; notice
493.1708 Approval of accreditation and State licensure programs; notice.
493.1710 Letter of exemption.

Authority: Secs. 1102, 1861(e), the sentence following 1861(s)(11), 1861(s)(12) and 1861(s)(13) of the Social Security Act and sec. 353 of the Public Health Service Act (42 U.S.C. 263a, 1302, the sentence following sec. 1395x(s)(11), and sec. 1395x(s) (12) and (13).)

Subpart A—General Provisions

§ 493.1 Basis and scope.

This part sets forth the conditions that laboratories must meet in order for their tests to be approved for coverage under the Medicare and Medicaid programs and in order for laboratories to be licensed under CLIA to perform testing on specimens received in interstate commerce. It implements sections 1861 (e) and (j), the sentence following section 1861(s)(13), sections 1861(s) (14) and (15), and 1902 of the Social Security Act, and section 353 of the Public Health Service Act. This part applies to: Laboratories located in physicians' offices (including group medical practices) that perform any tests on referred specimens; hospitals meeting at least the requirements specified in section 1861(e) of the Act to qualify for emergency hospital services under section 1814 of the Act; skilled nursing facilities; intermediate care facilities for the mentally retarded; rural health clinics that perform tests on referral; ambulatory surgical centers except as provided in § 416.49 of this chapter; end-stage renal disease facilities except with respect to the services prescribed in § 405.2163 of this chapter; and independent laboratories, as defined in § 488.52 of this chapter. It does not apply to laboratories operated by a rural health clinic, HMO, or physician's office exclusively for its own patients.

§ 493.2 Definitions.

As used in this part—

Accredited laboratory means a laboratory (including a laboratory in a hospital) accredited by, with respect to hospitals, the Joint Commission on the Accreditation of Healthcare Organizations or the American Osteopathic Association and, with respect to interstate licensed laboratories, the Laboratory Accreditation Program of the College of American Pathologists, or any other private non-profit organization that has been approved by HHS as provided in section 353 of the Public Health Service Act.

Authorized person means a person authorized under section 1861(r) of the Act to order and to receive test results. With respect to tests performed on individuals not receiving or seeking Medicare reimbursement, an authorized person is an individual not excluded under State law or by Medicaid.

Challenge means, for quantitative tests, an assessment of the amount of substance or analyte present in a sample. For qualitative tests, a challenge means the determination of the presence or the absence of an analyte, organism, or substance in a sample.

CLIA means the Clinical Laboratories Improvement Act of 1967.

Independent laboratory. An independent laboratory performing diagnostic texts means one which is independent both of the attending or consulting physician's office and of a hospital which meets at least the requirements specified in section 1861(e) of the Act to qualify for payment for emergency hospital services under section 1814(d) of the Act. A laboratory which is located in a hospital which meets at least the requirements specified in section 1861(e) of the Act to qualify for payment for emergency hospital services under section 1814(d) of the Act or, if outside the hospital, is operated under the supervision of the hospital or its organized medical staff, and serves the hospital's patients, is not an independent laboratory. Services furnished by out-of-hospital laboratories under the direction of a physician, such as a pathologist, are considered to be subject to the conditions where the physician holds himself and the facilities of his office out to other

physicians as being available for the performance of diagnostic tests. A laboratory maintained by a physician for performing diagnostic tests for his own patients is exempt from the conditions unless such laboratory accepts any laboratory tests on referral.

Laboratory means a facility for the biological, microbiological, serological, chemical, immunohematological hematological, biophysical, cytological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of any disease or impairment of, or the assessment of the health of, human beings. These examinations also include screening procedures to determine the presence or absence of various substances or organisms in the body. Facilities only collecting specimens or only serving as a mailing service and not performing testing are not considered laboratories.

Kit is all components of a test which are packaged together.

Referee laboratory means a laboratory that has had a record of satisfactory performance for all testing events for at least one year in a specific test specialty or subspecialty and has been nominated by an approved proficiency testing program and approved by HHS as a referee laboratory for that specialty or subspecialty.

Run means an interval within which the accuracy and precision of a testing system is expected to be stable but must not exceed a period of 24 hours and must not be less frequent than the manufacturer's specification for including controls and calibrators.

Sample, in proficiency testing, means the material contained in a vial, on a slide, or other unit that contains material to be tested by proficiency testing program participants. When possible, samples are of human origin.

Target value means either the mean of all responses after removal of outliers (those responses greater than 3 standard deviations from the original mean) or the mean established by definitive or reference methods acceptable for use in the National Reference System by the National Committee for Clinical Laboratory Standards. In instances where definitive or reference methods are not available, a comparative method may be used. If the method group is less than 20 participants, "target value" means the overall mean after outlier removal (as defined above) unless acceptable scientific reasons are available to indicate that such an evaluation is not appropriate.

Subparts B-F [Reserved]

Subpart G—Administration

§ 493.701 Condition: Compliance with Federal, State and local laws.

The laboratory must be in compliance with all applicable Federal, State and local laws.

(a) *Standard; Federal laws.* The laboratory must be in compliance with applicable Federal laws related to the health and safety of individuals whose specimens are submitted to it for testing.

(b) *Standard; State licensure.* The laboratory must be (1) licensed if State or applicable local law requires licensure; or (2) approved as meeting standards for licensing established by the agency of the State or locality responsible for licensing laboratories.

(c) *Standard; licensed staff.* All personnel, including those individuals who collect specimens, must be licensed or meet other applicable standards that are required by State and local laws.

(d) *Standard; fire safety.* The laboratory must comply with State and local laws related to fire safety.

(e) *Standard; environment and health.* The laboratory must comply with Federal, State and local laws relating to the storage, handling and disposal of chemical, biological and radioactive materials.

Subpart H—Participation in Proficiency Testing

§ 493.801 Condition: Enrollment and testing of samples.

A laboratory must enroll in a proficiency testing program that meets the criteria in subpart I of this part and is approved by HHS. The laboratory must enroll in such a program for each of the specialties and subspecialties for which it seeks or has approval for Medicare or Medicaid participation or for licensure under CLIA. The laboratory must test the samples in the same manner as patients' specimens.

(a) *Standard; Enrollment.* The laboratory must notify HHS of the approved program or programs in which it chooses to participate to meet proficiency testing requirements of this subpart. The laboratory must—

(1) Designate the program to be used for each specialty and subspecialty to determine compliance with this subpart if the laboratory participates in more than one proficiency testing program approved by HHS;

(2) For each specialty and subspecialty, participate in one approved proficiency testing program for four quarters before designating a different program and must notify HHS before any change in designation; and

(3) Authorize the proficiency testing program to release to HHS all data required by HHS to determine the laboratory's compliance with this subpart.

(b) *Standard; Testing of proficiency testing samples.* The laboratory must examine or test, as applicable, the proficiency testing samples it receives from the proficiency testing program in the same manner as it tests patient specimens.

(1) The samples must be examined or tested with the laboratory's regular patient workload by personnel who routinely perform the testing in the laboratory, using the laboratory's routine methods. The individual testing or examining the samples must attest to the routine integration of the samples into the patient workload using the laboratory's routine methods.

(2) The laboratory may not test the samples with greater frequency of testing than it routinely tests patient samples.

(3) A laboratory that performs tests on proficiency testing samples may not engage in any interlaboratory communications pertaining to the results of proficiency testing sample(s). Laboratories with multiple testing sites or separate locations may not engage in any communications or discussions across sites/locations concerning proficiency testing results.

(4) The laboratory must not send the samples or portions of samples to another laboratory for analysis. Any laboratory that HHS determines intentionally referred its proficiency testing samples to another laboratory for analysis will have its approval and/or license revoked for at least one year. Any laboratory that receives proficiency testing samples from another laboratory for testing must notify HHS of the receipt of those samples.

(5) The laboratory must document the handling, preparation, processing, examination, and each step in the testing and reporting of results for all proficiency testing samples and must maintain a copy of all records, including a copy of the proficiency testing program report forms used by the laboratory to record proficiency testing results, for a minimum of two years from the date of the proficiency testing event.

§ 493.803 Condition: Successful participation.

(a) Each laboratory must successfully participate in a proficiency testing program approved by HHS, if applicable, as described in subpart I of

this part for each specialty and subspecialty in which the laboratory seeks Medicare approval or licensure under CLIA.

(b) If the laboratory fails to participate successfully in proficiency testing for a given specialty or subspecialty, as defined in this section, the laboratory's Medicare approval or licensure under CLIA, or both, will be terminated, revoked, suspended or limited for the specialty or subspecialty.

(c) If the laboratory fails to perform successfully for the challenges on a given analyte or test procedure, as defined in this section, the laboratory's Medicare approval or licensure under CLIA, or both, for the specialty or subspecialty in which the analyte is categorized will be terminated, revoked, suspended or limited.

§ 493.805 Condition: Satisfactory participation before initial approval or licensure.

Laboratories must satisfactorily participate in one proficiency testing event for each specialty and subspecialty before initial Medicare approval or CLIA licensure of the specialty or subspecialty.

§ 493.807 Condition: Reinstatement after failure to participate successfully.

(a) If a laboratory fails to participate successfully in one or more specialties or subspecialties, or voluntarily withdraws its participation from Medicare or Medicaid or its licensure under CLIA for the failed specialty or subspecialty, the laboratory's participation or licensure for the applicable specialty or subspecialty will be terminated. The laboratory must then demonstrate sustained successful performance on three consecutive proficiency testing events, at least one of which will be on-site proficiency testing, before HHS will consider it for reinstatement in the specialty or subspecialty.

(b) The termination period for Medicare participation or period for revocation of licensure under CLIA for the failed specialty or subspecialty is for a period of not less than six months from the date of termination or revocation.

Proficiency Testing by Specialty and Subspecialty

§ 493.821 Condition: Microbiology.

The specialty of microbiology includes, for purposes of proficiency testing, the subspecialties of bacteriology, mycobacteriology, mycology, parasitology and virology.

§ 493.823 Standard; Bacteriology.

(a) Failure to attain an overall testing event score of at least 80 percent is unsatisfactory performance.

(b) Failure to participate in a testing event is unsatisfactory performance and results in a score of 0 for the testing event. Consideration may be given to those laboratories failing to participate in a testing event only if—

(1) Patient testing was suspended during the timeframe allotted for testing and reporting proficiency testing results;

(2) The laboratory notifies the inspecting agency and the proficiency testing program within the timeframe for submitting proficiency testing results of the suspension of patient testing and the circumstances associated with failure to perform tests on proficiency testing samples; and

(3) The laboratory participated in the previous two proficiency testing events.

(c) Failure to return proficiency testing results to the proficiency testing program within the timeframe specified by the program is unsatisfactory performance and results in a score of 0 for the testing event.

(d) For any unsatisfactory testing event, the laboratory must undertake appropriate training and employ the technical assistance necessary to correct problems associated with a proficiency testing failure. All remedial action taken must be documented and maintained by the laboratory for two years from the date of participation in the proficiency testing event.

(e) Failure to achieve an overall testing event score of satisfactory for two consecutive testing events or two out of three consecutive testing events is unsuccessful performance.

§ 493.825 Standard; Mycobacteriology.

(a) Failure to attain as overall testing event score of at least 80 percent is unsatisfactory performance.

(b) Failure to participate in a testing event is unsatisfactory performance and results in a score of 0 for the testing event. Consideration may be given to those laboratories failing to participate in a testing event only if—

(1) Patient testing was suspended during the timeframe allotted for testing and reporting proficiency testing results;

(2) The laboratory notifies the inspecting agency and the proficiency testing program within the timeframe for submitting proficiency testing results of the suspension of patient testing and the circumstances associated with failure to perform tests on proficiency testing samples; and

(3) The laboratory participated in the previous two proficiency testing events.

(c) Failure to return proficiency testing results to the proficiency testing program within the timeframe specified by the program is unsatisfactory performance and results in a score of 0 for the testing event.

(d) For any unsatisfactory testing event, the laboratory must undertake appropriate training and employ the technical assistance necessary to correct problems associated with a proficiency testing failure. All remedial action taken must be documented and maintained by the laboratory for two years from the date of participation in the proficiency testing event.

(e) Failure to achieve an overall testing event score of satisfactory for two consecutive testing events or two out of three consecutive testing events is unsuccessful performance.

§ 493.827 Standard; Mycology.

(a) Failure to attain an overall testing event score of at least 80 percent is unsatisfactory performance.

(b) Failure to participate in a testing event is unsatisfactory performance and results in a score of 0 for the testing event. Consideration may be given to those laboratories failing to participate in a testing event only if—

(1) Patient testing was suspended during the timeframe allotted for testing and reporting proficiency testing results;

(2) The laboratory notifies the inspecting agency and the proficiency testing program within the timeframe for submitting proficiency testing results of the suspension of patient testing and the circumstances associated with failure to perform tests on proficiency testing samples; and

(3) The laboratory participated in the previous two proficiency testing events.

(c) Failure to return proficiency testing results to the proficiency testing program within the timeframe specified by the program is unsatisfactory performance and results in a score of 0 for the testing event.

(d) For any unsatisfactory testing event, the laboratory must undertake appropriate training and employ the technical assistance necessary to correct problems associated with a proficiency testing failure. All remedial action taken must be documented and maintained by the laboratory for two years from the date of participation in the proficiency testing event.

(e) Failure to achieve an overall testing event score of satisfactory for two consecutive testing events or two out of three consecutive testing events is unsuccessful performance.

§ 493.829 Standard; Parasitology.

(a) Failure to attain an overall testing event score of at least 80 percent is unsatisfactory performance.

(b) Failure to participate in a testing event is unsatisfactory performance and results in a score of 0 for the testing event. Consideration may be given to those laboratories failing to participate in a testing event only if—

(1) Patient testing was suspended during the timeframe allotted for testing and reporting proficiency testing results;

(2) The laboratory notifies the inspecting agency and the proficiency testing program within the timeframe for submitting proficiency testing results of the suspension of patient testing and the circumstances associated with failure to perform tests on proficiency testing samples; and

(3) The laboratory participated in the previous two proficiency testing events.

(c) Failure to return proficiency testing results to the proficiency testing program within the timeframe specified by the program is unsatisfactory performance and results in a score of 0 for the testing event.

(d) For any unsatisfactory testing event, the laboratory must undertake appropriate training and employ the technical assistance necessary to correct problems associated with a proficiency testing failure. All remedial action taken must be documented and maintained by the laboratory for two years from the date of participation in the proficiency testing event.

(e) Failure to achieve an overall testing event score of satisfactory for two consecutive testing events or two out of three consecutive testing events is unsuccessful performance.

§ 493.831 Standard; Virology.

(a) Failure to attain an overall testing event score of at least 80 percent is unsatisfactory performance.

(b) Failure to participate in a testing event is unsatisfactory performance and results in a score of 0 for the testing event. Consideration may be given to those laboratories failing to participate in a testing event only if—

(1) Patient testing was suspended during the timeframe allotted for testing and reporting proficiency testing results;

(2) The laboratory notifies the inspecting agency and the proficiency testing program within the timeframe for submitting proficiency testing results of the suspension of patient testing and the circumstances associated with failure to perform tests on proficiency testing samples; and

(3) The laboratory participated in the previous two proficiency testing events.

(c) Failure to return proficiency testing results to the proficiency testing program within the timeframe specified by the program is unsatisfactory performance and results in a score of 0 for the testing event.

(d) For any unsatisfactory testing event, the laboratory must undertake appropriate training and employ the technical assistance necessary to correct problems associated with a proficiency testing failure. All remedial action taken must be documented and maintained by the laboratory for two years from the date of participation in the proficiency testing event.

(e) Failure to achieve an overall testing event score of satisfactory for two consecutive testing events or two out of three consecutive testing events is unsuccessful performance.

§ 493.833 Condition: Diagnostic immunology.

The specialty of diagnostic immunology includes for purposes of proficiency testing the subspecialties of syphilis serology and general immunology.

§ 493.835 Standard; Syphilis serology.

(a) Failure to attain a score of a least 80 percent of acceptable responses for each analyte in each testing event is unsatisfactory analyte performance for the testing event.

(b) Failure to attain an overall testing event score of at least 80 percent is unsatisfactory performance.

(c) Failure to participate in a testing event is unsatisfactory performance and results in a score of 0 for the testing event. Consideration may be given to those laboratories failing to participate in a testing event only if—

(1) Patient testing was suspended during the timeframe allotted for testing and reporting proficiency testing results;

(2) The laboratory notifies the inspecting agency and the proficiency testing program within the timeframe for submitting proficiency testing results of the suspension of patient testing and the circumstances associated with failure to perform tests on proficiency testing samples; and

(3) The laboratory participated in the previous two proficiency testing events.

(d) Failure to return proficiency testing results to the proficiency testing program within the timeframe specified by the program is unsatisfactory performance and results in a score of 0 for the testing event.

(e) For any unsatisfactory analyte performance or testing event, the laboratory must undertake appropriate training and employ the technical assistance necessary to correct problems associated with a proficiency testing failure. All remedial action taken must be documented and maintained by the laboratory for two years from the date of participation in the proficiency testing event.

(f) Failure to achieve satisfactory performance for the same analyte(s) in two consecutive testing events or two out of three consecutive testing events is unsuccessful performance.

(g) Failure to achieve an overall testing event score of satisfactory for two consecutive testing events or two out of three consecutive testing events is unsuccessful performance.

§ 493.837 Standard; General immunology.

(a) Failure to attain a score of at least 80 percent of acceptable responses for each analyte in each testing event is unsatisfactory analyte performance for the testing event.

(b) Failure to attain an overall testing event score of at least 80 percent is unsatisfactory performance.

(c) Failure to participate in a testing event is unsatisfactory performance and results in a score of 0 for the testing event. Consideration may be given to those laboratories failing to participate in a testing event only if—

(1) Patient testing was suspended during the timeframe alloted for testing and reporting proficiency testing results;

(2) The laboratory notifies the inspecting agency and the proficiency testing program within the timeframe for submitting proficiency testing results of the suspension of patient testing and the circumstances associated with failure to perform tests on proficiency testing samples; and

(3) The laboratory participated in the previous two proficiency testing events.

(d) Failure to return proficiency testing results to the proficiency testing program within the timeframe specified by the program is unsatisfactory performance and results in a score of 0 for the testing event.

(e) For any unsatisfactory analyte performance or testing event, the laboratory must undertake appropriate training and employ the technical assistance necessary to correct problems associated with a proficiency testing failure. All remedial action taken must be documented and maintained by the laboratory for two years from the date of participation in the proficiency testing event.

(f) Failure to achieve satisfactory performance for the same analyte(s) in two consecutive testing events or two out of three consecutive testing events is unsuccessful performance.

(g) Failure to achieve an overall testing event score of satisfactory for two consecutive testing events or two out of three consecutive testing events is unsuccessful performance.

§ 493.839 Condition: Chemistry.

The specialty of chemistry includes for the purposes of proficiency testing the subspecialties of routine chemistry, endocrinology, toxicology and urinalysis.

§ 493.841 Standard; Routine chemistry.

(a) Failure to attain a score of at least 80 percent of acceptable responses for each analyte in each testing event is unsatisfactory analyte performance for the testing event.

(b) Failure to attain an overall testing event score of at least 80 percent is unsatisfactory performance.

(c) Failure to participate in a testing event is unsatisfactory performance and results in a score of 0 for the testing event. Consideration may be given to those laboratories failing to participate in a testing event only if—

(1) Patient testing was suspended during the timeframe allotted for testing and reporting proficiency testing results;

(2) The laboratory notifies the inspecting agency and the proficiency testing program within the timeframe for submitting proficiency testing results of the suspension of patient testing and the circumstances associated with failure to perform tests on proficiency testing samples; and

(3) The laboratory participated in the previous two proficiency testing events.

(d) Failure to return proficiency testing results to the proficiency testing program within the timeframe specified by the program is unsatisfactory performance and results in a score of 0 for the testing event.

(e) For any unsatisfactory analyte performance or testing event, the laboratory must undertake appropriate training and employ the technical assistance necessary to correct problems associated with a proficiency testing failure. All remedial action taken must be documented and maintained by the laboratory for two years from the date of participation in the proficiency testing event.

(f) Failure to achieve satisfactory performance for the same analyte(s) in two consecutive testing events or two out of three consecutive testing events is unsuccessful performance.

(g) Failure to achieve an overall testing event score of satisfactory for two consecutive testing events or two out of three consecutive testing events is unsuccessful performance.

§ 493.843 Standard; Endocrinology.

(a) Failure to attain a score of at least 80 percent of acceptable responses for each analyte in each testing event is unsatisfactory analyte performance for the testing event.

(b) Failure to attain an overall testing event score of at least 80 percent is unsatisfactory performance.

(c) Failure to participate in a testing event is unsatisfactory performance and results in a score of 0 for the testing event. Consideration may be given to those laboratories failing to participate in a testing event only if—

(1) Patient testing was suspended during the timeframe allotted for testing and reporting proficiency testing results;

(2) The laboratory notifies the inspecting agency and the proficiency testing program within the timeframe for submitting proficiency testing results of the suspension of patient testing and the circumstances associated with failure to perform tests on proficiency testing samples; and

(3) The laboratory participated in the previous two proficiency testing events.

(d) Failure to return proficiency testing results to the proficiency testing program within the timeframe specified by the program is unsatisfactory performance and results in a score of 0 for the testing event.

(e) For any unsatisfactory analyte performance or testing event, the laboratory must undertake appropriate training and employ the technical assistance necessary to correct problems associated with a proficiency testing failure. All remedial action taken must be documented and maintained by the laboratory for two years from the date of participation in the proficiency testing event.

(f) Failure to achieve satisfactory performance for the same analyte(s) in two consecutive testing events or two out of three consecutive testing events is unsuccessful performance.

(g) Failure to achieve an overall testing event score of satisfactory for two consecutive testing events or two out of three consecutive testing events is unsuccessful performance.

§ 493.845 Standard; Toxicology.

(a) Failure to attain a score of at least 80 percent of acceptable responses for each analyte in each testing event is unsatisfactory analyte performance for the testing event.

(b) Failure to attain an overall testing event score of at least 80 percent is unsatisfactory performance.

(c) Failure to participate in a testing event is unsatisfactory performance and results in a score of 0 for the testing event. Consideration may be given to those laboratories failing to participate in a testing event only if—

(1) Patient testing was suspended during the timeframe allotted for testing and reporting proficiency testing results;

(2) The laboratory notifies the inspecting agency and the proficiency testing program within the timeframe for submitting proficiency testing results of the suspension of patient testing and the circumstances associated with failure to perform tests on proficiency testing samples; and

(3) The laboratory participated in the previous two proficiency testing events.

(d) Failure to return proficiency testing results to the proficiency testing program within the timeframe specified by the program is unsatisfactory performance and results in a score of 0 for the testing event.

(e) For any unsatisfactory analyte performance or testing event, the laboratory must undertake appropriate training and employ the technical assistance necessary to correct problems associated with a proficiency testing failure. All remedial action taken must be documented and maintained by the laboratory for two years from the date of participation in the proficiency testing event.

(f) Failure to achieve satisfactory performance for the same analyte(s) in two consecutive testing events or two out of three consecutive testing events is unsuccessful performance.

(g) Failure to achieve an overall testing event score of satisfactory for two consecutive testing events or two out of three consecutive testing events is unsuccessful performance.

§ 493.847 Standard; Urinalysis.

(a) Failure to attain score of at least 80 percent of acceptable responses for each analyte in each testing event is unsatisfactory analyte performance for the testing event.

(b) Failure to attain an overall testing event score of at least 80 percent is unsatisfactory performance.

(c) Failure to participate in a testing event is unsatisfactory performance and results in a score of 0 for the testing event. Consideration may be given to those laboratories failing to participate in a testing event only if—

(1) Patient testing was suspended during the timeframe allotted for testing and reporting proficiency testing results;

(2) The laboratory notifies the inspecting agency and the proficiency testing program within the timeframe for submitting proficiency testing results of the suspension of patient testing and the circumstances associated with failure to

perform tests on proficiency testing samples; and

(3) The laboratory participated in the previous two proficiency testing events.

(d) Failure to return proficiency testing results to the proficiency testing program within the timeframe specified by the program is unsatisfactory performance and results in a score of 0 for the testing event.

(e) For any unsatisfactory analyte performance or testing event, the laboratory must undertake appropriate training and employ the technical assistance necessary to correct problems associated with a proficiency testing failure. All remedial action taken must be documented and maintained by the laboratory for two years from the date of participation in the proficiency testing event.

(f) Failure to achieve satisfactory performance for the same analyte(s) in two consecutive testing events or two out of three consecutive testing events is unsuccessful performance.

(g) Failure to achieve an overall testing event score of satisfactory for two consecutive testing events or two out of three consecutive testing events is unsuccessful performance.

§ 493.849 Condition: Hematology.

The specialty of hematology, for the purpose of proficiency testing, is not subdivided into subspecialties of testing.

§ 493.851 Standard: Hematology.

(a) Failure to attain a score of at least 80 percent of acceptable responses for each analyte in each testing event is unsatisfactory analyte performance for the testing event.

(b) Failure to attain an overall testing event score of at least 80 percent is unsatisfactory performance.

(c) Failure to participate in a testing event is unsatisfactory performance and results in a score of 0 for the testing event. Consideration may be given to those laboratories failing to participate in a testing event only if—

(1) Patient testing was suspended during the timeframe allotted for testing and reporting proficiency testing results;

(2) The laboratory notifies the inspecting agency and the proficiency testing program within the timeframe for submitting proficiency testing results of the suspension of patient testing and the circumstances associated with failure to perform tests on proficiency testing samples; and

(3) The laboratory participated in the previous two proficiency testing events.

(d) Failure to return proficiency testing results to the proficiency testing program within the timeframe specified by the program is unsatisfactory performance and results in a score of 0 for the testing event.

(e) For any unsatisfactory analyte performance or testing event, the laboratory must undertake appropriate training and employ the technical assistance necessary to correct problems associated with a proficiency testing failure. All remedial action taken must be documented and maintained by the laboratory for two years from the date of participation in the proficiency testing event.

(f) Failure to achieve satisfactory performance for the same analyte in two consecutive testing events or two out of three consecutive testing events is unsuccessful performance.

(g) Failure to achieve an overall testing event score of satisfactory for two consecutive testing events or two out of three consecutive testing events is unsuccessful performance.

§ 493.853 Condition: Pathology.

The specialty of pathology includes, for purposes of proficiency testing, the subspecialty of cytology limited to gynecologic examinations.

§ 493.855 Standard; Cytology: Gynecologic examinations.

To participate successfully in a cytology proficiency testing program for gynecologic examinations (Pap smears), the laboratory must meet the requirements of paragraphs (a) through (c) of this section.

(a) The laboratory must require each individual engaged in the examination of gynecologic preparations to be tested twice per year. To insure this biannual examination, once a year one unannounced testing event will be conducted on-site in each laboratory and no less than four announced testing events will be conducted annually in each State. HHS will designate the testing sites.

(b) An individual is determined to have failed a testing event if he or she scores less than 80 percent on a test set. For any individual who fails a proficiency testing event, the laboratory must provide him or her with immediate remedial training and education in the area of failure, document the training and education provided, and assure that all subsequent gynecologic slides are reexamined until the individual is retested and scores at least 80 percent on the next testing event. If the individual who failed the testing event is not qualified as a technical supervisor in cytology under § 493.1421(a), 493.1421(f), or 493.1403(b)(1), at least the last 500 negative slides examined by the individual before the failed testing event must be reexamined. The reexamination must be performed by an individual who achieved a score of at least 80 percent on the most recent proficiency testing event. When a technical supervisor in cytology qualified under § 493.1421(a), 493.1421(f), or 493.1403(b)(1) fails a proficiency testing event, at least the last 500 slides examined by the individual before the failed testing event must be reexamined. The reexamination must be performed by an individual who qualifies under § 493.1421(a), 493.1421(f), or 493.1403(b)(1) and achieved a score of at least 80 percent on the most recent testing event.

(c) If a laboratory fails to take required remedial actions as described in paragraph (b) of this section when one or more individuals fails a testing event, HHS will terminate the laboratory's Medicare approval for gynecologic cytology testing or revoke its licensure under CLIA, or both if applicable.

§ 493.857 Condition: Immunohematology.

The specialty of immunohematology includes four subspecialties for the purposes of proficiency testing: ABO group and Rh_o (D) group; unexpected antibody detection; compatibility testing; and antibody identification.

§ 493.859 Standard; ABO group and Rh_o (D) group.

(a) Failure to attain a score of at least 100 percent of acceptable responses for each analyte in each testing event is unsatisfactory analyte performance for the testing event.

(b) Failure to attain an overall testing event score of at least 100 percent is unsatisfactory performance.

(c) Failure to participate in a testing event is unsatisfactory performance and results in a score of 0 for the testing event. Consideration may be given to those laboratories failing to participate in a testing event only if—

(1) Patient testing was suspended during the timeframe allotted for testing and reporting proficiency testing results;

(2) The laboratory notifies the inspecting agency and the proficiency testing program within the timeframe for submitting proficiency testing results of the suspension of patient testing and the circumstances associated with failure to perform tests on proficiency testing samples; and

(3) The laboratory participated in the previous two proficiency testing events.

(d) Failure to return proficiency testing results to the proficiency testing program within the timeframe specified by the program is unsatisfactory performance and results in a score of 0 for the testing event.

(e) For any unsatisfactory analyte performance or testing event, the laboratory must undertake appropriate training and employ the technical assistance necessary to correct problems associated with a proficiency testing failure. All remedial action taken must be documented and maintained by the laboratory for two years from the date of participation in the proficiency testing event.

(f) Failure to achieve satisfactory performance for the same analyte(s) in two consecutive testing events or two out of three consecutive testing events is unsuccessful performance.

(g) Failure to achieve an overall testing event score of satisfactory for two consecutive testing events or two out of three consecutive testing events is unsuccessful performance.

§ 493.861 Standard; Unexpected antibody detection.

(a) Failure to attain an overall testing event score of at least 80 percent is unsatisfactory performance.

(b) Failure to participate in a testing event is unsatisfactory performance and results in a score of 0 for the testing event. Consideration may be given to those laboratories failing to participate in a testing event only if—

(1) Patient testing was suspended during the timeframe allotted for testing and reporting proficiency testing results;

(2) The laboratory notifies the inspecting agency and the proficiency testing program within the timeframe for submitting proficiency testing results of the suspension of patient testing and the circumstances associated with failure to perform tests on proficiency testing samples; and

(3) The laboratory participated in the previous two proficiency testing events.

(c) Failure to return proficiency testing results to the proficiency testing program within the timeframe specified by the program is unsatisfactory performance and results in a score of 0 for the testing event.

(d) For any unsatisfactory analyte performance or testing event, the laboratory must undertake appropriate training and employ the technical assistance necessary to correct problems associated with a proficiency testing failure. All remedial action taken must be documented and maintained by the laboratory for two years from the date of participation in the proficiency testing event.

(e) Failure to achieve an overall testing event score of satisfactory for two consecutive testing events or two out of three consecutive testing events is unsuccessful performance.

§ 493.863 Standard; Compatibility testing.

(a) Failure to attain an overall testing event score of at least 100 percent is unsatisfactory performance.

(b) Failure to participate in a testing event is unsatisfactory performance and results in a score of 0 for the testing event. Consideration may be given to those laboratories failing to participate in a testing event only if—

(1) Patient testing was suspended during the timeframe allotted for testing and reporting proficiency testing results;

(2) The laboratory notifies the inspecting agency and the proficiency testing program within the timeframe for submitting proficiency testing results of the suspension of patient testing and the circumstances associated with failure to perform tests on proficiency testing samples; and

(3) The laboratory participated in the previous two proficiency testing events.

(c) Failure to return proficiency testing results to the proficiency testing program within the timeframe specified by the program is unsatisfactory performance and results in a score of 0 for the testing event.

(d) For any unsatisfactory testing event, the laboratory must undertake appropriate training and employ the technical assistance necessary to correct problems associated with a proficiency testing failure. All remedial action taken must be documented and maintained by the laboratory for two years from the date of participation in the proficiency testing event.

(e) Failure to achieve an overall testing event score of satisfactory for two consecutive testing events or two out of three consecutive testing events is unsuccessful performance.

§ 493.865 Standard; Antibody identification.

(a) Failure to attain a score of at least 80 percent of acceptable responses for each analyte in each testing event is unsatisfactory analyte performance for the testing event.

(b) Failure to attain an overall testing event score of at least 80 percent is unsatisfactory performance.

(c) Failure to participate in a testing event is unsatisfactory performance and results in a score of 0 for the testing event. Consideration may be given to those laboratories failing to participate in a testing event only if—

(1) Patient testing was suspended during the timeframe allotted for testing and reporting proficiency testing results;

(2) The laboratory notifies the inspecting agency and the proficiency testing program within the timeframe for submitting proficiency testing results of the suspension of patient testing and the circumstances associated with failure to perform tests on proficiency testing samples; and

(3) The laboratory participated in the previous two proficiency testing events.

(d) Failure to return proficiency testing results to the proficiency testing program within the timeframe specified by the program is unsatisfactory performance and results in a score of 0 for the testing event.

(e) For any unsatisfactory analyte performance or testing event, the laboratory must undertake appropriate training and employ the technical assistance necessary to correct problems associated with a proficiency testing failure. All remedial action taken must be documented and maintained by the laboratory for two years from the date of participation in the proficiency testing event.

(f) Failure to achieve satisfactory performance for the same analyte(s) in two consecutive testing events or two out of three consecutive testing events is unsuccessful performance.

(g) Failure to achieve an overall testing event score of satisfactory for two consecutive testing events or two out of three consecutive testing events is unsuccessful performance.

Subpart I—Proficiency Testing Programs

§ 493.901 Approval of proficiency testing programs.

In order for a proficiency testing program to receive HHS approval, the program must be offered by a private nonprofit organization or a Federal or State agency and must, for each specialty and subspecialty for which it provides testing—

(a) Assure the quality of test samples, appropriately evaluate the testing results, and identify performance problems in a timely manner; and

(b) Demonstrate to HHS that it has—

(1) The technical ability required to—

(i) Prepare or purchase samples from manufacturers who prepare the samples in conformance with the appropriate good manufacturing practices required in 21 CFR parts 606 and 640; and

(ii) Distribute the samples, using rigorous quality control to assure that samples mimic actual patient specimens when possible and that samples are homogeneous and will be stable within the time frame for analysis by proficiency testing participants;

(2) A scientifically defensible process for determining the correct result for each challenge offered by the program;

(3) A program of sufficient annual challenge and frequency to establish

that a laboratory has met minimum performance requirements;

(4) The resources needed to provide, Statewide or nationwide, reports to regulatory agencies on individual laboratory performance on testing events, cumulative reports about laboratory performance, and reports of specific laboratory failures using grading criteria acceptable to HHS. These reports must be provided to HHS on a timely basis;

(5) Provisions to include on each proficiency testing program report form used by the laboratory to record testing event results, an attestation statement that proficiency testing samples were tested in the same manner as patient specimens with a signature block to be completed by the individual performing the test; and

(6) A mechanism for participants to notify the proficiency testing program within seven days from the scheduled date of shipment that samples have not arrived or are unacceptable for testing. The program must have provisions for replacement of samples that are lost in transit or are received in a condition that is unacceptable for testing.

(c) Meet the specific criteria for proficiency testing programs listed by specialty and subspecialty of services contained in §§ 493.901–493.959 for initial approval and thereafter provide HHS, on an annual basis, with a description of program content and grading criteria.

§ 493.903 Administrative responsibilities.

The proficiency testing program must—

(a) Issue reports in a format approved by HHS on each laboratory's performances for the individual Medicare, Medicaid or CLIA-licensed specialty or subspecialty of service within 45 days after the date by which the laboratory must report proficiency testing results to the proficiency testing program. Copies of these laboratory reports must be sent to the State survey agency at the same time reports are sent to the laboratory;

(b) Furnish to HHS cumulative reports on an individual laboratory's performance and aggregate data on Medicare approved and CLIA-licensed laboratories;

(c) Provide HHS with additional information and data upon request and submit such information necessary for HHS to conduct an annual evaluation to determine whether the proficiency testing program continues to meet the requirements of § 493.901–493.959; and

(d) Maintain records of Medicare-approved and CLIA-licensed laboratories' performance for a period of five years or such time as may be necessary for any legal proceedings.

§ 493.905 Disapproved proficiency testing programs.

If a proficiency testing program is determined by HHS to fail to meet the criteria contained in §§ 493.901–493.959 for approval of the proficiency testing program, HHS will notify the program and all laboratories that are Medicare-approved or CLIA-licensed of the nonapproval and the reasons for nonapproval.

§ 493.907 Process for updating proficiency testing programs.

HHS reviews the requirements for proficiency testing on a regular basis and considers revisions to the program based on the performance of laboratories. It will change requirements after soliciting comments from concerned groups regarding the need to modify the criteria for an approved proficiency testing program. Changes in the program may be made to incorporate new analytes, tests, or organisms of clinical significance, to delete obsolete tests, to consider deleting well-performed tests, or to improve the evaluation scheme. When HHS decides to include new challenges or evaluation criteria in future proficiency testing, it will notify all proficiency testing programs of the necessary changes in proficiency testing and require these changes to be provided by approved proficiency testing programs within two years of the notice of change.

Proficiency Testing Programs by Specialty and Subspecialty

§ 493.909 Microbiology.

The subspecialties under the specialty of microbiology for which a program may offer proficiency testing are bacteriology, mycobacteriology, mycology, parasitology and virology. Specific criteria for these subspecialties are found at § 493.911 through 493.919.

§ 493.911 Bacteriology.

(a) *Types of services offered by laboratories.* In bacteriology, for proficiency testing purposes, there are three types of laboratories:

(1) Those that interpret Gram stains, use direct antigen techniques to detect an organism, perform primary inoculation, or perform any combination of these;

(2) Those that—

(i) May use direct antigen techniques to detect an organism or isolate aerobic and anaerobic bacteria from mixed bacterial populations; and

(ii) Interpret Gram stains and perform limited identification, perform antimicrobial susceptibility tests on selected microorganisms isolated, or both; and

(3) Those that—

(i) Interpret Gram stains and are able to identify aerobic and anaerobic bacteria from mixed bacterial populations to both genus and species in most patient specimens and perform antimicrobial susceptibility tests on the microorganisms isolated; and

(ii) May use direct antigen techniques to detect an organism.

(b) *Program content and frequency of challenge.* To be approved for proficiency testing for bacteriology, the annual program must provide a minimum of five samples per testing event. There must be four testing events per year. The samples may be provided to the laboratory through mailed shipments or, at HHS' option, may be provided to HHS for on-site testing. For the types of laboratories specified in paragraph (a) of this section, an annual program must include samples that contain organisms that are representative of the six major groups of bacteria: anaerobes, Enterobacteriaceae, Gram-positive bacilli, Gram-positive cocci, Gram-negative cocci, and miscellaneous Gram-negative bacteria, as appropriate. The specific organisms included in the samples may vary from year to year. The annual program must include samples for bacterial antigens detection and bacterial isolation and identification.

(1) An approved program must, prior to each calendar year, furnish HHS with a description of samples that it plans to include in its annual program. At least 50 percent of the samples must be mixtures of the principal organism and appropriate normal flora. The program must include other important emerging pathogens (as determined by HHS) and either organisms commonly occurring in patient specimens or opportunistic pathogens. The program must include two types of samples and each type of sample must meet the 50 percent mixed culture criterion:

(i) Samples that require laboratories to report only organisms that the testing laboratory considers to be a significant pathogen that is clearly responsible for a described illness (excluding immuno-compromised patients). The program determines the reportable isolates, including antimicrobial susceptibility for any designated isolate.

(ii) Samples that require laboratories to report all organisms present. Samples must contain multiple organisms frequently found in specimens such as urine, blood, abscesses, and aspirates

where multiple isolates are clearly significant or where specimens are derived from immunocompromised patients. The program determines the reportable isolates.

(2) An approved program may vary over time. For example, the types of organisms that might be included in an approved program overtime are—

Anaerobes:
Bacteroides fragilis group
Clostridium perfringens
Peptostreptococcus anaerobius
Enterobacteriaceae:
Klebsiella pneumoniae
Salmonella typhimurium
Serratia marcescens
Shigella sonnei
Yersinia enterocolitica
Gram-positive bacilli:
Listeria monocytogenes
Corynebacterium species CDC Group JK
Gram-positive cocci:
Staphylococcus aureus
Streptococcus Group A
Streptococcus Group B
Streptococcus Group D (*S. bovis* and *enterococcus*)
Streptococcus pneumoniae
Gram-negative cocci:
Branhamella catarrhalis
Neisseria gonorrhoeae
Neisseria meningitidis
Miscellaneous Gram-negative bacteria:
Campylobacter jejuni
Haemophilis influenza, Type B

(3) For antimicrobial susceptibility testing, the program must provide at least one sample per testing event that includes Gram-positive or Gram-negative strains that have a predictable pattern of sensitivity or resistance to the common antimicrobial agents.

(c) *Evaluation of a laboratory's performance.* HHS approves only those programs that assess the accuracy of a laboratory's responses in accordance with subparagraphs (1) through (6) of this paragraph.

(1) The program determines the morphologic and staining characteristics to be interpreted by Gram stain. The program determines the reportable bacteria to be detected by direct antigen techniques or isolation. To determine the accuracy of a laboratory's response, for organism identification or antimicrobial susceptibility testing, the program must compare the laboratory's response for each sample with the response which reflects agreement of either 80 percent of ten or more referee laboratories or 80 percent or more of all participating laboratories. Sample scores must be averaged to determine the score for the testing event.

(2) Since laboratories may incorrectly report the presence of organisms in addition to the correctly identified principal organism(s), the grading system must provide a means of deducting credit for additional erroneous organisms or erroneous Gram stain interpretations that are reported. Therefore, the total number of correct responses for Gram stain interpretations, direct antigen and organism isolation and detection techniques, submitted by the laboratory divided by the number of organisms present plus the number of incorrect organisms reported by the laboratory must be multiplied by 100 to establish a score for each sample in each testing event. For example, if a sample contained one principal organism and the laboratory reported it correctly but reported the presence of an additional organism, which was not considered reportable, the sample grade would be $1/(1+1)\times100=50$ percent.

(3) To evaluate a laboratory's response for a particular sample, the program must determine a laboratory's type of service in accordance with paragraph (a) of this section. A laboratory must isolate and identify the organisms to the same extent it performs these procedures on patient specimens.

(4) For antimicrobial susceptibility testing, a laboratory must indicate which drugs are routinely included in its test panel when testing patient samples. A laboratory's performance will be evaluated for only those antibiotics for which service is offered. A correct response for each antibiotic will be determined as described in paragraph (c)(1) of this section using criteria based on a consensus document such as the standards established by the National Committee for Clinical Laboratory Standards. Grading is based on the number of correct susceptibility responses reported by the laboratory divided by the actual number of correct susceptibility responses determined by the program, multiplied by 100. For example, if a laboratory offers susceptibility testing for *Enterobacteriaceae* using amikacin, cephalothin, and tobramycin, and the organism in the proficiency testing sample is an *Enterobacteriaceae*, and the laboratory reports correct responses for two of three antimicrobial agents, the laboratory's grade would be $\frac{2}{3}\times100=67$ percent.

(5) The score for a sample in bacteriology is the score determined under paragraph (c)(2) of this section for detection and identification of organisms or, if the laboratory also performs antimicrobial susceptibility testing for the organism, the score determined by dividing the total number of correct organisms a laboratory identified plus the number of correct antimicrobial agent responses by the number of possible organisms plus the number of additional erroneous organisms reported plus the actual number of correct susceptibility responses (see paragraph (c)(4) of this section) multiplied by 100 to establish a score for each sample in each testing event. For example, if a sample contained three reportable organisms and a laboratory reported all three correctly, but reported one additional organism, which was not present, and reported correct results for two of three antimicrobial agents tested, its score for the sample would be:

$(3+2)/(3+1+3)\times100=71$ percent.

(6) The performance criterion for qualitative antigen tests is the presence or absence of the bacterial antigen. The performance criterion for Gram stain in Gram positive or negative.

§ 493.913 Mycobacteriology.

(a) *Types of services offered by laboratories.* In mycobacteriology, there are three types of laboratories for proficiency testing purposes:

(1) Those that interpret acid-fast stains or interpret acid-fast stains and refer cultures to another laboratory for identification;

(2) Those that interpret acid-fast stains, isolate and perform identification, and/or antimycobacterial susceptibility of *Mycobacterium tuberculosis*, but refer other mycobacteria species to another laboratory for identification and/or susceptibility tests; and

(3) Those that interpret acid-fast stains, isolate and identify all mycobacteria to the extent required for correct clinical diagnosis, and perform antimycobacterial susceptibility tests on the organisms isolated, or interpret acid-fast stains, isolate and identify all mycobacteria to the extent required for correct clinical diagnosis, but refer antimycobacterial susceptibility tests to another laboratory.

(b) *Program content and frequency of challenge.* To be approved for proficiency testing for mycobacteriology, the annual program must provide a minimum of five samples per testing event. There must be at least two testing events per year. The samples may be provided through mailed shipments or, at HHS, option, provided to HHS for on-site testing. For types of laboratories specified in paragraph (a) (2) and (3) of this section, an annual program must include samples that contain species that are representative of the five major groups (complexes) of

mycobacteria encountered in human specimens. The specific mycobacteria included in the samples may vary from year to year.

(1) An approved program must, before each calendar year, furnish HHS with a description of samples that it plans to include in its annual program. At least 50 percent of the samples must be mixtures of the principal mycobacteria and appropriate normal flora. The program must include mycobacteria commonly occurring in patient specimens and other important emerging mycobacteria (as determined by HHS). The program determines the reportable isolates and correct responses for antimycobacterial susceptibility for any designated isolate.

(2) An approved program may vary over time. For example, the types of mycobacteria that might be included in an approved program over time are—

Tuberculosis
Mycobacterium tuberculosis
Mycobacterium bovis
Group I
Mycobacterium kansasii
Group II
Mycobacterium szulgai
Group III
Mycobacterium avium—intracellulare
Group IV
Mycobacterium terrae
Group V
Mycobacterium fortunitum

(3) For antimycobacterial susceptibility testing, the program must provide at least one sample per testing event that includes *Mycobacterium tuberculosis* that has a predictable pattern of sensitivity or resistance to the common antimycobacterial agents.

(4) For laboratories specified in paragraph (a)(1), the program must provide at least five samples per testing event that include challenges that are acid-fast and challenges that do not contain acid-fast organisms.

(c) *Evaluation of a laboratory's performance.* HHS approves only those programs that assess the accuracy of a laboratory's response in accordance with paragraph (c) (1) through (6) of this section.

(1) The program determines the reportable mycobacteria to be detected by acid-fast stain and for isolation and identification. To determine the accuracy of a laboratory's response, the program must compare the laboratory's response for each sample with the response that reflects agreement of either 80 percent of ten or more referee laboratories or 80 percent or more of all participating laboratories. Sample scores must be averaged to determine the score for the testing event.

(2) Since laboratories may incorrectly report the presence of organisms in addition to the correctly identified principal organism(s), the grading system must provide a means of deducting credit for additional erroneous organisms reported. Therefore, the total number of correct responses submitted by the laboratory divided by the number of organisms present plus the number of incorrect organisms reported by the laboratory must be multiplied by 100 to establish a score for each sample in each testing event. For example, if a sample contained one principal organism and the laboratory reported it correctly but reported the presence of an additional organism, which was not present, the sample grade would be $1/(1+1)\times100=50$ percent.

(3) To evaluate a laboratory's response for a particular sample, the program must determine a laboratory's type of service in accordance with paragraph (a) of this section. A laboratory must interpret acid-fast stains, and isolate and identify the organisms to the same extent it performs these procedures on patient specimens.

(4) For antimycobacterial susceptibility testing, a laboratory must indicate which drugs are routinely included in its test panel when testing patient samples. A laboratory's performance will be evaluated for only those antibiotics for which susceptibility testing is routinely performed on patient specimens. A correct response for each antibiotic will be determined as described in paragraph (c)(1) of this section. Grading is based on the number of correct susceptibility responses reported by the laboratory divided by the actual number of correct susceptibility responses as determined by the program, multiplied by 100. For example, if a laboratory offers susceptibility testing using three antimycobacterial agents and the laboratory reports the correct response for two of the three antimycobacterial agents, the laboratory's grade would be $\frac{2}{3}\times100=67$ percent.

(5) The score for a sample in mycobacteriology is the score determined under (2) for detection and identification of organisms. If the laboratory also performs antimycobacterial susceptibility testing, the score is determined by dividing the total number of correct organisms a laboratory identified plus the number of correct antimycobacterial agent responses as determined by the program by the number of possible organisms plus the number of additional erroneous organisms reported plus the actual number of correct susceptibility responses multiplied by 100. For example, if a sample contained one principle organism and a laboratory reported it correctly, and reported correct results for two of three antimycobacterial agents tested, its score for the sample would be:

$(1+2)/(1+3)\times100=75$ percent.

(6) The performance criterion for qualitative tests is the presence or absence of acid-fast organisms.

§ 493.915 Mycology.

(a) *Types of services offered by laboratories.* In mycology, there are two types of laboratories for proficiency testing purposes that may perform different levels of service for yeasts, dimorphic fungi, dermatophytes, and aerobic actinomycetes:

(1) Those that isolate and perform identification to the genus level; and

(2) Those that isolate and perform identification of organisms to the species level.

(b) *Program content and frequency of challenge.* To be approved for proficiency testing for mycology, the annual program must provide a minimum of five samples per testing event. There must be four testing events per year. The samples may be provided through mailed shipments or, at HHS' option, may be provided to HHS for on-site testing. An annual program must include samples that contain organisms that are representative of five major groups of fungi: yeast or yeast-like fungi; dimorphic fungi; dematiaceous fungi; dermatophytes; and saprophytes, including opportunistic fungi. The specific fungi included in the samples may vary from year to year.

(1) An approved program must, before each calendar year, furnish HHS with a description of samples that it plans to include in its annual program. At least 50% of the samples must be mixtures of the principal organism and appropriate normal background flora. Other important emerging pathogens (as determined by HHS) and organisms commonly occurring in patient specimens must be included periodically in the program.

(2) An approved program may vary over time. As an example, the types of organisms that might be included in an approved program over time are—

Candida albicans
Candida (other species)
Cryptococcus neoformans
Sporothrix schenckii
Exophiala jeanselmei
Fonsecaea pedrosoi
Acremonium sp.
Trichophyton sp.

Aspergillus fumigatus
Nocardia sp.
Blastomyces dermatitidis[1]
Zygomycetes sp.

(c) *Evaluation of a laboratory's performance.* HHS approves only those programs that assess the accuracy of a laboratory's response, in accordance with paragraphs (c) (1) through (3) of this section.

(1) The program determines the reportable organisms. To determine the accuracy of a laboratory's response, the program must compare the laboratory's response for each sample with the response that reflects agreement of either 80 percent of ten or more referee laboratories or 80 percent or more of all participating laboratories. Sample scores must be averaged to determine the score for the testing event.

(2) Since laboratories may incorrectly report the presence of organisms in addition to the correctly identified principal organism(s), the grading system must deduct credit for additional erroneous organisms reported. Therefore, the total number of correct responses submitted by the laboratory divided by the number of organisms present plust the number of incorrect organisms reported by the laboratory must be multiplied by 100 to establish a score for each sample in each shipment or testing event. For example, if a sample contained one principal organism and the laboratory reported it correctly but reported the presence of an additional organism, which was not present, the sample grade would be $1/(1+1)\times 100=50$ percent.

(3) To evaluate a laboratory's response for a particular sample, the program must determine a laboratory's type of service in accordance with paragraph (a) of this section. A laboratory must isolate and identify the organisms to the same extent it performs these procedures on patient specimens.

§ 493.917 Parasitology.

(a) *Types of services offered by laboratories.* In parasitology there are two types of laboratories for proficiency testing purposes—

(1) Those that are able to determine the presence of parasites by direct observation (wet mount) and refer them to another laboratory for identification; and

(2) Those that identify parasites using concentration preparations and/or permanent stains.

(b) *Program content and frequency of challenge.* To be approved for proficiency testing in parasitology, a program must provide a minimum of five samples per testing event. There must be four testing events per year. The samples may be provided through mailed shipments or, at HHS' option, may be provided to HHS for on-site testing. An annual program must include samples that contain parasites that are commonly encountered in the United States as well as those recently introduced into the United States. Other important emerging pathogens (as determined by HHS) and parasites commonly occurring in patient specimens must be included periodically in the program.

(1) An approved program must, before must calendar year, furnish HHS with a description of samples that it plans to include in its annual program. Samples must include both formalinized specimens and PVA (polyvinyl alcohol) fixed specimens, as well as blood smears, as appropriate for a particular parasite and stage of the parasite. The majority of samples must contain protozoa or helminths or a combination of parasites. Some samples must be devoid of parasites.

(2) An approved program may vary over time. As an example, the types of parasites that might be included in an approved program over time are—
Entamoeba histolytica
Entamoeba coli
Giardia lamblia
Endolimax nana
Dientamoeba fragilis
Iodamoeba butschlii
Chilomastix mesnili
Hookworm
Ascaris lumbricoides
Strongyloides stercoralis
Trichuris trichiura
Enterobius vermicularis
Diphyllobothrium latum
Cryptosporidium sp.
Plasmodium falciparum

(3) For laboratories specified in paragraph (a)(1), the program must provide at least five samples per testing event that include challenges that contain parasites and challenges that are devoid of parasites.

(c) *Evaluation of a laboratory's performance.* HHS approves only those programs that assess the accuracy of a laboratory's responses in accordance with paragraphs (c) (1) through (3) of this paragraph.

(1) The program must determine the reportable parasites. It may elect to establish a minimum number of parasites to be identified in samples before they are reported or if the program has assured itself that the samples that were distributed were homogeneous, it could rely on the following method of determining 80% consensus. To determine the accuracy of a laboratory's response, the program must compare the laboratory's response with the response that reflects agreement of either 80% of ten or more referee laboratories or 80% or more of all participating laboratories. Sample scores must be averaged to determine the score for the testing event.

(2) Since laboratories may incorrectly report the presence of parasites in addition to the correctly identified principal parasite(s), the grading system must deduct credit for these additional erroneous parasites reported. Therefore, the total number of correct responses submitted by the laboratory divided by the number of parasites present plus the number of incorrect parasites reported by the laboratory must be multiplied by 100 to establish a score for each sample in each testing event. For example, if a sample contained one principal parasite and the laboratory reported it correctly but reported the presence of an additional parasite, which was not present, the sample grade would be $1/(1+1)\times 100=50\%$.

(3) To evaluate a laboratory's response for a particular sample, the program must determine a laboratory's type of service in accordance with paragraph (a) of this section. A laboratory must determine the presence or absence of a parasite(s) or concentrate and identify the parasites to the same extent it performs these procedures on patient specimens.

(4) The criterion for acceptable performance for qualitative parasitology is presence or absence or a parasite(s).

§ 493.919 Virology.

(a) *Types of services offered by laboratories.* In virology, there are two types of laboratories for proficiency testing purposes—

(1) Those that only perform tests that directly detect viral antigens or structures, either in cells derived from infected tissues or free in fluid specimens; and

(2) Those that are able to isolate and identify viruses and use direct antigen techniques.

(b) *Program content and frequency of challenge.* To be approved for proficiency testing in virology, a program must provide a minimum of five samples per testing event. There must be four testing events per year. The samples may be provided to the laboratory through mailed shipments or, at HHS option, may be provided to HHS for on-site testing. An annual program must include viral species that are the more commonly identified viruses. The specific organisms found in the samples

[1] Provided as a nonviable sample.

may vary from year to year. The annual program must include samples for viral antigen detection and viral isolation and identification.

(1) An approved program must, prior to each calendar year, furnish HHS with a description of samples that it plans to include in its annual program. The program must include other important emerging viruses (as determined by HHS) and viruses commonly occurring in patient specimens.

(2) An approved program may vary over time. For example, the types of viruses that might be included in an approved program over time are the more commonly identified viruses such as *Herpes simplex*, respiratory syncytial virus, adenoviruses, enteroviruses, and cytomegaloviruses.

(c) *Evaluation of laboratory's performance.* HHS approves only those programs that assess the accuracy of a laboratory's response in accordance with paragraphs (c) (1) through (4) of this section.

(1) The program determines the reportable viruses to be detected by direct antigen techniques or isolated by laboratories that perform viral isolation procedures. To determine the accuracy of a laboratory's response, the program must compare the laboratory's response for each sample with the response that reflects agreement of either 80 percent of ten or more referee laboratories or 80 percent or more of all participating laboratories. Each sample score must be averaged to determine the testing event score.

(2) Since laboratories may incorrectly report the presence of viruses in addition to the correctly identified principal virus, the grading system must provide a means of deducting credit for additional erroneous viruses reported. Therefore, the total number of correct responses determined by virus culture techniques submitted by the laboratory divided by the number of viruses present plus the number of incorrect viruses reported by the laboratory must be multiplied by 100 to establish a score for each sample in each testing event. For example, if a sample contained one principal virus and the laboratory reported it correctly but reported the presence of an additional virus, which was not present, the sample grade would be $1/(1+1)\times 100=50$ percent.

(3) To evaluate a laboratory's response for a particular sample, the program must determine a laboratory's type of service in accordance with paragraph (a) of this section. A laboratory must isolate and identify the viruses to the same extent it performs these procedures on patient specimens.

(4) The performance criterion for qualitative antigen tests is presence or absence of the viral antigen.

§ 493.921 Diagnostic immunology.

The subspecialties under the specialty of immunology for which a program may offer proficiency testing are syphilis serology and general immunology. Specific criteria for these subspecialties are found at §§ 493.923 and 493.927.

§ 493.923 Syphilis serology.

(a) *Program content and frequency of challenge.* To be approved for proficiency testing in syphilis serology, a program must provide a minimum of five samples per testing event. There must be four testing events per year. The samples may be provided through mailed shipments or, at HHS' option, may be provided to HHS for on-site testing. An annual program must include samples that cover the full range of reactivity from highly reactive to non-reactive.

(b) *Challenges per quarter.* The minimum number of challenges per testing event a program must offer for syphilis serology is five.

(c) *Evaluation of analyte or test performance.* HHS approves only those programs that assess the accuracy of a laboratory's responses in accordance with paragraphs (c) (1) through (4) of this section.

(1) To determine the accuracy of a laboratory's response for qualitative and quantitative syphilis tests, the program must compare the laboratory's response for each analyte with the response that reflects agreement of either 80 percent of ten or more referee laboratories or 80 percent or more of all participating laboratories. The proficiency testing program must indicate the minimum concentration that will be considered as indicating a positive response. The score for a sample in syphilis serology is either the score determined under paragraphs (c) (2) or (3) of this section.

(2) For quantitative syphilis tests, the program must determine the correct response for each analyte by the distance of the response from the target value. After the target value has been established for each response, the appropriateness of the response must be determined by using either fixed criteria or the number of standard deviations the response differs from the target value. The criterion for acceptable performance for quantitative syphilis serology tests is the target value ± 1 dilution.

(3) The criterion for acceptable performance for qualitative syphilis serology tests is positive or negative.

(4) To determine the overall testing event score, the number of correct responses for all analytes must be averaged using the following formula:

$$\frac{\text{Number of acceptable responses for all analytes}}{\text{Total number of all analytes}}\times 100=\text{Testing event score}$$

§ 493.927 General immunology.

(a) *Program content and frequency of challenge.* To be approved for proficiency testing for immunology, the annual program must provide a minimum of five samples per testing event. There must be four testing events per year. The annual program must provide samples that cover the full range of reactivity from highly reactive to nonreactive. The samples may be provided through mailed shipments or, at HHS' option, may be provided to HHS for on-site testing.

(b) *Challenges per quarter.* The minimum number of challenges per testing event the program must provide for each analyte or test procedure is five.

Analyte or test procedure

Alpha-1 antitrypsin
Alpha-fetoprotein
Antinuclear antibody
Antistreptolysin 0
Anti-human immunodeficiency virus (HIV)
Complement C3
Complement C4
Hepatitis markers (HBsAg, anti-HBc, HBeAg)
IgA
IgG
IgE
IgM
Infectious mononucleosis
Rheumatoid factor
Rubella

(c) *Evaluation of a laboratory's analyte or test performance.* HHS approves only those programs that assess the accuracy of a laboratory's response in accordance with paragraphs (c) (1) through (5) of this section.

(1) To determine the accuracy of a laboratory's response for quantitative and qualitative immunology tests or analytes, the program must compare the laboratory's response for each analyte with the response that reflects agreement of either 80 percent of ten or more referee laboratories or 80 percent or more of all participating laboratories. The proficiency testing program must

indicate the minimum concentration that will be considered as indicating a positive response. The score for a sample in general immunology is either the score determined under paragraph (c) (2) or (3) of this section.

(2) For quantitative immunology analytes or tests, the program must determine the correct response for each analyte by the distance of the response from the target value. After the target value has been established for each response, the appropriateness of the response must be determined by using either fixed criteria or the number of standard deviations (SDs) the response differs from the target value.

Criteria for Acceptable Performance

The criteria for acceptable performance are—

Analyte or test	Criteria for acceptable performance
Alpha-1 antitrypsin	Target value ±3 SD.
Alpha-fetoprotein	Target value ±3 SD.
Antinuclear antibody	Target value ±1 dilution or (pos. or neg.).
Antistreptolysin O	Target value ±1 dilution or (pos. or neg.).
Anti-Human Immunodeficiency Virus	Reactive or nonreactive.
Complement C3	Target value ±3 SD.
Complement C4	Target value ±3 SD.
Hepatitis (HBsAg, anti-HBc, HBeAg).	Reactive (positive) or nonreactive (negative).
IgA	Target value ±3 SD.
IgE	Target value ±3 SD.
IgG	Target value ±3 SD.
IgM	Target value ±3 SD.
Infectious mononucleosis.	Target value ±1 dilution or (pos. or neg.).
Rheumatoid factor	Target value ±1 dilution or (pos. or neg.).
Rubella	Target value ±1 dilution or (pos. or neg.).

(3) The criterion for acceptable performance for qualitative general immunology tests is positive or negative.

(4) To determine the analyte testing event score, the number of acceptable analyte responses must be averaged using the following formula:

$$\frac{\text{Number of acceptable responses for the analyte}}{\text{Total number of analyte samples}} \times 100 = \text{Analyte score for the testing event}$$

(5) To determine the overall testing event score, the number of correct responses for all analytes must be averaged using the following formula:

$$\frac{\text{Number of acceptable responses for all analytes}}{\text{Total number of all analytes}} \times 100 = \text{Testing score event}$$

§ 493.929 Chemistry.

The subspecialties under the specialty of chemistry for which a proficiency testing program may offer proficiency testing are routine chemistry, endocrinology, toxicology, and urinalysis. Specific criteria for these subspecialties are listed in §§ 493.931 through 493.939.

§ 493.931 Routine chemistry.

(a) *Program content and frequency of challenge.* To be approved for proficiency testing for chemistry, a program must provide a minimum of five samples per testing event. There must be four testing events per year. The annual program must provide samples that cover the clinically relevant range of values that would be expected in patient specimens. The specimens may be provided through mailed shipments or, at HHS' option, may be provided to HHS for on-site testing.

(b) *Challenges per quarter.* The minimum number of challenges per testing event a program must provide for each analyte or test procedure is five serum, plasma or blood samples.

Analyte or test procedure

Alanine aminotransferase (ALT/SGPT)
Albumin
Alkaline phosphatase
Amylase
Aspartate aminotransferase (AST/SGOT)
Bilirubin, total
Blood gas pH, pO_2, pCO_2
Calcium, total
Chloride
Cholesterol, total
Cholesterol, high density lipoprotein
Creatine kinase
Creatine kinase, isoenzymes
Creatinine
Glucose
Iron, total
Lactate dehydrogenase (LDH)
LDH isoenzymes
Magnesium
Potassium
Sodium
Total Protein
Triglycerides
Urea Nitrogen
Uric Acid

(c) *Evaluation of a laboratory's analyte or test performance.* HHS approves only those programs that assess the accuracy of a laboratory's responses in accordance with paragraphs (c) (1) through (5) of this section.

(1) To determine the accuracy of a laboratory's response for qualitative and quantitative chemistry tests or analytes, the program must compare the laboratory's response for each analyte with the response that reflects agreement of either 80 percent of ten or more referee laboratories or 80 percent or more of all participating laboratories. The score for a sample in routine chemistry is the score determined under either paragraph (c) (2) or (3) of this section.

(2) For quantitative chemistry tests or analytes, the program must determine the correct response for each analyte by the distance of the response from the target value. After the target value has been established for each response, the appropriateness of the response must be determined by using either fixed criteria (percentage difference from the target value) or the number of standard deviations (SDs) the response differs from the target value.

Criteria for acceptable performance.

The criteria for acceptable performance are—

Analyte or test	Criteria for acceptable performance
Alanine aminotransferase (ALT/SGPT).	Target value ±20%
Albumin	Target value ±10%
Alkaline phosphatase	Target value ±3 SD
Amylase	Target value ±3 SD
Aspartate aminotransferase (AST/SGOT).	Target value ±20%
Bilirubin, total	Target value ±0.3 mg/dL or ±20% (greater)
Blood gas pO_2	Target value ±3 SD
Blood gas pCO_2	Target value ±5 mm Hg or ±8% (greater)
Blood gas pH	Target value ±0.04
Calcium, total	Target value ±1.0 mg/dL
Chloride	Target value ±5%
Cholesterol, total	Target value ±10%
Cholesterol, high density lipoprotein.	Target value ±3 SD
Creatine kinase	Target value ±3 SD
Creatine kinase isoenzymes	MB elevated (+ or −) or Target value ±3SD
Creatinine	Target value ±0.3 mg/dL or ±15% (greater)
Glucose	Target value ±6 mg/dl or ±10% (greater)
Iron, total	Target value ±20%
Lactate dehydrogenase (LDH).	Target value ±20%
LDH isoenzymes	LDH1/LDH2 (+ or −) or Target value ±3 SD
Magnesium	Target value ±25%
Potassium	Target value ±0.5 mmol/L

Analyte or test	Criteria for acceptable performance
Sodium	Target value ±4 mmol/L
Total Protein	Target value ±10%
Triglycerides	Target value ±3 SD
Urea Nitrogen	Target value ±2 mg/dL or ±9% (greater)
Uric Acid	Target value ±17%

(3) The criterion for acceptable performance for qualitative routine chemistry tests is positive or negative.

(4) To determine the analyte testing event score, the number of acceptable analyte responses must be averaged using the following formula:

$$\frac{\text{Number of acceptable responses for the analyte}}{\text{Total number of analyte samples}} \times 100 = \text{Analyte score for the testing event}$$

(5) To determine the overall testing event score, the number of correct responses for all analytes must be averaged using the following formula:

$$\frac{\text{Number of acceptable responses for all analytes}}{\text{Total number of all analytes}} \times 100 = \text{Testing score event}$$

§ 493.933 Endocrinology.

(a) *Program content and frequency of challenge.* To be approved for proficiency testing for endocrinology, a program must provide a minimum of five samples per testing event. There must be four testing events per year. The annual program must provide samples that cover the clinically relevant range of values that would be expected in patient specimens. The samples may be provided through mailed shipments or, at HHS' option, may be provided to HHS for on-site testing.

(b) *Challenges per quarter.* The minimum number of challenges per testing event a program must provide for each analyte or test procedure is five serum, plasma, blood or urine samples.

Analyte or test

Cortisol
Free Thyroxine
Human Chorionic Gonadotropin
T_3 Uptake
Triiodothyronine
Thyroid-stimulating hormone
Thyroxine

(c) *Evaluation of a laboratory's analyte or test performance.* HHS approves only those programs that assess the accuracy of a laboratory's responses in accordance with paragraphs (c) (1) through (5) of this section.

(1) To determine the accuracy of a laboratory's response for qualitative and quantitative endocrinology tests or analytes, a program must compare the laboratory's response for each analyte with the response that reflects agreement of either 80 percent of ten or more referee laboratories or 80 percent or more of all participating laboratories. The score for a sample in endocrinology is the score determined under either paragraph (c) (2) or (3) of this section.

(2) For quantitative endocrinology tests or analytes, the program must determine the correct response for each analyte by the distance of the response from the target value. After the target value has been established for each response, the appropriateness of the response must be determined by using either fixed criteria (percentage difference from the target value) or the number of standard deviations (SDs)–the response differs from the target value.

Criteria for acceptable performance. The criteria for acceptable performance are—

Analyte or test	Criteria for acceptable performance
Cortisol	Target value ±25%.
Free Thyroxine	Target value ±3 SD.
Human Chorionic Gonadotropin.	Target value ±3 SD or (positive or negative).
T_3 Uptake	Target value ±3 SD by method.
Triiodothyronine	Target value ±3 SD.
Thyroid-stimulating hormone.	Target value ±3 SD.
Thyroxine	Target value ±3 SD.

(3) The criterion for acceptable performance for qualitative endocrinology tests is positive or negative.

(4) To determine the analyte testing event score, the number of acceptable analyte responses must be averaged using the following formula:

$$\frac{\text{Number of acceptable responses for the analyte}}{\text{Total number of analyte samples}} \times 100 = \text{Analyte score for the testing event}$$

(5) To determine the overall testing event score, the number of correct responses for all analytes must be averaged using the following formula:

$$\frac{\text{Number of acceptable responses for all analytes}}{\text{Total number of all analytes}} \times 100 = \text{Testing score event}$$

§ 493.937 Toxicology.

(a) *Program content and frequency of challenge.* To be approved for proficiency testing for toxicology, the annual program must provide a minimum of five samples per testing event. There must be four testing events per year. The annual program must provide samples that cover the clinically relevant range of values that would be expected in specimens of patients on drug therapy and that cover the level of clinical significance for the particular drug. The samples may be provided through mailed shipments or, at HHS' option, may be provided to HHS for on-site testing.

(b) *Challenges per quarter.* The minimum number of challenges per testing event a program must provide for each analyte or test procedure is five serum, plasma, or blood samples.

Analyte or test procedure

Alcohol (blood)
Blood lead
Carbamazepine
Digoxin
Ethosuximide
Gentamicin
Lithium
Phenobarbital
Phenytoin
Primidone
Procainamide (and metabolite)
Quinidine
Theophylline
Valproic Acid

(c) *Evaluation of a laboratory's analyte or test performance.* HHS approves only those programs that assess the accuracy of a laboratory's responses in accordance with paragraphs (c) (1) through (5) of this section.

(1) To determine the accuracy of a laboratory's responses for quantitative and qualitative toxicology tests or analytes, the program must compare the laboratory's response for each analyte with the response that reflects agreement of either 80 percent of ten or more referee laboratories or 80 percent or more of all participating laboratories. The score for a sample in toxicology is the score determined under either paragraph (2) or (3).

(2) For quantitative chemistry tests or analytes, the program must determine the correct response for each analyte by the distance of the response from the target value. After the target value has been established for each response, the appropriateness of the response must be determined by using either fixed criteria (percentage difference from the target value) or the number of standard deviations (SDs) the response differs from the target value.

Criteria for acceptable performance. The criteria for acceptable performance are:

Analyte or test	Criteria for acceptable performance
Alcohol, blood	Target value ±25%.
Blood lead	Target value ±15% or ±6 mcg/dL (greater).
Carbamazepine	Target value ±25%.
Digoxin	Target value ±20% or ±0.2 ng/mL (greater).
Ethosuximide	Target value ±20%.
Gentamicin	Target value ±25%.
Lithium	Target value ±0.2 mmol/L or ±20% (greater).
Phenobarbital	Target value ±20%.
Phenytoin	Target value ±25%.
Primidone	Target value ±25%.
Procainamide (and metabolite).	Target value ±25%.
Quinidine	Target value ±25%.
Theophylline	Target value ±25%.
Valproic Acid	Target value ±25%.

(3) The criterion for acceptable performance for qualitative toxicology tests is positive or negative.

(4) To determine the analyte testing event score, the number of acceptable analyte responses must be averaged using the following formula:

$$\frac{\text{Number of acceptable responses for the analyte}}{\text{Total number of analyte samples}} \times 100 = \text{Analyte score for the testing event}$$

(5) To determine the overall testing event score, the number of correct responses for all analytes must be averaged using the following formula:

$$\frac{\text{Number of acceptable responses for all analytes}}{\text{Total number of all analytes}} \times 100 = \text{Testing score event}$$

§ 493.939 Urinalysis.

(a) *Program content and frequency of challenge.* To be approved for proficiency testing for urinalysis, a program must provide a minimum of five samples per testing event. There must be four testing events per year. The annual program must provide samples that cover the clinically relevant range of values that would be expected in patient specimens. The specimens may be provided through mailed shipments or, at HHS' option, may be provided to HHS for on-site testing.

(b) *Challenges per quarter:* The minimum number of challenges per testing event a program must provide for each analyte or test procedure is five.

Analyte or test procedure

pH
Bilirubin
Glucose
Hemoglobin
Ketones
Protein

(c) *Evaluation of a laboratory's analyte or test performance.* HHS approves only those programs that assess the accuracy of a laboratory's responses in accordance with paragraphs (c) (1) through (5) of this section.

(1) To determine the accuracy of a laboratory's responses for qualitative and quantitative urinalysis tests or analytes, the program must compare the laboratory's response for each analyte with the response that reflects agreement of either 80 percent of ten or more referee laboratories or 80 percent or more of all participating laboratories. The score for a sample in urinalysis is the score determined under either paragraph (c) (2) or (3).

(2) For quantitative urinalysis tests or analytes, the program must determine the correct response for the analyte by the distance of the response from the target value. After the target value has been established, the appropriateness of the response must be determined using the fixed criteria.

Criteria for acceptable performance. The criteria for acceptable performance are:

Analyte or test	Criteria for acceptable performance
pH	Target value ±0.5.
Bilirubin	Positive or negative.
Glucose	Positive or negative.
Hemoglobin	Positive or negative.
Ketones	Positive or negative.
Protein	Positive or negative

(3) The criterion for acceptable performance for qualitative urinalysis tests is positive or negative.

(4) To determine the analyte testing event score, the number of acceptable analyte responses must be averaged using the following formula:

$$\frac{\text{Number of acceptable responses for the analyte}}{\text{Total number of analyte samples}} \times 100 = \text{Analyte score for the testing event}$$

(5) To determine the overall testing event score, the number of correct responses for all analytes must be averaged using the following formula:

$$\frac{\text{Number of acceptable responses for all analytes}}{\text{Total number of all analytes}} \times 100 = \text{Testing score event}$$

§ 493.941 Hematology (including routine hematology and coagulation).

(a) *Program content and frequency of challenge.* To be approved for proficiency testing for hematology, a program must provide a minimum of five samples per testing event. There must be four testing events per year. The annual program must provide samples that cover the full range of values that would be expected in patient specimens. The samples may be provided through mailed shipments or, at HHS' option, may be provided to HHS for on-site testing.

(b) *Challenges per quarter:* The minimum number of challenges per testing event a program must provide for each analyte or test procedure is five.

Analyte or test procedure

Cell identification
White cell differential
Erythrocyte count
Hematocrit
Hemoglobin
Leukocyte count
Platelet count
Fibrinogen
Partial thromboplastin time
Prothrombin time

(1) An approved program for cell identification may vary over time. For example, the types of cells that might be included in an approved program over time are—

Neutrophilic granulocytes
Eosinophilic granulocytes
Basophilic granulocytes
Lymphocytes
Monocytes
Major red and white blood cell abnormalities
Immature red and white blood cells

(2) White cell differentiation should be limited to the percentage distribution of cellular elements listed above.

(c) *Evaluation of a laboratory's analyte or test performance.* HHS approves only those programs that assess the accuracy of a laboratory's responses in accordance with paragraphs (c) (1) through (5) of this section.

(1) To determine the accuracy of a laboratory's responses for qualitative and quantitative hematology tests or analytes, the program must compare the laboratory's response for each analyte with the response that reflects agreement of either 80 percent of ten or more referee laboratories or 80 percent or more of all participating laboratories. The score for a sample in hematology is the score determined under either paragraph (c) (2) or (3) of this section.

(2) For quantitative hematology tests or analytes, the program must determine the correct response for each analyte by the distance of the response from the target value. After the target value has been established for each response, the appropriateness of the response is determined using either fixed criteria (percentage difference from the target value) or the number of standard deviations (SDs) the response differs from the target value.

Criteria for acceptable performance. The criteria for acceptable performance are:

Analyte or test	Criteria for acceptable performance
Cell identification	80% or greater consensus on identification.
White cell differentiation	Target ±3 SD based on the percentage of different types of white cells in the samples.
Erythrocyte count	Target ±3 SD or ±6% (lesser).
Hematocrit	Target ±3 SD or ±6% (lesser).
Hemoglobin	Target ±3 SD or ±7% (lesser).
Leukocyte count	Target ±3 SD or ±15% (lesser).
Platelet count	Target ±3 SD or ±25% (lesser).
Fibrinogen	Target ±3 SD.
Partial thromboplastin time	Target ±3 SD or ±15% (greater).
Prothrombin time	Target ±3 SD or ±15% (greater).

(3) The criterion for acceptable performance for the qualitative hematology test is correct cell identification.

(4) To determine the analyte testing event score, the number of acceptable analyte responses must be averaged using the following formula:

$$\frac{\text{Number of acceptable responses for the analyte}}{\text{Total number of analyte samples}} \times 100 = \text{Analyte score for the testing event}$$

(5) To determine the overall testing event score, the number of correct responses for all analytes must be averaged using the following formula:

$$\frac{\text{Number of acceptable responses for all analytes}}{\text{Total number of all analytes}} \times 100 = \text{Testing score event}$$

§ 493.945 Cytology: Gynecologic examinations.

(a) *Program content and frequency of challenge.* To be approved for proficiency testing for gynecologic examinations (Pap smears) in cytology, a program must provide 20 glass slide preparations per test set. Proficiency testing programs may obtain slides for test sets from cytology laboratories, provided the slides have been maintained by the laboratory for the required periods specified in § 493.1257 or the proficiency testing program must ensure that slides loaned to it are retrievable upon request, if necessary. Each test set should include slides representing some but not necessarily all of the following: unsatisfactory preparations; normal challenges; infectious agents; and benign reactive processes, premalignant processes, and malignant processes.

(b) *Evaluation of an individual's performance.* HHS approves only those programs that assess the accuracy of each individual's responses on a 20 slide test set in which the slides have been referenced in a scientifically defensible manner.

(1) To determine the accuracy of an individual's response on a particular challenge (slide), the program must compare the individual's response for each slide preparation with the response that reflects consensus agreement or confirmation. For slide preparations that are normal, unsatisfactory, benign reactive processes or contain infection agents, a 95 percent consensus agreement is required. For premalignant or malignant slide preparations, confirmation by tissue biopsy is required. An 80 percent consensus agreement of at least five pathologists is also required on tissue biopsies that confirm the premalignant or malignant cytology slides used in proficiency testing events.

(2) The criteria for acceptable performance are determined by using the scoring system in paragraphs (b)(2)(i) and (ii) of this section.

(i) Each slide set must contain 20 slides with point values established for each slide preparation based on the significance of the relationship of the interpretation of the slide to a clinical condition. Total points for slide set must be established by the proficiency testing program and need not be 100.

(ii) The scoring system rewards or penalizes the participants in proportion to the distance of their answers from the correct response or target diagnosis and the penalty of reward is weighted in proportion to the severity of the lesion.

(A) In accordance with the criteria for scoring system chart in paragraph (b)(2)(ii)(B) of this section, a maximum of 2 points is awarded for a correct response and a minimum of minus one (−1) point is assessed for misinterpretation of malignant and premalignant smears. For example, if the correct response on a slide is "squamous abnormality, high grade" (category "D" on the scoring system chart) and an examinee calls it "normal/negative" (category "B" on the scoring system chart), then the examinee's point value on that slide is calculated as minus one (−1). Each slide is scored individually in the same manner. The individual's score for the testing event is determined by adding the point value achieved for each slide preparation, divided by the total points for the testing event and multiplied by 100. For example, if a testing event has a total point score of 40 and an individual has a point score of 32, the individual's testing event score is $32/40 \times 100 = 80$ percent.

(B) Criteria for scoring system.

Response categories (Bethesda system description in § 493.958 of this subpart)	A	B	C	D
A Unsatisfactory	2	0	0	0
B Normal/Negative Infection Reactive and Preparative Changes	0	2	1	0
C Squamous cell abnormalities (low grade)	−1	−1	2	1
D Squamous Cell abnormalities (high grade). Glandular cell abnormalities. Non-epithelial malignant neoplasm	−1	−1	1	2

§ 493.958 Cytopathology testing results.

The format and terminology for reporting cytopathology proficiency testing results is taken from the 1988 Bethesda System for Reporting Cervical/Vaginal Cytologic Diagnoses.

including a statement on adequacy of the specimen, a general categorization of the diagnosis and the descriptive diagnosis as follows:

(a) *Statement on specimen adequacy.*

(1) Satisfactory for interpretation;

(2) Less than optimal;

(3) Unsatisfactory.

(b) *Explanation for "less than optimal/unsatisfactory samples":*

(1) Scant cellularity;

(2) Poor fixation or preservation;

(3) Presence of foreign material (e.g., lubricant);

(4) Partially or completely obscuring inflammation;

(5) Partially or completely obscuring blood;

(6) Excessive cytolysis or autolysis;

(7) No endocervical component in a premenopausal woman who has a cervix;

(8) Not representative of the anatomic site;

(9) Other.

(c) *General categorization.*

(1) Within normal limits;

(2) Other.

(i) See descriptive diagnosis.

(ii) Further action recommended.

(d) *Descriptive diagnoses.*

(1) *Infection.*

(i) *Fungal.*

(A) Fungal organisms morphologically consistent with *Candida species*;

(B) Other.

(ii) *Bacterial.*

(A) Microorganisms morphologically consistent with *Gardnerella species*;

(B) Microorganisms morphologically consistent with *Actinomyces species*;

(C) Cellular changes suggestive of *Chlamydia species* infection, subject to confirmatory studies;

(D) Other.

(iii) *Protozoan.*

(A) *Trichomonas vaginalis*;

(B) Other.

(iv) *Viral.*

(A) Cellular changes associated with cytomegalovirus;

(B) Cellular changes associated with herpes simplex virus;

(C) Other.

Note: For human papillomavirus (HPV), refer to Epithelial cell abnormalities, squamous cell, in paragraph (d)(3)(i) of this section.

(v) *Other.*

(2) *Reactive and reparative changes.*

(i) Inflammation—

(A) Associated cellular changes;

(B) Follicular cervicitis.

(ii) Miscellaneous (as related to patient history)—

(A) Effects of therapy;

(B) Ionizing radiation;

(C) Chemotherapy;

(D) Effects of mechanical devices (e.g., intrauterine contraceptive device);

(E) Effects of non-steroidal estrogen exposure (e.g., diethylstilbestrol);

(F) Other.

(3) *Epithelial cell abnormalities.*

(i) *Squamous cell.*

(A) Atypical squamous cells of undetermined significance (recommended follow-up and/or type of further investigation; specify).

(B) Squamous intraepithelial lesion (SIL) (comment on presence of cellular changes associated with HPV if applicable)—

(*1*) Low-grade squamous intraepithelial lesion, encompassing—

(*i*) Cellular changes associated with HPV;

(*ii*) Mild (slight) dysplasia/cervical intraepithelial neoplasia grade 1 (CIN 1).

(*2*) High-grade squamous intraepithelial lesion, encompassing—

(*i*) Moderate dysplasia/CIN 2;

(*ii*) Severe dysplasia/CIN 3;

(*iii*) Carcinoma in situ/CIN 3.

(C) Squamous cell carcinoma

(ii) *Glandular cell.*

(A) Presence of endometrial cells in one of the following circumstances—

(*1*) Out-of-phase in a menstruating woman

(*2*) In a postmenopausal woman;

(*3*) No menstrual history available.

(B) Atypical glandular cells of undetermined significance (recommended follow-up and/or type of further investigation: specify)

(*1*) Endometrial;

(*2*) Endocervical;

(3) Not otherwise specified.

(C) Adenocarcinoma

(*1*) Specify probable site of origin: endocervical, endometrial, extrauterine;

(*2*) Not otherwise specified.

(D) Other epithelial malignant neoplasm: specify.

(iv) *Non-epithelial malignant neoplasm:* specify.

§ 493.959 Immunohematology.

(a) *Types of services offered by laboratories.* In immunohematology, there are four types of laboratories for proficiency testing purposes—

(1) Those that perform ABO group and/or Rh_o (D) group;

(2) Those that perform ABO group and/or Rh_o (D) group and unexpected antibody detection;

(3) Those that perform ABO group and/or Rh_o (D) group, unexpected antibody detection, and compatibility testing; and;

(4) Those that perform ABO group and/or Rh_o (D) group, unexpected antibody detection, compatibility testing, and antibody identification.

(b) *Program content and frequency of challenge.* To be approved for proficiency testing for immunohematology, a program must provide a minimum of five samples per testing event. There must be four testing events per year. The annual program must provide samples that cover the full range of interpretation that would be expected in patient specimens. The samples may be provided through mailed shipments or, at HHS' option, may be provided to HHS for on-site testing.

(c) *Challenges per quarter.* The minimum number of challenges per testing event a program must provide for each analyte or test procedure is five.

Analyte or Test Procedure

ABO group (excluding subgroups)
Rh_o (D) group
Unexpected antibody detection
Compatibility testing
Antibody identification

(d) *Evaluation of a laboratory's analyte or test performance.* HHS approves only those programs that assess the accuracy of a laboratory's response in accordance with paragraphs (c)(1) through (5) of this section.

(1) To determine the accuracy of a laboratory's response, a program must compare the laboratory's response for each analyte with the response that reflects agreement of either 100 percent of ten or more referee laboratories or 95 percent or more of all participating laboratories except for unexpected antibody detection and antibody identification. To determine the accuracy of a laboratory's response for unexpected antibody detection and antibody identification, a program must compare the laboratory's response for unexpected antibody detection and antibody identification with the response that reflects agreement of either 95 percent of ten or more referee laboratories or 95 percent or more of all participating laboratories. The score for a sample in immunohematology is the score determined under either paragraph (2) or (3).

(2) *Criteria for acceptable performance.* The criteria for acceptable performance are—

Analyte or test	Criteria for acceptable performance
ABO group	100% accuracy.
Rh_o (D) group	100% accuracy.
Unexpected antibody detection.	80% accuracy.
Compatibility testing	100% accuracy.
Antibody identification	80% accuracy.

(3) The criterion for acceptable performance for qualitative

immunohematology tests is positive or negative.

(4) To determine the analyte testing event score, the number of acceptable analyte responses must be averaged using the following formula:

$$\frac{\text{Number of acceptable responses for the analyte}}{\text{Total number of analyte samples}} \times 100 = \text{Analyte score for the testing event}$$

(5) To determine the overall testing event score, the number of correct responses for all analytes must be averaged using the following formula:

$$\frac{\text{Number of acceptable responses for all analytes}}{\text{Total number of all analytes}} \times 100 = \text{Testing score event}$$

Subpart J—Patient Test Management

§ 493.1101 Condition: Patient test management.

The laboratory must maintain and employ a system that provides for proper receipt and processing of patient specimens and accurate reporting of patient test results and that meets the standards in paragraphs (a) through (e) of this section.

(a) *Standard; Procedures for specimen submission.* The laboratory must have available and follow written policies and procedures regarding collection, labeling, preservation or fixation, including conditions for proper transportation and processing or preparation of specimens that, when followed, will assure the optimum condition of patient specimens for testing. The laboratory must make available to clients written instructions for specimen collection, labeling, handling, preservation or fixation, processing or preparation and conditions necessary for transportation to ensure that specimens submitted are received in a condition acceptable for testing.

(b) *Standard; Specimen requisition.* The laboratory must perform tests only at the written or electronic request of an authorized person. Oral requests for laboratory tests are permitted only if the laboratory subsequently obtains written authorization for testing within 30 days of the request. Records of test requisitions must be maintained for at least two years. The laboratory must assure that the requisition includes—

(1) The patient's name or other method of specimen identification to assure accurate reporting of results;

(2) The name or other suitable identifier of the authorized person who ordered the test or the name of the laboratory submitting the specimen;

(3) The date of specimen collection;

(4) The time of specimen collection, when pertinent to testing;

(5) The source of specimen, if pertinent, and name or identifying laboratory code number of test(s) ordered;

(6) Patient sex and age or date of birth;

(7) Pertinent clinical information; and

(8) For Pap smears, the last menstrual period and indication of whether the patient had a previous abnormal report, treatment or biopsy and, if available, information indicating whether the patient is at risk for developing cervical cancer or its precursors.

(c) *Standard; Specimen records.* The laboratory must maintain a system to ensure reliable specimen identification, and must document each step in processing, testing, and reporting patient specimens to assure accurate test results are reported. Records of patient testing must be maintained for at least two years. All immunohematology records must be maintained for a period of five years. This system must provide documentation of information specified in (b)(1) through (b)(8) of this section and—

(1) The accession number or other identification of the specimen;

(2) The date and time of specimen receipt into the laboratory;

(3) The condition and disposition of specimens that do not meet the laboratory's criteria for specimen acceptability; and

(4) The records and dates of performance of each step in patient testing leading to and including the final report to assure proper identification and reliable reporting of test results.

(d) *Standard; Test report.* The laboratory report must be sent promptly to the authorized person or laboratory that initially requested the test. A legally reproduced record of each test result, including preliminary reports, must be preserved by the testing laboratory for a period of at least two years after the date of reporting. Immunohematology reports must be maintained for a period of five years. For pathology, test reports must be maintained at least ten years after the date of reporting.

(1) The laboratory must have adequate systems in place to report results in a timely, accurate and reliable manner and in a way that ensures confidentiality according to the laboratory's procedures.

(2) The legally reproduced copies of test reports must be filed in the laboratory in a manner that permits ready identification and accessibility.

(3) The results or transcripts of laboratory tests or examinations must be released only to authorized persons.

(4) Pertinent "normal" ranges, as determined by the laboratory performing the tests, must be available to the authorized person who ordered or who utilizes the test results.

(5) The laboratory must establish special reporting procedures for imminent life-threatening laboratory results or panic values. In addition, the laboratory must immediately alert the individual requesting the test or the individual responsible for utilizing test results when any test result indicates an imminent life-threatening condition.

(6) The laboratory must indicate on the test report any information regarding the condition and disposition of specimens that do not meet the laboratory's criteria for acceptability.

(7) The laboratory must upon request make available to clients a list of test methods employed by the laboratory and a basis for the listed "normal" ranges. In addition, information that may affect the interpretation of test results, such as test interferences, if known, and performance claims including, where applicable, detection limits, sensitivity, specificity, accuracy, precision and validity of test measurement and other pertinent test characteristics must be provided upon request. Updates on testing information must be provided to clients whenever changes occur that affect the test results or interpretation of test results.

(8) The test report must include the name and address of each laboratory location at which each test was performed.

(e) *Standard; Referral of specimens.* A Medicare laboratory may refer specimens for testing only to a laboratory that is Medicare-approved for the appropriate specialty or subspecialty. If tests are sent to a laboratory in another State, the referral laboratory must have a CLIA license applicable to the specialty or subspecialty of services requested. A CLIA licensed laboratory may refer specimens for testing only to a laboratory that is CLIA licensed (or exempted from CLIA licensure) for the appropriate specialty or subspecialty.

(1) The authorized person who orders a test or procedure must be notified by the referring laboratory of the name and

address of each laboratory location at which a test was performed.

(2) If the referring laboratory interprets or revises in any way the test results provided by the testing laboratory, the referring laboratory must notify the authorized person who requested the test or examination and the testing laboratory. The referring laboratory must maintain a legally reproduced copy of such interpretations, alterations or revisions and of the notice to the client and testing laboratory.

(3) The referring laboratory may permit each testing laboratory to send the test result directly to the authorized person who initially requested the test. The referring laboratory must maintain a legally reproduced copy of each testing laboratory's report.

Subpart K—Quality Control

§ 493.1201 Condition: General quality control.

(a) Quality control requirements are specified in this subpart unless HHS approves a lesser frequency in Appendix C of the State Operations Manual (HCFA Pub. 7).

(b) The laboratory must impose and practice quality control procedures that provide and assure accurate, reliable and valid test results and reports and that meet the standards in §§ 493.1203 through 493.1221 of this subpart.

§ 493.1203 Standard; Facilities.

The laboratory must be constructed, arranged and maintained to ensure adequate space, ventilation, facilities and essential utilities for the performance and reporting of tests.

§ 493.1205 Standard; Adequacy of methods and equipment.

The laboratory must employ methodologies and equipment that provide accurate and reliable test results and reports.

(a) The laboratory must have appropriate and sufficient equipment and instruments for the type and volume of testing performed.

(b) The equipment and instrumentation used must be capable of providing test results within the laboratory's stated performance characteristics. These performance characteristics include detection limits, precision, accuracy, specificity, and sensitivity as well as freedom from interferences and related test variables.

(c) Test procedures, examinations, or both, must be performed in a manner that provides test results within the laboratory's stated performance characteristics for its test method, including precision, accuracy, sensitivity, specificity, and detection limits as well as freedom from interference and related test variables.

§ 493.1207 Standard; Temperature and humidity monitoring.

Temperature and humidity must be maintained and monitored within a defined acceptable range to assure—

(a) Proper storage of specimens, tissue, reagents and supplies; and

(b) Accurate and reliable test performance and reporting.

§ 493.1209 Standard; Labeling of testing supplies.

(a) Reagents, solutions, culture media, controls, calibrators and other materials must be labeled to indicate—

(1) Identity and, when significant, titer, strength or concentration;

(2) Recommended storage requirements;

(3) Preparation or expiration date; and

(4) Other pertinent information.

(b) The laboratory may not use materials that have exceeded their expiration date, are of substandard reactivity, or have deteriorated. The laboratory must comply with the Food and Drug Administration licensed product dating requirements of 21 CFR 610.53. Any exceptions to these product dating requirements will be granted by the Food and Drug Administration in accordance with 21 CFR 610.53(d).

(c) Components of each kit of reagents may not be interchanged with other kit reagents of different lot numbers unless otherwise specified by the manufacturer.

§ 493.1211 Standard; Procedure manual.

(a) Personnel examining specimens and performing related procedures within a specialty or subspecialty must have available in the testing area complete written instructions and descriptions related to the current analytical methods or procedures used by personnel concerning:

(1) Specimen requirements and processing;

(2) Microscopic examination, including criteria for detecting inadequately prepared slides;

(3) Preparation of slides, solutions, reagents, materials, and stains;

(4) Calibration;

(5) Quality control;

(6) Quality assurance;

(7) Limitations in methodologies;

(8) Actions to be followed when quality control results deviate from expected values or patterns;

(9) Reporting patient results, including test calculations;

(10) Pertinent literature references; and

(11) Alternative methods for performing tests or storing the test specimens in the event that a test system becomes inoperable.

(b) Procedures must be initially approved, signed and dated by the current director of the laboratory.

(c) Each change in a procedure must be approved, signed and dated by the current director of the laboratory.

(d) The laboratory must maintain copies of each procedure it uses and the length of time the procedure was in use. These records must be maintained for two years after a procedure has been discontinued.

(e) Textbooks may be used as supplements to these written descriptions but may not be used in lieu of the laboratory's written procedures for testing or examining specimens.

§ 493.1213 Standard; Equipment maintenance and function checks.

The laboratory establishes and employs policies and procedures for—

(a) The proper maintenance of equipment, instruments and test systems by—

(1) Defining its preventive maintenance program for each instrument and piece of equipment based on the manufacturer's instructions. A laboratory must document that preventative maintenance has occurred with at least the frequency recommended by the manufacturer. If the manufacturer does not specify a frequency, the laboratory must document the validity of its preventive maintenance program; and

(2) Documenting the performance of its preventive maintenance program.

(b) Performing and documenting function checks on equipment, including but not limited to spectrophotometers, radioactive counters, particle counters, automated analyzers, centrifuges, densitometers and data processors to assure proper performance and accurate and reliable test results by—

(1) Rechecking, calibrating or recalibrating each instrument, device or test system at least once each day of use or more frequently, as specified by the manufacturer;

(2) Performing the function checks with at least the frequency specified by the manufacturer. The laboratory must establish performance criteria for each test or procedure if the manufacturer of the test system or equipment has not specified the type of maintenance and function checks to perform; and

(3) Performing all necessary baseline or background checks each day of use on radioactive counters, particle counters, refractometers,

spectrophotometers and other equipment requiring such measurements. Background or baseline checks must be performed and be within acceptable limits before patient testing.

§ 493.1215 Standard; Validation of methods.

The laboratory must have a written protocol and documentation for the validation of each method that verifies that the method produces test results within the laboratory's stated performance characteristics. Method validation must be performed before a test procedure is placed into routine use, thereafter, each method must be checked through calibration requirements specified in § 493.1217 of this subpart.

(a) The linear reportable range of each quantitative method, if applicable, must be established.

(b) In the case of qualitative and screening tests, the laboratory must determine and document the basis for specifying reportable results as positive, negative, or degree of reactivity. The laboratory must follow these established limits in reporting test results.

(c) A method used by the laboratory must be validated before it is used and documentation of the validation must be available for the period during which the procedure is used by the laboratory or for two years, whichever is longer.

(d) The laboratory must have documentation of the level of precision, accuracy, sensitivity, and specificity that the laboratory claims for each method in use and for which it reports results.

(e) The laboratory must maintain documentation verifying that test systems perform according to the laboratory's specifications. This documentation must be available to the authorized persons ordering or receiving test results.

(f) The laboratory must establish its reference range for each method before reporting patient test results.

(g) The laboratory may not report patient test results if it does not have data to verify the specified test performance characteristics and reporting limits.

§ 493.1217 Standard; Frequency of quality control.

The laboratory must perform quality control at the frequencies specified in this section unless another frequency is specified in §§ 493.1223 through 493.1285 of this subpart or HHS approves a lesser frequency in Appendix C of the State Operations Manual (HCFA Pub. 7).

(a) The laboratory must establish and document a schedule for calibration, recalibration or calibration verification of each automated and manual method.

(1) The laboratory must perform calibration, calibration verification or recalibration of each automated and manual procedure at least once every six months, or more frequently if specified by the manufacturer, using a complete range of calibrators and, in addition, when any of the following occur:

(i) A complete change of reagents for a procedure is introduced. If all of the reagents for a test are packaged together, the laboratory is not required to reclibrate for each package of reagents, provided the reagents are received in the same shipment and contain the same lot number;

(ii) There is major preventive maintenance or replacement of critical parts, such as an excitor lamp;

(iii) Controls begin to reflect an unusual trend or are outside of acceptable limits;

(iv) The manufacturer's recommendations specify more frequent recalibration; or

(v) The laboratory's established schedule requires more frequent recalibration.

(2) The number of calibrators the laboratory uses to calibrate, recalibrate, or verify calibration varies by method—

(i) For methods in which a linear relationship exists between concentration and direct instrument reading, at least three points and a zero or minimum value are required; and

(ii) For methods in which a nonlinear relationship exists between concentration and direct instrument readings, at least five points and a zero or minimum value are required unless the manufacturer specifies more points for calibration. If the manufacturer specifies more than five points of calibration and a zero, the laboratory must follow the manufacturer's recommendation or document the validity of performing procedural calibration using fewer, but not less than five, points.

(3) The calibrators must cover the entire range of patient values, with dilution as necessary, to be reported for the test procedures.

(4) for patient values above the maximum calibration point or below the minimum calibration point—

(i) The laboratory must report the patient results as greater than the upper limit or less than the lower limit or an equivalent designation; or

(ii) For patient results greater than the upper limit, the laboratory must dilute the sample and the diluted sample must fall within the laboratory's reportable range for the method. If a dilution method is employed, the laboratory must be able to provide evidence that the dilution process can yield accurate, reliable and valid test results.

(b) For each procedure, the laboratory must evaluate instrument and reagent stability and operator variance in determining the frequency of testing quality control samples in accordance with each run as defined in § 493.2 of this part.

(c) For quantitative tests, the laboratory must include two calibrator samples, one calibrator sample and one control sample, or two control samples in each run of unknown samples when these reference samples are available.

(d) The laboratory must use the calibrator samples, the control samples, or combination thereof, and monitor both the abnormal and normal range of reportable patient values.

(1) If calibrators are not used, two controls of different concentrations must be used;

(2) If controls are not used, two calibrators of different concentrations must be used. Two separate dilutions from a stock calibrator must be prepared or a calibrator and a sample spiked with a calibrator must be used;

(3) If calibrators and controls are not available, the laboratory must have a mechanism to assure the quality, accuracy and precision of the test results.

(e) For qualitative tests, the laboratory must include a positive and negative control with each run of specimens.

(f) The laboratory must determine its statistical limits (e.g., mean and standard deviation) for each lot number of controls through repetitive testing. The laboratory may use the assayed control limits established by the manufacturer, provided the limits are verified by the laboratory and the manufacturer's limits correspond to the methodology and instrumentation employed by the laboratory. Acceptable limits for unassayed materials must be established over time by the laboratory through concurrent testing with a control material having previously determined ranges.

(g) Initially, the laboratory must check each batch or shipment of reagents, discs, stains, antisera and identification systems (systems using two or more substrates and antigen detection systems) when prepared or opened for positive and negative reactivity, as well as graded reactivity if applicable.

(h) Each day of use (unless otherwise specified in this subpart), the laboratory must test staining materials for intended reactivity to ensure predictable staining characteristics.

(i) The laboratory must check positive and negative reactivity each time of use for fluorescent stains.

(j) Each day of use, the laboratory must test direct antigen detection systems using positive and negative control organisms that evaluate all phases of the system including the extraction and reaction phases, if appropriate.

(k) The laboratory must check each batch or shipment of media for sterility when labeled sterile, ability to support growth and, as appropriate, selectivity/inhibition, biochemical response or both. The laboratory may use a commercial manufacturer's quality control checks of media if the laboratory has documentation to verify that the manufacturer has used the quality assurance practices that have been approved by HHS in Appendix C of the State Operations Manual (HCFA Pub. 7). The laboratory must document that the physical characteristics of the media are not compromised and report any deterioration in the media to the manufacturer. The laboratory must follow the manufacturer's specifications for using the media and be responsible for the test results. A batch of media (solid, semi-solid, or liquid)—

(1) Consists of all tubes, plates, or containers of the same medium prepared at the same time and in the same laboratory; or

(2) If received from an outside source or commercial supplier, consists of all of the plates, tubes or containers of the same medium that have the same lot numbers and are received in a single shipment.

(l) Quality control samples must be tested in the same manner as patient specimens.

(m) Patient results may not be reported unless control results meet the laboratory's quality control criteria.

§ 493.1219 Standard; Remedial actions.

The laboratory must establish and employ policies and procedures and document actions taken when—

(a) Test systems do not meet the laboratory's established criteria as determined in § 493.1215, including—

(1) Quality control results that are outside of acceptable limits;

(2) Equipment or methodologies that perform outside of established operating parameters or specifications; and

(3) Test results that are outside of the laboratory's reportable range, established on the basis of maximum and minimum calibration values;

(b) It cannot test samples within specified times that it has established. The laboratory must establish and follow criteria for referring or for storing specimens. The laboratory must notify the individual responsible for utilizing test results if the laboratory cannot test a specimen within the laboratory's established timeframe for testing specimens;

(c) It detects errors in the reported patient results. The laboratory must promptly—

(1) Notify the authorized person ordering or individual utilizing the test results of reporting errors:

(2) Issue corrected reports to the authorized person ordering the test; and

(3) Maintain copies of the original report as well as the corrected report for two years;

(d) It does not report test results within its established time frames; and

(e) Proficiency test results are unacceptable or unsatisfactory.

§ 493.1221 Standard; Quality control—records.

(a) The laboratory must document all quality control activities specified in §§ 493.1203 through 493.1285 of this subpart and retain records for at least two years. Immunohematology quality control records must be maintained for a period of five years as specified in 21 CFR Part 606, Subpart I.

(b) The laboratory must maintain records of each step in the processing and testing of quality control samples to assure that the quality control samples are tested in the same manner as patient samples.

§ 493.1223 Condition: Quality control—specialties and subspecialties.

The laboratory must establish and follow policies and procedures for an acceptable quality control program that include verification and assessment of accuracy, measurement of precision and detection of error for all analyses and procedures performed by the laboratory. In addition to the general requirements specified in §§ 493.1201 through 493.1221 of this subpart, the laboratory must meet the applicable requirements of §§ 493.1225 through 493.1285 for each specialty and subspecialty for which the laboratory is licensed (CLIA and/or approved (Medicare and Medicaid).

Failure to meet any of the applicable conditions in §§ 493.1225 through 493.1285 will result in noncompliance with and in the loss of approval, licensure, or exemption from licensure for the entire specialty to which the condition applies; failure to meet any of the standards in §§ 493.1227 through 493.1285 will result in the loss of approval, licensure or exemption from licensure for the subspecialty to which the standard applies.

§ 493.1225 Condition: Microbiology.

The laboratory must meet the applicable quality control requirements in §§ 493.1201 through 493.1221 and in §§493.1227 through 493.1235 of this subpart for the subspecialties for which it is approved (Medicare and Medicaid) and/or licensed (CLIA) under the speciality of microbiology.

§ 493.1227 Standard; Bacteriology.

To meet the quality control requirements for bacteriology, the laboratory must comply with the applicable requirements in §§ 493.1201 through 493.1221 and with paragraphs (a) and (b) of this section.

(a) The laboratory must check positive and negative reactivity with control organisms—

(1) Each day of use for catalase, coagulase, oxidase reagents and DNA probes;

(2) Each week of use for Gram and acid-fast stains, bacitracin, optochin, ONPG, X, V, and XV discs or strips; and

(3) Each month of use for antisera.

(b) For antimicrobial susceptibility tests, the laboratory must check each new batch of media and each lot of antimicrobial discs before, or concurrent with, initial use, using approved reference organisms.

(1) The laboratory's zone sizes or minimum inhibitory concentration for reference organisms must be within established limits before reporting patient results.

(2) Each day tests are performed, the laboratory must use the appropriate control organism(s) to check the procedure, unless the laboratory can establish precision and accuracy to be within the limits established by HHS in Appendix C of the State Operations Manual (HCFA Pub. 7).

§ 493.1229 Standard; Mycobacteriology.

To meet the quality control requirements for mycobacteriology, the laboratory must comply with the applicable requirements in §§ 493.1201 through 493.1221 of this subpart and with paragraphs (a) through (d) of this section.

(a) Each day of use, the laboratory must check the iron uptake test with at least one acide-fast organism that produces a positive reaction and with an organism that produces a negative reaction and check all other reagents used for mycobacteria identification with at least one acid-fast organism that produces a positive reaction.

(b) The laboratory must check fluorochrome acid-fast stains for positive and negative reactivity each day of use.

(c) The laboratory must check each week of use acid-fast stains with an acid-fast organism that produces a positive reaction.

(d) For susceptibility tests performed on *Mycobacterium tuberculosis* isolates, the laboratory must check the procedure each week of use with a control strain of *Mycobacterium tuberculosis*.

§ 493.1231 Standard; Mycology.

To meet the quality control requirements for mycology, the laboratory must comply with the applicable requirements in §§ 493.1201 through 493.1221 of this subpart and with paragraphs (a) through (c) of this section.

(a) Each day of use, the laboratory must check the nitrate reagent with a peptone control.

(b) Each week of use, the laboratory must check acid-fast stains for positive and negative reactivity.

(c) For susceptibility tests, the laboratory must test each drug each day of use with at least one control strain that is susceptible to the drug. The laboratory must establish control limits. Criteria for control results must be met prior to reporting patient results.

§ 493.1233 Standard; Parasitology.

To meet the quality control requirements for parasitology, the laboratory must comply with the applicable requirements of §§ 493.1201 through 493.1221 of this subpart and with paragraphs (a) through (c) of this section.

(a) The laboratory must have available a reference collection of slides, photographs or gross specimens for identification of parasites available and use it in the laboratory for appropriate comparison with diagnostic specimens.

(b) The laboratory must use a calibrated ocular micrometer for determining the size of ova and parasites, if size is a critical parameter.

(c) Each month of use, the laboratory must check permanent stains using a fecal sample control that will demonstrate staining characteristics.

§ 493.1235 Standard; Virology.

To meet the quality control requirements for virology, the laboratory must comply with the applicable requirements in §§ 493.1201 through 493.1221 of this subpart and with paragraphs (a) through (c) of this section.

(a) The laboratory must have available host systems for the isolation of viruses and test methods for the identification of viruses that cover the entire range of viruses that are etiologically related to clinical diseases for which services are offered.

(b) The laboratory must maintain records that reflect the systems used and the reactions observed.

(c) In tests for the identification of viruses, the laboratory must employ uninoculated cells or cell substrate controls to detect erroneous identification results.

§ 493.1237 Condition: Diagnostic immunology.

The laboratory must meet the applicable quality control requirements in §§ 493.1201 through 493.1221 and §§ 493.1239 through 493.1241 of this subpart for the subspecialties for which it is approved (Medicare and Medicaid) and/or licensed (CLIA) under the specialty of diagnostic immunology.

§ 493.1239 Standard; Syphilis serology.

To meet the quality control requirements for syphilis serology, the laboratory must comply with the applicable requirements in §§ 493.1201 through 493.1221 of this subpart and with paragraphs (a) through (e) of this section.

(a) For laboratories performing syphilis testing, the equipment, glassware, reagents, controls, and techniques for tests for syphilis must conform to manufacturers' specifications.

(b) The laboratory must run serologic tests on patient specimens concurrently with a positive serum control of known titer or controls of graded reactivity plus a negative control unless otherwise specified by HHS in Appendix C of the State Operations Manual (HCFA Pub. 7).

(c) The laboratory must employ controls for all test components to ensure reactivity and uniform dosages.

(d) The laboratory may not report test results unless the predetermined reactivity pattern is observed.

(e) All facilities maufacturing blood and blood products for transfusion or serving as referral laboratories for these facilities must meet the syphilis serology testing requirements of 21 CFR 640.5(a).

§ 493.1241 Standard; General immunology.

To meet the quality control requirements for general immunology, the laboratory must comply with the applicable requirements in §§ 493.1201 through 493.1221 of this subpart and with paragraphs (a) through (d) of this section.

(a) The laboratory must run serologic tests on patient specimens concurrently with a positive serum control of known titer or controls of graded reactivity plus a negative control unless otherwise specified by HHS in Appendix C of the State Operations Manual (HCFA Pub. 7).

(b) The laboratory must employ controls for all test components (antigens, complement, erythrocyte indicator systems, etc.) to ensure reactivity and uniform dosages.

(c) The laboratory may not report test results unless the predetermined reactivity pattern is observed.

(d) All facilities manufacturing blood and blood products for transfusion or serving as referral laboratories for these facilities must meet:

(1) The HIV testing requirements of 21 CFR 610.45; and

(2) Hepatitis testing requirements of 21 CFR 610.40.

§ 493.1243 Condition: Chemistry.

The laboratory must meet the applicable quality control requirements in §§ 493.1201 through 493.1221 and §§ 493.1245 through 493.1251 of this subpart for the subspecialties for which it is approved (Medicare and Medicaid) and/or licensed (CLIA) under the specialty of chemistry.

§ 493.1245 Standard; Routine chemistry.

To meet the quality control requirements for routine chemistry, the laboratory must comply with the applicable requirements in §§ 493.1201 through 493.1221. In addition, for blood gas analyses, the laboratory must—

(a) Calibrate, recalibrate or verify calibration each eight hours using two calibrators;

(b) Test control materials each eight hours of testing; and

(c) Include a calibrator or control each time patients are tested unless automated instrumentation internally verifies calibration at least every thirty minutes.

§ 493.1247 Standard; Endocrinology.

To meet the quality control requirements for endocrinology, the laboratory must comply with the applicable requirements contained in §§ 493.1201 through 493.1221 of this subpart.

§ 493.1249 Standard; Toxicology.

To meet the quality control requirements for toxicology, the laboratory must comply with the applicable requirements in §§ 493.1201 through 493.1221 of this subpart.

§ 493.1251 Standard; Urinalysis.

(a) To meet the quality control requirements for urinalysis, the laboratory must comply with the applicable requirements in §§ 493.1201 through 493.1221; and

(b) For urinalysis qualitative or screening tests, the laboratory must include a positive control each day of testing to check the reactivity of each constituent for which qualitative test results are reported.

§ 493.1253 Condition: Hematology.

To meet the quality control requirements for hematology, the laboratory must comply with the applicable requirements in §§ 493.1201 through 493.1221 of this subpart and with paragraphs (a) through (c) of this section.

(a) For hematology tests excluding coagulation, the laboratory must include two levels of control each eight hours of operation except for manual cell counts, in which one level of control is required for each eight hours of operation.

(b) For all coagulation tests the laboratory must include two levels of control each eight hours of operation and each time a change in reagents occurs.

(c) For manual coagulation tests—

(1) Each individual performing tests must test two levels of controls before testing patient samples; and

(2) Patient and control specimens must be tested in duplicate.

§ 493.1255 Condition: Pathology.

The laboratory must meet the applicable quality control requirements in §§ 493.1201 through 493.1221 and §§ 493.1257 through 493.1261 of this subpart for the subspecialties for which it is approved (Medicare and Medicaid) and/or licensed (CLIA) under the specialty of pathology.

§ 493.1257 Standard; Cytology.

To meet the quality control requirements for cytology, the laboratory must comply with the applicable requirements in §§ 493.1201 through 493.1221 of this subpart and paragraphs (a) through (i) of this section.

(a) The laboratory must assure that—

(1) All gynecologic smears are stained using a Papanicolaou staining method;

(2) Staining solutions must be filtered or changed between the staining of gynecologic specimen batches and nongynecologic specimen batches;

(3) Before routine staining, all body cavity fluids are assessed for their potential to cross-contaminate other non-gynecological specimens. Those specimens found to have a high potential for cross-contamination must be stained separately from other non-gynecological specimens and the stains filtered between batches; and

(4) Diagnostic interpretations are not reported on unsatisfactory smears.

(b) The laboratory is responsible for insuring that—

(1) Each individual engaged in the evaluation of cytology preparations by nonautomated microscopic techniques examines no more than 120 slides, which include both gynecologic and nongynecologic preparations, in a 24 hour period. Of the slide limit established by the technical supervisor for each individual in accordance with paragraph (c)(4) of this section, no more than two-thirds (up to a maximum of 80) of the unevaluated slides may be examined; the remaining slides that may be examined must be for quality control and quality assurance or proficiency testing purposes. Previously examined premalignant or malignant gynecologic cases defined in paragraph (c)(1), previously examined non-gynecologic cytology preparations, and tissue pathology slides examined by a person qualified under § 493.1421 (a) or (f) or § 493.1403(b)(1) are not included in the 120 slide limit for the technical supervisor.

(2) Records are maintained of the number of slides examined by each individual during each 24 hour period and the number of hours each individual spends examining slides in the 24 hour period.

(i) The maximum number of 120 slides described in paragraph (b)(1) may be examined in no less than 6 hours.

(ii) For the purposes of establishing workload limits for individuals examining slides on a part-time basis, a period of 8 hours must be used to prorate the number of slides that may be examined. Use the formula—

$$\frac{\text{No. of hours} \times 120}{8}$$

to determine maximum slide volume to be examined. No more than two-thirds of the slides examined by individuals on a part-time basis may be unevaluated slides; the remaining slide preparations must be for quality control and quality assurance or proficiency testing purposes only.

(c) The individual providing technical supervision of cytology must assure that—

(1) All gynecological smears interpreted to be in the premalignant (dysplasia, cervical intraepithelial neoplasia or any squamous intraepithelial lesions including human papillomavirus associated changes) or malignant category are confirmed by the technical supervisor in cytology. The report must be signed to reflect the review or, if a computer report is generated, it must reflect an electronic signature authorized by the technical supervisor in cytology.

(2) All nongynecological cytological preparations are reviewed by the technical supervisor in cytology. The report must be signed to reflect technical supervisory review or, if a computer report is generated, it must reflect an electronic signature authorized by the technical supervisor.

(3) Provision is made for documenting and evaluating the slide examination performance of each individual not qualified under § 493.1421 (a) or (f) or § 493.1403(b)(1), including performance evaluation through the re-examination of normal and negative cases and feedback on the premalignant or malignant cases as defined in paragraph (c)(1) of this section referred to the technical supervisor in cytology.

(4) A maximum number of slides, not to exceed 120 slides, to be examined in 24 hours or in the period spent examining slides is established by the technical supervisor for each individual examining slide preparations by non-automated microscopic technique.

(i) The workload limit must be documented for each individual and established in accordance with the individual's capability based on the quality assurance evaluations required in § 493.1501 of this subpart.

(ii) Records are available to document that each individual's workload limit is reassessed monthly and adjusted when necessary.

(d) The laboratory must establish and follow a program designed to detect errors in the performance of cytological examinations and the reporting of results.

(1) The laboratory must establish a program that includes a review of slides examined by each individual not qualified under § 493.1421 (a) or (f) or § 493.1403(b)(1); records of initial examinations and rescreening results must be available. The review must be completed before reporting patient results and must meet the requirements of subparagraph (1)(i) and (1)(ii) of this paragraph.

(i) At least ten percent of all gynecologic cases interpreted to be negative for premalignant or malignant conditions as defined in paragraph (c)(1) of this section must be re-examined by another individual authorized by the laboratory to examine cytologic preparation; and

(ii) Gynecologic cases that are interpreted to be negative for premalignant or malignant conditions as defined in paragraph (c)(1) of this section and that are from patients who

are identified as having a high probability of developing cervical cancer, as referred to in § 493.1101(b)(8), must be included in the ten percent of cases to be re-examined by an individual authorized by the laboratory to examine cytologic preparations.

(2) The laboratory must compare clinical information with cytology reports and must compare all premalignant and malignant (as defined in paragraph (c)(1) of this section) gynecology reports with the histopathology report, if available in the laboratory (either on-site or in storage) or available through the State health department registry, and determine the causes of any discrepancies.

(3) The laboratory must review all normal or negative gynecologic specimens, within the last five years, if available in the laboratory (either on-site or in storage), for each patient with a current premalignant or malignant (as defined in paragraph (c)(1) of this section) gynecologic result.

(4) The laboratory must establish and document an annual statistical evaluation of the number of cytology cases examined, number of specimens processed by specimen type, volume of patients reported by diagnosis, number of gynecologic cases where cytology and available histology are discrepant, the number of gynecologic cases where any rescreen of a normal or negative specimen results in a reclassification as premalignant or malignant as defined in paragraph (c)(1) of this section, and the number of gynecologic cases for which histology results were unavailable to compare with premalignant or malignant cytology cases as defined in paragraph (c)(1) of this section. The laboratory must also document the number of unsatisfactory specimens submitted by each physician or laboratory.

(5) The laboratory must evaluate the case reviews of each individual examining slides against the laboratory's overall statistical values, document any discrepancies, including reasons for the deviation, and document corrective action, if appropriate.

(e) The laboratory report must—

(1) Clearly distinguish smears that are unsatisfactory for diagnostic interpretation;

(2) Contain narrative descriptions for any premalignant or malignant results;

(3) Include the presence of endometrial cells if endometrial cells are present out of cycle;

(4) Indicate evidence of viral infection if present;

(5) Contain appropriate provisions for follow-up recommendations; and

(6) Notify physicians if specimens and/or smears are unsatisfactory for examination.

(f) Corrected reports issued by the laboratory must indicate the basis for correction.

(g) The laboratory must retain all normal, negative and unsatisfactory slide preparations for five years from the date of examination.

(h) The laboratory must retain all premalignant and malignant as defined in paragraph (c)(1) of this section slide preparations for ten years from the date of examination.

(i) Slides may be loaned to approved proficiency testing programs, as specified in subparts H and I of this part in lieu of maintaining slides for the time periods specified in §§ 493.1257(g) and 493.1257(h) of this section, only if authorized by HHS.

§ 493.1259 Standard; Histopathology.

To meet the quality control requirements for histopathology, a laboratory must comply with the applicable requirements in §§ 493.1201 through 493.1221 of this subpart and paragraphs (a) through (f) of this section.

(a) A control slide of known reactivity must be included with each slide or group of slides for differential or special stain. Reaction(s) of the control slide with each special stain must be documented.

(b) The laboratory must retain stained slides at least ten years from the date of examination and retain specimen blocks at least two years from the date of examination.

(c) The laboratory must retain remnants of tissue specimens in a fixative solution until the portions submitted for microscopic examination have been examined and a diagnosis made by an individual qualified under § 493.1421(g)(1), 493.1421(g)(2) or 493.1403(b)(2) of this part. In addition, an individual who meets the requirements of § 493.1421(g)(1), 493.1421(g)(2), 493.1421(g)(3), or 493.1403(b)(3), may examine and provide reports for specimens for skin pathology; an individual meeting the requirements of § 493.1421(a), 493.1421(h) or § 493.1403(b)(4) may examine and provide reports for oral pathology specimens.

(d) All tissue pathology reports must be signed by an individual qualified as specified in paragraph (c) of this section. If a computer report is generated with an electronic signature, it must be authorized by the individual qualified as specified in paragraph (c) of this section.

(e) The laboratory must utilize acceptable terminology of a recognized system of disease nomenclature in reporting results.

(f) The laboratory must report results of all biopsy-confirmed cases of cervical cancer to the State health department for the State in which the laboratory is located.

§ 493.1261 Standard; Oral pathology.

To meet the quality control requirements for oral pathology, the laboratory must comply with the applicable requirements in §§ 493.1201 through 493.1221 and 493.1259 of this subpart.

§ 493.1263 Condition: Radiobioassay.

To meet quality control requirements for radiobioassay, the laboratory must meet the specific requirements of §§ 493.1201 through 493.1221 of this subpart.

§ 493.1265 Condition: Histocompatibility.

In addition to meeting the requirements for general quality control in §§ 493.1201 through 493.1221, for quality control for general immunology in § 493.1241 of this subpart and for immunohematology in § 493.1269 of this subpart, if applicable, the laboratory must comply with the applicable requirements in paragraphs (a) through (d) of this section.

(a) For renal allotransplantation the laboratory must meet the requirements of paragraphs (a)(1) through (a)(24) of this section.

(1) The laboratory must have available and follow criteria for selecting appropriate patient serum samples for crossmatching;

(2) The laboratory must have available results of final crossmatches before an organ or tissue is transplanted;

(3) The laboratory must have available and follow criteria for the technique used in crossmatching;

(4) The laboratory must have available and follow criteria for preparation of donor lymphocytes for crossmatching;

(5) The laboratory must have available and follow criteria for reporting crossmatch results;

(6) The laboratory must have available serum specimens for all potential transplant recipients at initial typing, for periodic screening, for pretransplantation crossmatch and following sensitizing events, such as transfusion and transplant loss;

(7) The laboratory's storage and maintenance of both recipient sera and reagents must—

(i) Be at an acceptable temperature range for sera and components;

(ii) Use a temperature alarm system and have an emergency plan for alternate storage; and

(iii) Be well-organized with all specimens properly identified and easily retrievable;

(8) The laboratory's reagent typing sera inventory (applicable only to locally constructed trays) must indicate source, bleeding date and identification number, and volume remaining;

(9) The laboratory must properly label and store cells, complement, buffer, dyes, etc.;

(10) The laboratory must HLA type all potential transplant recipients;

(11) The laboratory must type cells from organ donors referred to the laboratory;

(12) The laboratory must have available and follow criteria for the preparation of lymphocytes for HLA-A, B and DR typing;

(13) The laboratory must have available and follow criteria for selecting typing reagents, whether locally or commercially prepared;

(14) The laboratory must have available and follow criteria for the assignment of HLA antigens;

(15) The laboratory's reagents for typing recipients and donors must be adequate to define all major and International Workship HLA-A, B and DR specificities for which reagents are readily available;

(16) The laboratory must include positive and negative controls on each tray;

(17) The laboratory must have a written policy that it follows that establishes when antigen redefinition and retyping are required;

(18) The laboratory must screen recipient sera for preformed antibodies with a suitable lymphocyte panel that assures that—

(i) Potential transplant recipient sera are screened for HLA-A and B antibody content at the time of the recipient's initial HLA typing; and

(ii) Screening must be performed on samples collected at monthly intervals thereafter and following sensitizing events;

(19) The laboratory must use a suitable cell panel for screening patient sera (antibody screen), a screen that contains all the major HLA specificities and common splits—

(i) If the laboratory does not use commercial panels, it must maintain a list of individuals for fresh panel bleeding; and

(ii) If the laboratory uses frozen panels, there must be a suitable storage system.

(20) Compatibility testing for cellularly-defined antigens must utilize techniques such as the mixed lymphocyte culture test, homozygous typing cells or DNA analysis;

(21) If the laboratory reports the recipient's and/or donor's ABO blood group and Rh_o (D) group, the testing must be performed in accordance with § 493.1269 of this subpart;

(22) If the laboratory utilizes ABO agglutinins to remove red blood cells during lymphocyte isolation, the specificity of the ABO reagents must be verified with control cells;

(23) The laboratory must, at least once each month, give each individual performing tests a previously tested specimen as an unknown to verify his or her ability to reproduce test results. The laboratory must maintain records of the results for each individual; and

(24) The laboratory must participate in at least one national or regional cell exchange program, if available, or develop an exchange system with another laboratory in order to validate interlaboratory reproducibility.

(b)(1) For laboratories performing histocompatibility testing only for transfusions and other nonrenal transplantation, excluding bone marrow, the laboratory must meet all the requirements specified in this section except for the performance of mixed lymphocyte cultures.

(2) For laboratories performing histocompatibility testing for bone marrow transplantation, the laboratory must meet all the requirements specified in this section including the performance of mixed lymphocyte cultures.

(3) For laboratories performing histocompatibility testing for non-renal solid organ transplantation, the results of final crossmatches must be available before transplantation when the recipient has demonstrated presensitization by prior serum screening.

(c) Laboratories performing HLA typing for disease-associated studies, or parentage testing must meet all the requirements specified in this section except for the performance of mixed lymphocyte cultures.

(d) For laboratories performing tests for organ transplantation, the laboratory must assure the donor is tested for HIV reactivity using the same protocols as required under § 493.1241 of this part for the transfusion of blood and blood products, unless the organ recipient (or an individual authorized to act on his or her behalf) waives the tests because of medical circumstances.

§ 493.1267 Condition: Clinical cytogenetics.

To meet the quality control requirements for clinical cytogenetics, the laboratory must comply with the applicable requirements of §§ 493.1201 through 493.1221 of this subpart and with paragraphs (a) through (d) of this section.

(a) When determination of sex is performed by X and Y chromatin counts, these counts must be based on an examination of an adequate number of cells. Confirmatory testing such as full chromosome analysis must be performed for all atypical results.

(b) The laboratory must have records that document the number of cells counted, the number of cells karyotyped, the number of chromosomes counted for each metaphase spread, and the quality of the banding; that the resolution is sufficient to support the reported results; and that an adequate number of karyotypes are prepared for each patient.

(c) The laboratory also must have policies and procedures for assuring an adequate patient sample identification during the process of accessioning, cell preparation, photographing or other image reproduction technique, and photographic printing, and storage and reporting of results or photographs.

(d) The laboratory report must include the summary and interpretation of the observations and number of cells counted and analyzed and the use of appropriate nomenclature.

§ 493.1269 Condition: Immunohematology.

To meet the quality control requirements for immunohematology, the laboratory must comply with the applicable requirements in §§ 493.1201 through 493.1221 of this subpart and with paragraphs (a) through (d) of this section.

(a) The laboratory must perform ABO group and Rh_o(D) group, unexpected antibody detection, antibody identification and compatibility testing in accordance with 21 CFR part 606 (with the exception of 21 CFR 606.20a, Personnel) and 21 CFR 640 et seq.

(b) The laboratory must perform ABO group by testing unknown red cells with anti-A and anti-B grouping reagents. For confirmation of ABO group, the unknown serum must be testing with known A_1 and B red cells.

(c) The laboratory must determine the Rh_o(D) group by testing unknown red cells with anti-D (anti-Rh_o) blood grouping reagent.

(d) If required in the manufacturer's package insert for anti-D reagents, the laboratory must employ a control system capable of detecting false positive Rh_o test results.

§ 493.1271 Condition: Transfusion services and bloodbanking.

If a facility provides services for the transfusion of blood and blood products, the facility must be under the adequate control and technical supervision of the pathologist or other doctor of medicine or osteopathy meeting the qualifications in subpart L for technical supervision in immunohematology, transfusion services. The facility must ensure that there are facilities for procurement, safekeeping and transfusion of blood and blood products and that blood products are available to meet the needs of the physicians responsible for the diagnosis, management, and treatment of patients. The facility meets this condition by complying with the standards in §§ 493.1273 through 493.1285 of this subpart.

§ 493.1273 Standard; Immunohematological collection, processing, dating periods, labeling and distribution of blood and blood products.

In addition to the requirements in this section, the facility must also meet the applicable quality control requirements in §§ 493.1201 through 493.1221 of this part.

(a) Blood and blood product collection, processing and distribution must comply with 21 CFR part 640 and 21 CFR part 606, and the testing laboratory must be Medicare-approved.

(b) Dating periods for blood and blood products must conform to 21 CFR 610.53.

(c) Labeling of blood and blood products must conform to 21 CFR part 606, subpart G.

§ 493.1275 Standard; Blood storage facilities.

If blood is stored or maintained for transfusion, the facility must ensure that storage conditions, including temperature, are appropriate to prevent deterioration of the blood or blood product.

§ 493.1277 Standard; Arrangement for services.

In the case of services provided outside the blood bank, the facility must have an agreement reviewed and approved by the director that governs the procurement, transfer and availability of blood and blood products.

§ 493.1279 Standard; Provision of testing.

There must be provision for prompt ABO blood group, RH_o (D) group, unexpected antibody detection, compatibility testing in accordance with § 493.1269 and for laboratory investigation of transfusion reactions, either through the facility or under arrangement with an approved facility on a continuous basis, under the supervision of a pathologist or other doctor of medicine or osteopathy.

§ 493.1281 Standard; Storage facilities.

The blood storage facilities must have an adequate temperature alarm system that is regularly inspected.

§ 493.1283 Standard; Retention of transfused blood.

According to the facility's established procedures, samples of each unit of transfused blood must be retained for further testing in the event of reactions. The facility must promptly dispose of blood not retained for further testing that has passed its expiration date.

§ 493.1285 Standard; Investigation of transfusion reactions.

The facility, according to its established procedures, must promptly investigate all transfusion reactions occurring in its own facility for which it has investigational responsibility and make recommendations to the medical staff regarding improvements in transfusion procedures. The facility must document that all necessary remedial actions are taken to prevent future recurrences and that all policies and procedures are reviewed to assure that they are adequate to ensure the safety of individuals being transfused within the facility.

Subpart L—Personnel

§ 493.1401 General.

This subpart consists of the requirements that the personnel of various types of providers and suppliers must meet.

§ 493.1402 Definitions.

For purposes of this subpart, the following definitions apply:

Subsequent to graduation. The phrase "subsequent to graduation" means laboratory training and experience acquired after receipt of the degree specified. However, for purposes of § 493.1415 or 493.1427, experience as a technologist in a laboratory, which was gained prior to acquiring such degree, may be substituted on an equivalency basis of 1.5 years of such experience for every 1 year of postdegree training and experience; and experience as a general supervisor in an approved clinical laboratory, which was gained prior to acquiring such degree, may be substituted on a 1-for-1 basis.

Substitution of education for experience. The phrase "substitution of education for experience," applies only to §§ 493.1427(b)(6), 493.1433(b)(5), and 493.1441(b)(5) and means that a minimum of 30 semester hours of credit from an approved school of medical technology, or toward a bachelor's degree from an accredited institution with a chemical, physical, or biological science as his major subject is considered equivalent to 2 years of experience. Additional education is equated at the rate of 15 semester hours of credit for 1 year of experience.

Technician trainee. The term "technician trainee" means a high school graduate or equivalent who is gaining the required 2 years of clinical laboratory on-the-job experience to qualify as a technician, and is participating in a structured training program approved by the State agency designed to provide the trainee with a broad range of laboratory procedures of progressive technical difficulty.

Hospital-Based Laboratories

§ 493.1403 Hospital personnel.

As part of meeting the condition of participation at § 482.27 of this chapter, a hospital's laboratory must provide personnel to direct and conduct the laboratory services.

(a) The laboratory director must be technically qualified to supervise the laboratory personnel and test performance.

(1) The director must be a pathologist or other doctor of medicine or osteopathy with training and experience in clinical laboratory services;

(2) A laboratory specialist with a doctoral degree in physical, chemical or biological sciences, and training and experience in clinical laboratory services; or

(3) Qualifies under State law to direct a laboratory in the State in which the laboratory is located.

(b) If the laboratory performs services in any of following testing areas, specific qualifications are required for the individual providing technical supervision.

(1) Cytology—In the case of tests in cytology, the individual is a physician who—

(i) Is certified in anatomic pathology by the American Board of Pathology or the American Osteopathic Board of Pathology;

(ii) Is certified by the American Society of Cytology to practice cytopathology;

(iii) Possesses qualifications that are equivalent to those required for certification by the Boards specified in paragraph (b)(1)(i) of this section; or

(iv) Possesses qualifications that are equivalent to those required for certification specified in (b)(1)(ii) of this section.

(2) Histopathology—In the case of tests limited to histopathology, the individual is a physician who meets the requirements of paragraph (b)(1)(i) or (b)(1)(iii) of this section.

(3) Dermatopathology—In the case of tests in dermatopathology, the individual—

(i) Is a physician who meets the requirements of paragraph (b)(1)(i) or (b)(1)(iii) of this section.

(ii) Is certified in dermatopathology by the American Board of Dermatology, the American Osteopathic Board of Dermatology, the American Board of Pathology, or the American Osteopathic Board of Pathology; or

(iii) Possesses qualifications that are equivalent to those required for certification by the Boards specified in paragraph (b)(3)(ii) of this section.

(4) Oral pathology—In the case of tests in oral pathology, the individual—

(i) Is a physician who meets the requirements of paragraph (b)(1)(i) or (b)(1)(iii) of this section;

(ii) Is certified in oral pathology by the American Board of Oral Pathology; or

(iii) Possesses qualifications that are equivalent to those required for certification by the Board specified in paragraph (b)(4)(ii) of this section.

(5) Histocompatibility—In the case of tests in histocompatibility, the individual—

(i) Holds an earned doctoral degree in a biological science or is a physician; and

(ii) Subsequent to graduation, has had four years of experience in immunology, two of which have been in histocompatibility testing.

(6) Clinical cytogenetics—In the case of tests in clinical cytogenetics, the individual—

(i) Holds an earned doctoral degree in a biological science or is a physician; and

(ii) Has had four years of experience in genetics, two of which have been in clinical cytogenetics.

(7) Transfusion services and blood banking—The individual is a pathologist or other doctor of medicine or osteopathy with training and experience in transfusion services.

(c) The laboratory director must—

(1) Provide technical supervision of the laboratory services; and

(2) Assure that tests, examinations, and procedures are properly performed, recorded, and reported.

(d) The laboratory director must ensure that the staff—

(1) Has appropriate education, experience, and training to perform and report laboratory tests promptly and proficiently;

(2) Is sufficient in number for the scope and complexity of the services provided; and

(3) Receives in-service training appropriate to the type and complexity of the laboratory services offered.

(4) The laboratory technologists must be technically competent to perform test procedures and report test results promptly and proficiently.

SNF Laboratories

§ 493.1405 Skilled nursing facility laboratory personnel.

As part of meeting the condition of participation for laboratory services (see § 405.1128 of this chapter), a skilled nursing facility's laboratory personnel must meet the same requirements as hospital laboratory personnel must meet in § 493.1403 (a) through (d) of this subpart.

ICF/MR Laboratories

§ 493.1407 ICF/MR laboratory services.

If a facility chooses to provide laboratory services, its personnel must meet the following requirements—

(a) The laboratory director must be technically qualified to supervise the laboratory personnel and test performance and must meet licensing or other qualification standards established by the State with respect to directors of clinical laboratories. For those States that do not have licensure or qualification requirements pertaining to directors of laboratories, the director must be either—

(1) A pathologist or other doctor of medicine or osteopathy with training and experience in laboratory services; or

(2) A laboratory specialist with a doctoral degree in physical, chemical or biological sciences, and training and experience in laboratory services; or

(3) Qualified under State law to direct a laboratory in the State in which the laboratory is located.

(b) The laboratory director must provide adequate technical supervision of the laboratory services and assure that tests, examinations and procedures are properly performed, recorded and reported.

(c) The laboratory director must ensure that the staff—

(1) Has appropriate education, experience, and training to perform and report laboratory tests promptly and proficiently;

(2) Is sufficient in number for the scope and complexity of the services provided; and

(3) Receives in-service training appropriate to the type and complexity of the laboratory services offered; and

(4) Is technically competent to perform test procedures and report test results promptly and proficiently.

Independent Laboratories

§ 493.1413 Condition—Independent laboratories; laboratory director.

The laboratory must have a director who meets the requirements of § 493.1415 of this subpart and provides overall management and direction in accordance with § 493.1417 of this subpart.

§ 493.1415 Standard; Laboratory director, qualifications.

The laboratory director must be qualified to manage and direct the laboratory personnel and test performance.

(a) The laboratory director must possess a current license as a laboratory director issued by the State, if such licensing exists; and

(b) The laboratory director must:

(1) Be a physician certified in anatomical or clinical pathology (or both) by the American Board of Pathology or the American Osteopathic Board of Pathology or possess qualifications that are equivalent to those required for such certification;

(2) Be a physician who: (i) Is certified by the American Board of Pathology or the American Osteopathic Board of Pathology in at least one of the laboratory specialties, or (ii) is certified by the American Board of Medical Microbiology, the American Board of Clinical Chemistry, the American Board of Bioanalysis, or other national accrediting board in one of the laboratory specialties, or (iii) is certified by the American Society of Cytology to practice cytopathology or possesses qualifications that are equivalent to those required for such certification, or (iv) subsequent to graduation, has had 4 or more years of full-time general laboratory training and experience of which at least 2 years were spent acquiring proficiency in one of the laboratory specialties;

(3) For the subspecialty of oral pathology only, be certified by the American Board of Oral Pathology, American Board of Pathology or the American Osteopathic Board of Pathology or possesses qualifications that are equivalent to those required for certification;

(4) Hold an earned doctoral degree from an accredited institution with a chemical, physical, or biological science as a major subject and (i) is certified by the American Board of Medical Microbiology, the American Board of Clinical Chemistry, the American Board

of Bioanalysis, or other national accrediting board acceptable to HHS in one of the laboratory specialties, or (ii) subsequent to graduation has had 4 or more years of fulltime general laboratory training and experience of which at least 2 years were spent acquiring proficiency in one of the laboratory specialties;

(5) With respect to individuals first qualifying before July 1, 1971, have been responsible for the direction of a laboratory for 12 months between July 1, 1961, and January 1, 1968, and, in addition, either:

(i) Was a physician and subsequent to graduation had at least 4 years of pertinent full-time laboratory experience;

(ii) Held a master's degree from an accredited institution with a chemical, physical, or biological science as a major subject and subsequent to graduation had at least 4 years of pertinent full-time laboratory experience;

(iii) Held a bachelor's degree from an accredited institution with a chemical, physical, or biological science as a major subject and subsequent to graduation had at least 6 years of pertinent full-time laboratory experience; or

(iv) Achieved a satisfactory grade through an examination conducted by or under the sponsorship of the U.S. Public Health Service on or before July 1, 1970; or

(6) Qualify under State law to direct the laboratory in the State in which the laboratory is located.

Note: The January 1, 1968, date for meeting the 12 months' laboratory direction requirement in paragraph (b)(5) of this section may be extended 1 year for each year of full-time laboratory experience obtained before January 1, 1968 required by State law for a laboratory director license. An exception to the July 1, 1971, qualifying date in paragraph (b)(5) of this section was made provided that the individual requested qualification approval by October 21, 1975 and had been employed in a laboratory for at least 3 years of the 5 years preceding the date of submission of his qualifications.

§ 493.1417 Standard; Laboratory director responsibilities.

The laboratory director must be responsible for the overall management of the laboratory personnel, for the performance of test procedures and reporting of test results and for assuring compliance with the applicable regulations.

(a) The laboratory director must assure that technical supervision is provided by individuals as required under § 493.1419 of this subpart.

(b) The laboratory director must—

(1) Assure that tests, examinations and procedures are properly performed, recorded and reported;

(2) Assure that the laboratory maintains an ongoing quality assurance program;

(3) Assure that when tests are being performed there is a general supervisor on the premises who meets the qualifications of § 493.1417 of this subpart; and

(4) Assure compliance with the applicable regulations.

(c) The laboratory director must ensure that the staff—

(1) Has the appropriate education, experience and training to perform and report laboratory tests promptly and proficiently;

(2) Is sufficient in number for the scope and complexity of the services provided;

(3) Receives regular in-service training appropriate for the type and complexity of the laboratory services offered; and

(4) Maintains competency to perform test procedures and report test results promptly and proficiently.

§ 493.1419 Condition: Independent laboratories; technical supervision.

For each specialty or subspecialty of services performed, the laboratory must have an individual who is qualified under § 493.1421 of this subpart to provide technical supervision in accordance with § 493.1423 of this subpart.

§ 493.1421 Standard; Technical supervisor qualifications.

Specific qualifications are required for the individual providing technical supervision for each of the specialties and subspecialties in which the laboratory performs tests or procedures.

(a) The laboratory may perform anatomical and clinical laboratory procedures and tests in all specialties and subspecialties of services except histocompatibility and clinical cytogenetics services provided the technical supervisor is a physician and—

(1) Is certified in both anatomical and clinical pathology by the American Board of Pathology or the American Osteopathic Board of Pathology; or

(2) Possesses qualifications that are equivalent to those required for certification.

(b) If the requirements of paragraph (a) of this section are not met and the laboratory performs tests in the specialty of microbiology, including the subspecialties of bacteriology, mycobacteriology, mycology, parasitology, and virology, the testing must be performed under the supervision of an individual who—

(1) Is a physician and—

(i) Is certified in clinical pathology by the American Board of Pathology or the American Osteopathic Board of Pathology; or

(ii) Possesses qualifications that are equivalent to those required for certification by one of the Boards specified in subparagraph (1)(i) of this paragraph; or

(2)(i) Holds an earned doctoral or master's degree in microbiology from an accredited institution or is a physician, and

(ii) Subsequent to graduation has had at least 4 years of experience in clinical microbiology.

(c) If the requirements of paragraph (a) of this section are not met and the laboratory performs tests in the specialty of diagnostic immunology, the testing must be performed under the supervision of an individual who—

(1) Is a physician and—

(i) Is certified in clinical pathology by the American Board of Pathology or the American Osteopathic Board of Pathology; or

(ii) Possesses qualifications that are equivalent to those required for certification by one of the Boards specified in subparagraph (1)(i) of this paragraph; or

(2)(i) Holds an earned doctoral or master's degree in biology, chemistry, immunology, or microbiology from an accredited institution or is a physician, and

(ii) Subsequent to graduation has had at least 4 years of experience in immunology.

(d) If the requirements of paragraph (a) of this section are not met and the laboratory performs tests in the specialty of chemistry, the testing must be performed under the supervision of an individual who—

(1) Is a physician and—

(i) Is certified in clinical pathology by the American Board of Pathology or the American Osteopathic Board of Pathology; or

(ii) Possesses qualifications that are equivalent to those required for certification by one of the Boards specified in subparagraph (1)(i) of this paragraph; or

(2)(i) Holds an earned doctoral or master's degree in chemistry from an accredited institution or is a physician, and

(ii) Subsequent to graduation has had at least 4 years of experience in clinical chemistry.

(e) If the requirements of paragraph (a) of this section are not met and the

laboratory performs tests in the specialty of hematology, the testing must be performed under the supervision of an individual who—

(1) Is a physician and—

(i) Is certified in clinical pathology by the American Board of Pathology or the American Osteopathic Board of Pathology; or

(ii) Possesses qualifications that are equivalent to those required for certification by one of the Boards specified in subparagraph (1)(i) of this paragraph; or

(2)(i) Holds a master's or a bachelor's degree in biology, immunology, microbiology, or chemistry, or medical technology from an accredited institution, and

(ii) Subsequent to graduation has had at least 4 years of experience in hematology.

(f) If the requirements of paragraph (a) of this section are not met and the laboratory performs tests in the subspecialty of cytology, the testing must be performed under the supervision of a physician who—

(1) Is certified in anatomic pathology by the American Board of Pathology or the American Osteopathic Board of Pathology;

(2) Is certified by the American Society of Cytology to practice cytopathology; or

(3) Possesses qualifications that are equivalent to those required for certification specified in (f)(1) or (f)(2) of this section.

(g) If the laboratory performs tests in the subspecialty of histopathology, the testing must be performed under the supervision of an individual who—

(1) Meets the requirements of paragraph (a) of this section;

(2) Is a physician and—

(i) Is certified in anatomical pathology by the American Board of Pathology or the American Osteopathic Board of pathology; or

(ii) Possesses qualifications that are equivalent to those required for certification by one of the Boards specified in subparagraph (1)(i) of this paragraph; or

(3) For tests in dermatopathology, the individual—

(i) Meets the requirements of paragraph (a) of this section;

(ii) Is a physician and is certified in anatomic pathology by the American Board of Pathology or the American Osteopathic Board of Pathology;

(iii) Is certified in dermatology by the American Board of Dermatology or the American Osteopathic Board of Dermatology; or

(iv) Possesses qualifications that are equivalent to those required for certification by one of the Boards specified in subparagraph (3)(ii) or (iii) of this paragraph.

(h) If the requirements of paragraph (a) of this section are not met and the laboratory performs tests in the subspecialty of oral pathology, the testing must be performed under the supervision of an individual who—

(1) Is a physician and—

(i) Is certified in anatomical pathology by the American Board of Pathology or the American Osteopathic Board of Pathology; or

(ii) Possesses qualifications that are equivalent to those required for certification by one of the Boards specified in subparagraph (1)(i) of this paragraph; or

(2)(i) Is certified in oral pathology by the American Board of Oral Pathology; or

(ii) Possesses qualifications that are equivalent to those required for certification.

(i) If the requirements of paragraph (a) of this section are not met and the laboratory performs tests in the specialty of radiobioassay, the testing must be performed under the supervision of an individual who—

(1) Is a physician and—

(i) Is certified in clinical pathology by the American Board of Pathology or the American Osteopathic Board of Pathology; or

(ii) Possesses qualifications that are equivalent to those required for certification by one of the boards specified in paragraph (1)(i) of this paragraph; or

(2)(i) Holds an earned doctoral, master's, or bachelor's degree in chemistry, physics, biology, or medical technology from an accredited institution or is a physician and

(ii) Subsequent to graduation has had at least 4 years of experience in radiobioassay.

(j) If the laboratory performs tests in the specialty of histocompatibility, the testing must be performed under the supervision of an individual who—

(1) Holds an earned doctoral degree in a biological science or is a physician, and

(2) Subsequent to graduation has had 4 years of experience in immunology, 2 of which have been in histocompatibility testing.

(k) If the laboratory performs tests in the specialty of clinical cytogenetics, the testing must be performed under the supervision of an individual who—

(1) Holds an earned doctoral degree in a biological science or is a physician, and

(2) Has had four years of experience in genetics, two of which have been in clinical cytogenetics.

(l) If the requirements of paragraph (a) of this section are not met and the laboratory performs tests in the specialty of immunohematology, the testing must be performed under the supervision of an individual who—

(1) Is a physician and—

(i) Is certified in clinical pathology by the American Board of Pathology or the American Osteopathic Board of Pathology; or

(ii) Possesses qualifications that are equivalent to those required for certification by one of the Boards specified in subparagraph (1)(i) of this paragraph; or

(2) Is a physician with at least 2 years of experience in immunohematology subsequent to graduation; or

(3) Within the specialty of immunohematology, the laboratory performs tests in the subspecialties of ABO group and RH_o (D) group, unexpected antibody detection, antibody identification, and titering only, the supervisor holds a master's or bachelor's degree in biology, immunology, microbiology, chemistry, or medical technology from an accredited institution and subsequent to graduation has had at least 4 years of experience in immunohematology.

(m) A laboratory whose director qualifies as a director under § 493.1415(b)(5)(iv) is qualified as a technical supervisor in the laboratory specialties in which the director achieved a satisfactory grade in the examination conducted or sponsored by the Public Health Service. Further, a director who achieved a satisfactory grade in chemistry or blood grouping and Rh. group, or both, is deemed to meet the requirements of paragraphs (i), (1)(2), or both, of this section.

(n) If the laboratory has a director who qualifies under § 493.1415(b)(5)(iii) of this subpart, the laboratory may perform tests in the specialty of microbiology, if the director has a bachelor's degree in a biological science and subsequent to graduation has had at least 6 years of experience in microbiology;

(o) If the laboratory has a director who qualifies under § 493.1415(b)(5)(iii) of this subpart, the laboratory may perform tests in the specialty of hematology, if the director has a bachelor's degree in biology, immunology, or microbiology from an accredited institution and subsequent to graduation has had at least 6 years of laboratory experience of which at least 4 years of experience are in hematology;

(p) If the laboratory has a director who qualifies under § 493.1415(b)(5)(iii) of this subpart, the laboratory may perform tests in the specialty of diagnostic immunology, if the director has a bachelor's degree in biology, chemistry, immunology, or microbiology and subsequent to graduation has had at least 6 years of experience in immunology;

(q) If the laboratory has a director who qualifies under § 493.1415(b)(5)(iii) of this subpart, the laboratory may perform tests in the specialty of radiobioassay, if the director has a bachelor's degree in a chemical, physical, or biological science and subsequent to graduation has had at least 6 years of laboratory experience at least 1 year of which is in radiobioassay;

(r) If the laboratory has a director who qualifies under § 493.1415(b)(5)(iii) of this subpart the laboratory may perform ABO blood grouping and Rh$_0$ (D) group, unexpected antibody detection, antibody identification, and titering, if the director has a bachelor's degree in biology, immunology, or microbiology from an accredited institution and subsequent to graduation has had at least 6 years of laboratory experience of which at least 4 years of experience are in immunohematology;

(s) If the laboratory has a director who qualifies under § 493.1415(b)(5)(iii) of this subpart, the laboratory may perform tests in the specialty of chemistry, if the director has a bachelor's degree in a chemical science or its equivalent and subsequent to graduation has had at least 6 years of experience in clinical chemistry;

(t) If the laboratory has a director who qualifies under § 493.1415(b)(5)(iii) of this subpart, the laboratory may perform tests referred to in paragraphs (n) through (s) of this section, if the director has a bachelor's degree in medical technology and after graduation has had at least the designated years of specialized experience.

§ 493.1423 Standard; Technical supervisor responsibilities.

The technical supervisor spends an adequate amount of time in the laboratory to supervise the technical performance of the staff in the specialty for which the technical supervisor is responsible and is readily available for personal or telephone consultation.

§ 493.1425 Condition: Independent laboratories; general supervisor.

The laboratory must have one or more general supervisors who are qualified under § 493.1427 of this subpart to provide general supervision in accordance with § 493.1429 of this subpart.

§ 493.1427 Standard; General supervisor qualification.

The laboratory has one or more supervisors who, under the direction of the laboratory director, supervise technical personnel and reporting of test results, perform tests requiring special scientific skills, and, in the absence of the director and technical supervisor, are held responsible for the proper performance of all laboratory procedures.

(a) Each supervisor possesses a current license as a laboratory supervisor issued by the State, if such licensing exists; and

(b) The laboratory supervisor—

(1) Who qualifies as a laboratory director under § 493.1415(b) (1), (2), (4), or (5) is also qualified as a general supervisor; therefore, depending upon the size and functions of the laboratory, the laboratory director may also serve as the laboratory supervisor.

(2)(i) Is a physician or has earned a doctoral degree from an accredited institution with a major in one of the chemical, physical, or biological sciences and

(ii) Subsequent to graduation, has had at least 2 years of experience in one of the laboratory specialities in a laboratory.

(3)(i) Holds a master's degree from an accredited institution with a major in one of the chemical, physical, or biological sciences and

(ii) Subsequent to graduation has had at least four years of pertinent full-time laboratory experience of which not less than 2 years have been spent working in the designated specialty in a laboratory.

(4)(i) Is qualified as a laboratory technologist under § 493.1433(b) (1), (2), (3), (4) or (6) of this subpart; and

(ii) After qualifying as a laboratory technologist, has had at least 6 years of pertinent full-time laboratory experience of which not less than 2 years have been spent working in the designated laboratory specialty in a laboratory.

(5) With respect to the specialty of diagnostic cytology, qualifies as a supervisory cytotechnologist because he or she—

(i) Is qualified as a cytotechnologist under § 493.1437; and

(ii) Has had 4 years of full-time experience as cytotechnologist in a laboratory directed or supervised by a pathologist or other physician recognized as a specialist in diagnostic cytology within the preceding 10 years;

(6) With respect to individuals first qualifying before July 1, 1971, has had at least 15 years of pertinent full time laboratory experience before January 1 1968; this required experience may be met by the substitution of education for experience.

§ 493.1429 Standard; General supervisor responsibilities.

The general supervisor, under the direction of the laboratory director and the technical supervision of the technical supervisor, supervises laboratory personnel, test performance, and test reporting.

(a) A general supervisor is on the laboratory premises during all hours in which tests are being performed.

(b) The general supervisor in cytology must be on the premises when nonsupervisory cytotechnologists examine cytologic preprations unless a technical supervisor who qualifies under § 493.1421 (a) or (f) of this subpart is present.

(c) When emergencies arise outside regularly scheduled hours of duty, an individual who qualifies as a general supervisor is not required to be on the premises, provided that the technologist performing tests is qualified to perform such tests, the supervisor who is responsible for the results of the work reviews them during the next duty period, and a record is maintained to reflect the actual review.

§ 493.1431 Condition: Independent laboratories; technical personnel.

The laboratory has a sufficient number of properly qualified technical personnel for the volume and diversity of tests performed.

§ 493.1433 Standard; Technologist qualifications.

Each technologist must—

(a) Possess a current license as a laboratory technologist issued by the State, if such licensing exists; and

(b)(1) Have earned a bachelor's degree in medical technology from an accredited university;

(2) Have successfully completed 3 years of academic study (a minimum of 90 semester hours or equivalent) in an accredited college or university, which met the specific requirements for entrance into a school of medical technology accredited by an accrediting agency approved by the Secretary, and has successfully completed a course of training of at least 12 months in such a school;

(3) Have earned a bachelor's degree in one of the chemical, physical, or biological sciences and, in addition, has at least 1 year of pertinent full-time laboratory experience or training, or both, in the specialty or subspecialty in which the individual performs tests;

(4) Have successfully completed 3 years (90 semester hours or equivalent) in an accredited college or university with the following distribution of courses—

(i) *For those whose training was completed before September 15, 1963.* At least 24 semester hours in chemistry and biology courses of which—

(A) At least 6 semester hours were in inorganic chemistry and at least 3 semester hours were in other chemistry courses; and

(B) At least 12 semester hours in biology courses pertinent to the medical sciences; or

(ii) *For those whose training was completed after September 14, 1963.*

(A) 16 semester hours in chemistry courses that included at least 6 semester hours in inorganic chemistry and that are acceptable toward a major in chemistry;

(B) 16 semester hours in biology courses that are pertinent to the medical sciences and are acceptable toward a major in the biological sciences; and

(C) 3 semester hours of mathematics; and

(iii) Has experience, training, or both, covering several fields of medical laboratory work of at least 1 year and of such quality as to provide him or her with education and training in medical technology equivalent to that described in paragraphs (b) (1) and (2) of this section; or

(5) With respect to individuals first qualifying before July 1, 1971, the technologist—

(i) Was performing the duties of a laboratory technologist at any time between July 1, 1961, and January 1, 1968, and

(ii) Has had at least 10 years of pertinent laboratory experience prior to January 1, 1968. (This required experience may be met by the substitution of education for experience); or

(6) Achieves a satisfactory grade in a proficiency examination approved by HHS.

§ 493.1435 Standard; Technologist duties.

The laboratory must—

(a) Employ a sufficient number of laboratory technologists, cytotechnologists, or both, to perform proficiently under general supervision the laboratory tests that require the exercise of independent judgment; and

(b) Ensure that—

(1) The laboratory technologists perform tests requiring the exercise of independent judgment and responsibility with minimal supervision by the director or supervisors only in those specialties or subspecialties in which the laboratory technologists are qualified by education, training, and experience;

(2) For specialties in which the laboratory technologist is not qualified by education, training, or experience, tests are performed only under the direct supervision of the laboratory supervisor or qualified technologist;

(3) Laboratory technologists are sufficient in number to supervise the work of technicians and technician trainees adequately; and

(4) An individual qualified as a cytotechnologist solely under § 493.1437 of this subpart may supervise technicians and trainees only in the specialty of cytology.

§ 493.1437 Standard; Cytotechnologist qualifications.

Each laboratory cytotechnologist—

(a) Possesses a current license as a cytotechnologist issued by the State, if such licensing exists; and

(b)(1) Has successfully completed 2 years in an accredited college or university with at least 12 semester hours in science, 8 hours of which are in biology, and

(i) Has had 12 months of training in a school of cytotechnology accredited by an accrediting agency approved by the HHS; or

(ii) Has received 6 months of formal training in a school of cytotechnology accredited by an accrediting agency approved by the Secretary and 6 months of full time experience in cytotechnology in a laboratory acceptable to the pathologist who directed the formal 6 months of training;

(2) Before January 1, 1969, had:

(i) Been graduated from high school;

(ii) Completed 6 months of training in cytotechnology in a laboratory directed by a pathologist or other physician recognized as a specialist in cytology; and

(iii) Completed 2 years of full-time supervised experience in cytotechnology; or

(3) Achieves a satisfactory grade in a proficiency examination approved by HHS and designed to qualify persons as cytotechnologists.

§ 493.1439 Standard; Cytotechnologist responsibilities

The cytotechnologist must—

(a) Document the gynecologic and non-gynecologic cases examined; and

(b) Record slide interpretation results of each gynecologic and nongynecologic case reviewed.

§ 493.1441 Standard; Technician qualifications.

Each laboratory technician—

(a) Possesses a current license as a technician, issued by the State if such licensing exists; and

(b)(1) Has successfully completed 60 semester hours of academic credit including chemistry and biology as well as a structured curriculum in medical laboratory techniques at an accredited institution or has an associate degree based on a course of study including those subjects from an accredited institution;

(2) Is a high school graduate or equivalent and has completed at least 1 year in a technician training program in a school accredited by an accrediting agency approved by HHS;

(3) Is a high school graduate or equivalent and has 2 years of pertinent full-time laboratory experience as a technician trainee in a laboratory;

(4) Is a high school graduate or equivalent and has successfully completed an official military medical laboratory procedures course of at least 50 weeks duration and has held the military enlisted occupational specialty of Medical Laboratory Specialist (Laboratory Technician);

(5) With respect to a technician not meeting the training and experience requirements defined in paragraph (b) (1), (2), (3), or (4) of this section—

(i) Was performing the duties of a clinical laboratory technician any time between July 1, 1961, and January 1, 1968, and

(ii) Has had at least 5 years of pertinent laboratory experience prior to January 1, 1968. (This required experience may be met by the substitution of education for experience.); or

(6) Achieves a satisfactory grade in a proficiency examination approved by HHS. However, after December 31, 1977, initial certification as a technician must be in accordance with paragraph (b) (1), (2), (3), or (4) of this section.

§ 493.1443 Standard; Technician duties.

The laboratory must—

(a) Employ a sufficient number of technicians to meet the workload demands of the laboratory;

(b) Ensure that—

(1) Technicians perform laboratory procedures only under the direct supervision of a technologist;

(2) Each technician performs only those laboratory procedures that require a degree of skill commensurate with the technician's education, training, and technicial abilities and involve limited exercise of independent judgment;

(3) No laboratory technician performs procedures in the absence of a qualified

laboratory technologist, supervisor, or director; and

(4) A technician trainee performs only repetitive procedures that require a minimal exercise of independent judgment and that he or she performs these procedures only when a qualified supervisor or technologist is in the immediate bench area.

Subpart M—Quality Assurance

§ 493.1501 Condition: Quality assurance.

The laboratory must establish and follow policies and procedures for an ongoing quality assurance program designed to monitor and evaluate quality; identify and correct problems; assure the accurate, reliable and prompt reporting of test results; assure the adequacy and competency of the staff; and the laboratory's quality assurance program must meet the standards in paragraphs (a) through (l) of this section.

(a) *Standard.* The laboratory must have an ongoing system under which it monitors and evaluates quality control and proficiency testing data for the purpose of substantiating that all tests performed and reported by the laboratory conform to the laboratory's specified performance criteria. These criteria include: precision, accuracy, detection limits, interferences, linearity, sensitivity, specificity, validity and adequacy.

(b) *Standard.* The laboratory must have a mechanism for assuring the accurate and timely reporting of test results. Reporting times must be within the acceptable time periods established by the laboratory.

(c) *Standard.* The laboratory must have a mechanism for assuring that—

(1) All quality control data are reviewed;

(2) Patient test results are not reported when control values are outside the acceptable range established by the laboratory;

(3) All patient test results analyzed in the same test run before a failure in quality control or since the last acceptable quality control must be reevaluated before reporting to determine that the patient values are accurate and reliable; and

(4) Actions are taken to correct the problems that led to the unsatisfactory quality control results and the corrective actions are documented.

(d) *Standard.* The laboratory must have a mechanism for assuring that corrective action is taken and is documented on all unacceptable or unsatisfactory proficiency testing results.

(e) *Standard.* The laboratory must have a mechanism to assure that specimens are not tested when they do not meet the laboratory's established criteria for acceptability and that the authorized person ordering the test is notified of the condition of specimens not meeting the laboratory's criteria for a satisfactory specimen suitable for testing or any limitations on the reliability of the test results.

(f) *Standard.* The laboratory must have a mechanism to identify and evaluate patient test results that appear inconsistent with clinically relevant criteria such as—

(1) Patient's age;

(2) Sex;

(3) Diagnosis or pertinent clinical data;

(4) Distribution of patient test results; and

(5) Relationship with other test parameters.

(g) The laboratory must have a system in place to document problems that occur related to breakdowns in communication between the laboratory and the authorized individual who orders or receives the results of test procedures or examinations. Records of the corrective action taken to minimize or resolve the problems must be available.

(h) *Standard.* The laboratory must have policies and procedures for an ongoing program to assure that employees are competent and maintain their competency to perform their duties as specified by the laboratory. Policies and procedures may include direct observation of routine patient test performance as well as analysis of unknowns, monitoring the reporting of test results, or other activities identified by the laboratory. The laboratory must have an established program for providing orientation and in service training to employees to improve performance when problems are identified. The laboratory must evaluate employee performance by—

(1) Retesting of previously analyzed specimens, internal blind proficiency test samples, or external proficiency test samples (that have already been reported to approved proficiency testing programs) to assess the performance levels of each staff member responsible for performing and/or supervising testing; or

(2) Enrolling in external proficiency testing programs to the extent that there are programs available to cover all analyses performed, to assess an individual's laboratory performance. (The proficiency test samples are in addition to those required in Subpart H of this part.) For cytology, the laboratory may insert into the workload slides from previously reported cases as blind samples or may arrange to exchange cases with another laboratory for the purpose of rescreening slides and comparing results.

(i) *Standard.* The laboratory must have a mechanism for documenting and assessing problems identified during quality assurance reviews and discussing them with the staff. The laboratory must take necessary corrective actions to prevent recurrences.

(j) *Standard.* The laboratory must evaluate all data analysis and test reporting systems to assure that the systems perform according to specifications and provide accurate and reliable reporting, transmittal, storage and retrieval of data.

(k) *Standard.* The laboratory must establish and follow policies and procedures to assure that all complaints and problems reported to the laboratory are documented. If necessary, these complaints are investigated and, where appropriate, corrective actions are instituted and documented.

(l) *Standard.* The laboratory must maintain records of its quality assurance program, document all corrective actions taken to remedy problems it has identified and make records of corrective action available to HHS or its designee.

Subpart N—Inspection

§ 493.1601 Condition: Inspection.

HHS or its designees may conduct an unannounced inspection of any laboratory at any time during its hours of operation. Unless otherwise specified in this part, HHS may deny approval to a laboratory for a period of at least one year for violation of any of the requirements of this part or of the Social Security Act, subject to the appeal rights specified in Part 498 of this chapter.

(a) *Standard.* The laboratory may be required, as part of this inspection, to—

(1) Test samples (including proficiency testing samples) or perform procedures as HHS requires;

(2) Allow an interview of any employee of the laboratory;

(3) Allow employees to be observed performing tests (including proficiency testing specimens provided by the inspection team), data analysis and reporting; and

(4) Provide copies to HHS or its designee of all records and data it requires.

(b) *Standard.* All records and data must be readily accessible and retrievable within a reasonable time frame during the course of the inspection. All records must be

available for at least two years unless other time frames are specified in this part or HHS specifies a different interval in Appendix C of the State Operations Manual (HCFA Pub. 7).

(c) *Standard.* The laboratory must provide upon request all information and data needed by HHS or its designee to make a determination of the laboratory's compliance with the requirements.

(d) *Standard.* The laboratory must notify HHS or its designee within 30 days of the effective date of all changes in directors, supervisors, ownership and control, location, specialties and subspecialties of service offered, and hours of operation.

(e)(1) *Standard.* A laboratory applying for Medicare/Medicaid approval or CLIA licensure (or letter of exemption), or both, must successfully participate in an approved proficiency testing program for one testing event for each specialty and subspecialty for which Medicare or Medicaid approval or CLIA licensure (or letter of exemption) is requested. The laboratory must submit the results of the testing to HHS or its designee before inspection, approval or licensure of the facility can take place.

(2) An approved or licensed laboratory must successfully participate in one proficiency testing event for each additional specialty or subspecialty of service for which approval or licensure is requested. The laboratory must submit the results of the testing to HHS or its designee before inspection, approval or licensure of service can take place.

(f) *Standard.* HHS or its designee may reinspect a laboratory at any time necessary to evaluate the ability of the laboratory to provide accurate and reliable test results.

Subpart O—CLIA Requirements

§ 493.1701 Basis and scope.

(a) This subpart applies to laboratories engaged in the laboratory examination of, or other laboratory procedures relating to, human specimens solicited or accepted in interstate commerce, directly or indirectly, for the purpose of providing information for the diagnosis, prevention, or treatment of any disease or impairment, or the assessment of the health, of human beings. All screening procedures are included as well as quantitative testing of specimens for the presence or absence of any substance, pathogen or other analytes.

(b) This subpart does not apply to—

(1) Any laboratory that performs 100 or fewer tests during any calendar year; however, the laboratory must—

(i) Hold an unrevoked or unsuspended letter of exemption for low volume from HHS;

(ii) Provide information to HHS upon request, permit inspections, and make records available as required by § 493.1601 of this part for licensed laboratories; and

(iii) Perform testing that HHS has determined poses no significant threat to public health;

(2) Any laboratory operated by a licensed physician, osteopath, dentist, or podiatrist, or group of these individuals in any combination who performs laboratory tests or procedures solely as an adjunct to the treatment of the practitioner's or practitioners' own patients;

(3) Any laboratory performing tests or other procedures solely for the purpose of determining whether to write an insurance contract or determine eligibility or continued eligibility for insurance payments; and

(4) Any laboratory exempted under section 353(1) of the Public Health Service Act.

§ 493.1702 Definitions.

As used in this subpart—

Act means the Public Health Service Act, as amended, 42 U.S.C. 201, et seq., also known as the Clinical Laboratories Improvement Act of 1967 (CLIA).

§ 493.1704 Licensure application and issuance.

(a) *Licensure application.* (1) An application for the issuance or renewal of a license must be made for each laboratory location by the owner, director or authorized representative of the laboratory on the form or forms prescribed by HHS.

(2) The application for renewal of a license may not be submitted less than 30 days nor more than 60 days before the expiration date of the license.

(b) *Licensure issuance or renewal.* (1) As a part of the review of the application for issuance or renewal of licensure, HHS may require the laboratory to furnish additional information needed to consider the application. HHS also reviews the results of an onsite inspection of the laboratory's premises, performance in proficiency testing and compliance with this part. If HHS determines that the laboratory complies with the standards and other requirements of CLIA and provides consistent performance of accurate and reliable test procedures and services, HHS issues an initial or a renewal license with respect to one or more specialties or subspecialties as specified in §§ 493.1225 through 493.1269 of this part.

(2) HHS issues initial or renewal licenses for a period of at least one year. If no changes occur that affect the licensure status of the laboratory, HHS notifies the laboratory of its continued approval for at least another year. The laboratory must notify HHS within 30 days of any change in ownership, location, name, director(s), or supervisor(s), and/or of any deletion of specialties or subspecialties of service. The laboratory must notify HHS of all additions of specialties or subspecialties of service and no interstate testing may be reported until the laboratory is licensed for the appropriate specialty or subspecialties of service. HHS issues revised licenses reflecting any changes in the laboratory's status.

(3) If HHS does not issue or renew a license (in whole or in part), HHS gives the laboratory reasonable notice and issues a statement of grounds on which it proposes not to issue or renew the license or any part of it. The laboratory is also given an opportunity to request a hearing in accordance with the provisions of part 498 of this chapter.

(4) If a laboratory applies for licensure in any specialty or subspecialty for which a license has been revoked or application for a license has been denied by HHS, licensure for that specialty or subspecialty will not be approved until at least one year elapses from the effective date of the adverse action. HHS may waive this one year period if the laboratory submits good cause for the waiver, such as satisfactory performance on three consecutive proficiency testing events, one of which is on-site proficiency testing, in no less than six months following the termination action. A laboratory that requests reinstatement after this one year period must provide assurance that it complies with this subpart.

(c) *Exception.* These standards for issuance and renewal of licenses do not apply to accredited laboratories if—

(1) HHS determines that the standards applied by an accrediting organization are equal to or more stringent than the requirements of CLIA and of these regulations;

(2) The accrediting organization assures that its standards are met by the laboratory;

(3) The accrediting organization and accredited laboratories make available to HHS all records and information required by these regulations and permit inspections as required by HHS.

(4) The laboratory holds an unrevoked and unsuspended letter of exemption issued in accordance with § 493.1710 of this subpart.

§ 493.1706 Revocation, suspension, and limitation of licenses and letters of exemption; notice.

(a) A laboratory license or letter of exemption may be revoked, suspended or limited whenever HHS, after reasonable notice and opportunity for a hearing to the owner or director of the laboratory as provided in part 498 of this chapter, finds—

(1) In the case of a license, that the owner, director or any employee of the laboratory has committed any of the actions specified in section 353 (e) of the Act or has not met the requirements of this part; or

(2) In the case of a letter of exemption, that the laboratory is no longer eligible for its letter of exemption.

(b) Any notice issued under paragraph (a) of this section will contain a statement of the proposed action and of the grounds upon which HHS proposes to act.

(c) If HHS proposes to suspend a license or letter of exemption the notice will state—

(1) The period of such proposed suspension or the action required to end the suspension; and

(2) That the license or letter of exemption will be revoked if the appropriate remedial action is not taken within the suspension period.

(d) If HHS proposes to revoke or limit a license or letter of exemption, the notice will state the specialty or subspecialty with respect to which the license or letter of exemption will no longer apply.

§ 493.1708 Approval of accreditation and State licensure programs; notice.

(a) Approval of accreditation and State licensure programs is based on HHS' determination that these programs have requirements at least as stringent as those contained in CLIA. HHS, in making this evaluation, considers each program's standards, standards enforcement and survey procedures related to: quality control; maintenance of records; equipment and facilities; qualifications of personnel; proficiency testing; program administration related to renewal of accreditation; frequency and comprehensiveness of onsite inspections; and maintenance and availability of data and records related to accredited laboratories.

(b) In filing an application for approval, the accrediting organization or State must initially provide all information and data HHS determines necessary to determine if a program can be approved and thereafter must provide all information needed by HHS to determine a program's continued approval. The accrediting organization or State licensure program must—

(1) Provide information regarding the accreditation or licensure, specialities or subspecialties for which accreditation or licensure is applicable at a frequency required by HHS; and

(2) Notify HHS within five days of any changes in accreditation or licensure.

(c) HHS may require an accrediting organization or State licensure program to sign a written agreement specifying the terms of approval.

(d) If HHS determines at any time that the accrediting organization's or State licensure program's requirements are no longer at least as stringent as the Act's requirements, HHS will notify the accrediting organization or State licensure program and provide a reasonable period of time for revision. If the organization or State licensure program does not provide satisfactory evidence on a timely basis of its continued acceptability, HHS will notify the accrediting organization or State licensure program of the basis for revoking approval. The notice will state that the provisions of section 353 of the Act and 42 CFR part 493 requiring licensure will apply to all its accredited or licensed laboratories effective 30 days after the date the notice is received. HHS will also notify each laboratory affected by this determination that its exemption from CLIA licensure is not in effect 30 days after the date the notice is received by the accreditation organization or State licensure program.

§ 493.1710 Letter of exemption.

(a) HHS may issue a letter of exemption to a laboratory provided that—

(1) The laboratory owner or authorized representative of the laboratory signs an agreement to permit inspections as required by HHS and makes available records and other information HHS requires; and

(2) The laboratory submits an application form provided by HHS that certifies that the laboratory is accredited or licensed by an approved organization or State licensure program and specifies the specialities and subspecialties for which the laboratory is accredited or licensed and the date or dates of accreditation or licensure.

(b) If a laboratory fails to comply with the requirements of this part, the laboratory will no longer be eligible for a letter of exemption and is subject to the revocation and suspension procedures described in § 493.1706 of this subpart.

(Catalog of Federal Domestic Programs No. 13.714—Medical Assistance Program; No. 13.773, Medicare—Hospital Insurance Program; No. 13.774, Medicare—Supplementary Medical Insurance Program)

Dated: February 8, 1990.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

Approved: March 1, 1990.

Louis W. Sullivan,

Secretary.

[FR Doc. 90-5765 Filed 3-8-90; 4:29 pm]

BILLING CODE 4120-01-M

federal register

Wednesday
March 14, 1990

Part III

Department of Housing and Urban Development

Office of the Assistant Secretary

Neighborhood Development Demonstration Program; Fund Availability for Fiscal Year 1990; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-90-3034; FR-2757-N-01]

Neighborhood Development Demonstration Program; Fund Availability for Fiscal Year 1990

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of fund availability.

SUMMARY: Funds have been appropriated for Fiscal Year 1990 for HUD to carry out, for a fourth round, the Neighborhood Development Demonstration Program under section 123 of the Housing and Urban-Rural Recovery Act of 1983 (42 U.S.C. 5318 note). The purpose of this Program is to determine the ability of neighborhood organizations to support eligible neighborhood development activities using cooperative efforts and monetary contributions from individuals, businesses, and nonprofit and other organizations located within established neighborhood boundaries. The Federal funds are incentive funds to promote the development of this concept, and to encourage neighborhood organizations to become more self-sufficient in their development activities. Up to 30 percent of the 1990 awards may be to previous grantees in the Program; the remaining 70 percent of the awards will be made to those organizations selected from among new applicants. All applicants, including previous participants, are to compete through the same selection process.

Application due date: Applications are due by May 15, 1990.

DATES: Effective Date: March 14, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Samuel Jones, Office of Procurement and Contracts, Community Services Division (ACC-SJ), Department of Housing and Urban Development, room 5252, 451 Seventh Street SW., Washington, DC 20410. Telephone number (202) 755-5662. (This is not a toll-free number.) (Use this mailing address to obtain copies of the Request for Grant Applications, which provides further information on the Demonstration. See part IV of this Notice.)

SUPPLEMENTARY INFORMATION: This document (1) notifies the public of the availability of funds for the Demonstration; (2) identifies the objectives of the Program; (3) describes the method of allocation and distribution of funds; (4) defines eligible neighborhood development organizations; (5) sets forth eligible neighborhood development activities; (6) sets forth application requirements for the funds; (7) identifies the selection criteria for the award of funds; and (8) specifies grantee reporting requirements.

Before requesting a grant application package as provided for under part IV, organizations should carefully review this notice, particularly the eligibility factors under part III. Many organizations that spent time and effort preparing applications for first round assistance were determined to be ineligible under the statutory requirements.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969. (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection and copying Monday through Friday, 7:30 a.m. until 6 p.m. in the office of the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410.

The information collection requirements contained in this Notice have been approved by OMB and have been assigned OMB control number 2535-0084.

Notice of Fund Availability

I. Background

A. Legislation

Section 123 of the Housing and Urban-Rural Recovery Act of 1983 (Pub. L. 98-181) authorized the Neighborhood Development Demonstration Program. The report of the Senate Committee on Banking, Housing, and Urban Affairs referred to the new authority as a:

> Demonstration Program to assist neighborhood organizations to carry out community development activities through an innovative matching grant mechanism. Designed to encourage greater financial self-sufficiency on the part of nonprofit neighborhood development groups, the Program would provide federal matching funds of up to $50,000 per organization on the basis of charitable contributions which organizations raise from individuals, businesses, and religious institutions in their areas. Different matching ratios would be established for participating organizations based upon the size and economic condition of the community in which those organizations operate, although the ratio could not be lower than 50/50. (S. Rep. No. 142, 98th Cong., 1st Sess. 29 (1983).)

Under the Departments of Veterans Affairs and Housing and Urban Development Appropriations Act of 1990 (Pub. L. 101-144, approved November 9, 1989), $1.943 million was appropriated for the Program for Fiscal Year 1990. Under section 123(e)(6)(E), HUD may use no more than five percent of the appropriation for HUD administrative or other expenses in connection with the demonstration. The remaining funds are to be used to match monetary support raised over a one-year grant period from individuals, businesses, and nonprofit and other organizations located within established neighborhood boundaries. Federal payments will be made on a quarterly basis, beginning with the first quarter of the one-year period, as neighborhood organizations report and verify the amount of funds raised from private sector sources during the previous quarter.

B. Program Objectives

The Neighborhood Development Demonstration Program has the following objectives:

—To evaluate the degree to which new monetary contributions and other private sector support can be generated and new activities undertaken at the neighborhood level through Federal incentive funding;

—To determine the correlation, if any, between the demographics of a neighborhood (*i.e.*, the income level of its occupants, the amount of non-residential development, the percent of persons employed, the tenant/homeowner breakdown, the racial/ethnic makeup of the neighborhood, etc.) and the neighborhood organization's ability to raise funds within the neighborhood boundaries;

—To determine the correlation, if any, between the type of neighborhood improvement activities proposed and the success of fund-raising efforts; and

—To determine the correlation, if any, between the characteristics of an organization and the success of its fund-raising efforts.

II. Allocation and Distribution of Funds

The Department proposes to make grants, in the form of matching funds, to eligible neighborhood development organizations. Under section 123(e)(3), grantee organizations may receive no more than $50,000 in Federal matching funds in a single Program year. The amount of Federal matching funds that an organization may receive depends in part upon the amount of monetary contributions raised from within the established neighborhood boundaries in the preceding quarter. Funds raised from

organizations or persons not residing in or conducting business within the grantee's neighborhood, loans, in-kind services, contributions by owners of properties to be improved, fees for services, public funds, and any in-lieu-of-cash contributions cannot be used to match Federal funds. Such contributions may, however, be used to carry out project activities. The neighborhood monetary contributions for matching purposes must be raised within the one-year grant period. However, grant activities may be programmed over a period of one to three years.

Maximum Federal matching ratios are to be established in accordance with the statutorily required "smallest number of households or greatest degree of economic distress" criteria. Subject to the statutory maximum of $50,000, the Federal match will range from one to six Federal dollars for each qualifying dollar raised by the grantee. Applications selected to receive Federal funds will be rank-ordered, and the matching ratio determined, based on application of these two criteria. Applications best satisfying either criteria will be placed in the matching ratio categories eligible to receive proportionally more, with those in the matching ratio category least satisfying either test being eligible to receive one Federal dollar for each neighborhood dollar.

Any application selected for the award of Federal funds that proposed a matching funds ratio in excess of the ratio HUD determines for it will be offered an award of funds at the HUD-determined ratio. However, any application selected for award that proposed a match below the maximum ratio HUD determines for it will be funded at the level proposed by the applicant.

Federal payments to participating neighborhood organizations will be made on a quarterly basis following receipt of quarterly performance and financial reports. The maximum Federal payment will be governed by the amount of verified, qualifying monetary contributions received in the preceding quarter, multiplied by the appropriate matching funds ratio.

III. Eligibility

Note: Organizations are cautioned that, to avoid wasted effort, they should carefully review the following requirements. Over 39 percent of the 281 applications received in connection with a previous year's funding cycle were ineligible under these statutory requirements.

A. Eligible Neighborhood Development Organizations

An eligible neighborhood development organization must be located in and serve the neighborhood for which assistance is to be provided. It cannot be a city-wide organization, a multi-neighborhood consortium, or, in general, an organization serving a large area of the city. It must meet all of the following statutory requirements.

(1) The organization must carry out its activities in an area that meets the Urban Development Action Grant Program eligibility requirements for Federal assistance under section 119(b) of the Housing and Community Development Act of 1974 (42 U.S.C. 5218) and the Department's implementing regulation at 24 CFR part 570, subpart G. These provisions require, among other things, that a neighborhood must be located in a governmental jurisdiction or pocket of poverty that is found to be a distressed area and secondly, that the governmental jurisdiction in which an area is located must have demonstrated results in providing housing and employment for low- and moderate-income persons and members of minority groups. The neighborhood organization must be located in an area currently meeting the following distress criteria in order for the neighborhood organization to be able to apply:

(i) A city or an urban county that meets the distress criteria required as a condition for assistance under the Urban Development Action Grant Program, under section 119(b)(1) of the Housing and Community Development Act of 1974, as amended, and the Department's implementing regulation at 24 CFR 570.452; or

(ii) An area that has been approved by the Department for assistance under the Urban Development Action Grant Program as a "pocket of poverty" under section 119(b)(2) of the Housing and Community Development Act of 1974, as amended, and the Department's implementing regulation at 24 CFR 570.466.

The second test of UDAG eligibility, which assesses the localities' demonstrated progress in providing housing and equal opportunity in employment must have also been performed previously or a finding will be necessary by the HUD Field Office. This finding must be made by May 15, 1990. In order to meet this deadline, the local unit of government, if not previously certified as UDAG-eligible, must submit a "Request for Determination of UDAG Eligibility" by April 15, 1990. The nonprofit applicant should contact the community development department of its local unit of government by March 15, 1990, notifying it of the applicant's intent to apply. The applicant should inform the locality of the need (if the locality is not already certified as eligible to participate in the UDAG Program) for the local government to submit to HUD a "Request for Determination of UDAG Eligibility" to allow the applicant to participate in the Demonstration. The UDAG eligibility requirements are set forth at section 119(b)(1) of the Housing and Community Development Act of 1974 and the Department's implementing regulations at 24 CFR 570.453.

(2) The organization must be incorporated as a private, voluntary, nonprofit corporation under the laws of the State in which it operates.

(3) The organization must have conducted business for at least three years before the date of its application.

(4) The organization must be responsible to the residents of the neighborhood it serves, with no less than 51 percent of the members of its governing body being residents of the neighborhood.

(5) The organization must have conducted one or more eligible neighborhood development activities, as defined in section B below, which primarily benefit low- and moderate-income residents of the neighborhood. For the purposes of the preceding sentence, "low- and moderate-income residents" means families and individuals whose incomes do not exceed 80 percent of the median income of the area involved, as determined by HUD, with adjustments for smaller and larger families.

B. Eligible Neighborhood Development Activities

Funds may be used by eligible neighborhood development organizations to develop or carry out a project designed to achieve the following:

(1) Create permanent jobs in the neighborhood;

(2) Establish or expand businesses within the neighborhood;

(3) Develop new housing, rehabilitate existing housing, or manage housing stock within the neighborhood;

(4) Develop delivery mechanisms for essential services that have lasting benefits for the neighborhood, such as Fair Housing counseling services, child care centers, youth training, or health services; or

(5) Plan, promote, or finance voluntary neighborhood improvement efforts, such as establishing a neighborhood credit

union, demolishing abandoned buildings, removing abandoned cars, or establishing an on-going street and alley cleanup Program.

C. Equal Opportunity Businesses

The neighborhood development organization must certify that it will carry out activities assisted under the Program in compliance with:

(1) The requirements of title VIII of the Civil Rights Acts of 1968 (42 U.S.C. 3601–3619) (Fair Housing Act) and implementing regulations at 24 CFR parts 100, 108, 109, 110, and 115; part 200, subpart M; Executive Order 11063 (Equal Opportunity Housing) and implementing regulations at 24 CFR part 107; and title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR part 1;

(2) The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–07) and the prohibition against discrimination against handicapped individuals under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). The requirements of Executive Order 11246 and the regulations issued under the Order at 41 CFR chapter 60;

(3) The requirements of section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u (see § 570.607(b) of this chapter); and

(4) The requirements of Executive Orders 11625, 12432, and 12138. Consistent with HUD's responsibilities under these Orders, the grantee must make efforts to encourage the use of minority and women's business enterprises in connection with activities funded under this notice.

D. Other Federal Requirements

In addition to the Equal Opportunity Requirements set forth above, grantees must comply with the following requirements:

(1) Ineligible contractors. The provisions of 24 CFR part 24 relating to the employment, engagment of services, awarding of contracts or funding of any contractors or subcontractors during any period of debarment, suspension, or placement in ineligibility status.

(2) Flood insurance. No site proposed on which acquisition, construction, reconstruction, repair or improvement of a building which is to be assisted under this demonstration may be located in an area that has been identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless the community in which the area is situated is participating in the National Flood Insurance Program and the regulations thereunder (44 CFR parts 59 thorugh 79) or less than a year has passed since FEMA notification regarding such hazards, and the grantee will ensure that flood insurance on the structure is obtained in compliance with section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 et seq.).

(3) Lead-based paint. The requirements, as applicable, of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846) and implementing regulations at 24 CFR part 35.

(4) Applicability of OMB Circulars. The policies, guidelines, and requirements of OMB Circular Nos. A–110 and A–122 with respect to the acceptance and use of assistance by private nonprofit organizations.

IV. Application Process.

A. Application Requirements

(1) There are three steps in the application submission process: (i) Organizations must determine first whether they are in an area or pocket of poverty currently eligible for assistance under the Urban Development Action Grant (UDAG) Program. Organizations that are uncertain whether the city or urban county in which they are located meets the current minimum standards of physical and economic distress which are used in determining which cities and urban counties are potentially eligible applicants under the Urban Development Action Grant Program are advised to consult two notices published by the Department in the Federal Register entitled, "Urban Development Action Grant: Revised Minimum Standards for Small Cities" (52 FR 37876, October 9, 1987) and "Urban Development Action Grant; Revised Minimum Standards for Large Cities and Urban Counties" (52 FR 38174, October 14, 1987).

These notices identify, among other things, (1) the most current minimum standards of physical and economic distress for cities and urban counties, and (2) those cities and urban counties that currently met the minimum standards. In addition, it is possible for an applicant to be eligible on the basis of its neighborhood's being located in a "pocket of poverty." See 24 CFR 570.466. Organizations that need further help in determining their eligibility should contact the nearest Department of Housing and Urban Development Field Office (Community Planning and Development Division). The city or county community development office serving a neighborhood organization should be able to provide the HUD Field Office contact number if assistance is needed. If unable to obtain a local contact, the HUD Headquarters contact for the Neighborhood Development Demonstration programmatic information is Mrs. Joyce Walther, telephone number (202) 755–6186. (This is not a toll-free number.)

(ii) Organizations in an area that is eligible for funding under the UDAG Program that wish to apply must send a request in writing, with two self-addressed labels, for a "Request for Grant Application" (RFGA) package from Mr. Samuel Jones in the HUD Office of Procurement and Contracts, as identified under **"FOR FURTHER INFORMATION CONTACT"**. The RFGA contains the forms and other information regarding the application process and the administration of the demonstration, including relevant provisions from OMB Circulars A–110 and A–122 (This Notice of Fund Availability summarizes major provisions of the RFGA.)

(iii) An original and three copies of an application must be submitted to the address stated under **"FOR FURTHER INFORMATION CONTACT"** earlier in this notice to initiate the application review process. HUD will accept only one application per neighborhood organization.

(2) Each application must contain the following, as required by the Request for Grant Application:

(i) A transmittal letter, a table of contents referenced to numbered pages, and Standard Form SF–424;

(ii) An abstract describing, among other things, the applicant and its achievements, the proposed project, its intended beneficiaries, its projected impact on the neighborhood, and the manner in which the proposed project will be carried out;

(iii) A complete fact sheet that lists neighborhood and organizational characteristics contained elsewhere in the application narrative;

(iv) Evidence that the applicant meets eligibility and other criteria, including the following:

—A legible map, with street names, prepared by the city community development or planning office delineating the applicant's neighborhood. Census tract, block or enumeration district references and zip code references must also be delineated on the map or on other maps submitted;

—A copy of the applicant organization's corporate charter, along with the incorporation papers, bylaws, and a statement of purpose;

—The size of the neighborhood population, including the number of low- and moderate-income persons and the size of the minority population, broken down by its ethnic composition;
—A list of the names of the neighborhood body members and their addresses (with zip codes), noting those who reside and (separately) those who conduct business, in the neighborhood;
—A statement of the percentage of the members of the neighborhood organization who are neighborhood residents, the percentage of neighborhood residents who conduct business in the neighborhood, and the percentage of neighborhood businesses conducted by nonresidents;
—Identification of the applicant organization's past and current neighborhood projects, including those eligible as neighborhood development activities as defined under paragraph III B;
—A description of the means by which the governing body members account to residents of the neighborhood, including the method and frequency of selection of members of the governing body, the consultation process with residents, the frequency of meetings, and a statement showing how the board is representative of the demographics of the neighborhood (*i.e.*, a breakdown by tenants, homeowners, race, sex, ethnic composition, etc.);
—Evidence of the applicant's sound financial management, determined from its financial statements or audits;
—A letter from the Chief Executive Officer of the unit of general local government in which assisted activities are to be carried out, certifying that the activities are not inconsistent with the government's housing and community development plans. (In lieu of this certification, evidence may be presented that the local government did not respond within 30 days of the organization's request for such a letter); and
—A certification that the applicant will comply with the requirements of Federal law governing the application, acceptance, and use of Federal funds;

(v) A narrative statement defining how neighborhood matching funds will be raised and their anticipated sources; what neighborhood development activities will be funded; and a strategy for achieving greater long-term private sector support;

(vi) A project management plan, including a schedule of tasks for both fund raising and project implementation; and

(vii) A project budget and budget narrative;

(viii) A certification, pursuant to an interim final guidance published by the Office of Management and Budget implementing the "Byrd anti-lobbying amendment" at 54 FR 52306, which must state that for all potential grants in excess of $100,000.00, no appropriated funds will be used for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant or loan; and

(ix) A certification that a potential grantee will comply with the drug-free workplace requirements in accordance with 24 CFR part 24, subpart F.

V. Selection Criteria for Award Funds

Applications will be evaluated on the basis of the Factors for Award outlined below (maximum possible points that may be awarded are shown under each Factor);

A. Neighborhood/Organizational Qualifications

(1) The degree of economic distress within the neighborhood; (15 points)

(2) The extent of neighborhood participation in the proposed activities, as indicated by the proportion of the households and businesses in the neighborhood involved that are members of the eligible neighborhood development organization; (5 points)

(3) The record of demonstrated measurable achievements in one or more of the activities specified under III B, including benefits to low- and moderate-income residents, plus evidence of promoting fair housing activities, if the applicant has previously sponsored projects involving housing; (15 points) and

(4) The extent to which the governing body of the organization reflects the demographics of the neighborhood (education, age, sex, race, income level, types of employment, etc.). (5 points)

B. Project Qualifications

(1) The extent of monetary contributions available that are to be matched with Federal funds, supported by reasonable evidence that private funding sources within the neighborhood have been realistically identified. (HUD will waive scoring under this provision and assign full points in the case of an application submitted by a small eligible organization, an application involving activities in a very low-income neighborhood or an application that is especially meritorious); (5 points)

(2) The extent to which a strategy has been developed for achieving greater long-term private sector support for this demonstration and future funding; (10 points)

(3) The extent to which the proposed activities will benefit persons of low- and moderate-income, including promotion of equal employment and fair housing objectives. If emphasis is to be placed on economic development, low- and moderate-income relationships should be described; (15 points) and

(4) The quality of the management plan submitted for accomplishing one or more of the activities specified under III B, including evidence of sound financial management of organizational activities, the experience and capability of the organization's director and staff, and coordination efforts involved, including working relationships with local governments when applicable. (30 points)

VI. Reporting Requirements.

In addition to complying with relevant provisions of OMB Circulars A–110 and A–122, grantees will be required to submit quarterly performance and financial reports. These reports should inform HUD of any changes that may affect the outcome of the demonstration, such as changes in any of the following—the governing body membership, staffing, working relationships with local government and private organizations, fund raising activities, volunteer efforts, the management plan, and the budget. The quarterly reports must also verify the amount of monetary contributions received from within the neighborhood, as a basis for Federal disbursement of matching funds. Grantees must certify that none of the monetary contributions originated through public funding sources.

Grantees will be required also to submit a final report at the completion of the grant period. This final report must describe fully the successes and failures associated with the project, including the reasons for the successes and failures. It should also describe possible improvements in the methods used. The quarterly and final reports will be used for evaluation purposes, reports to the Congress on the demonstration, and a report on successful projects that will be distributed to other neighborhood organizations.

VII. Environmental Reviews.

For all proposed actions or activities that are not considered a categorical exclusion as set forth in 24 CFR 50.20, HUD will perform the appropriate environmental reviews under the

National Environmental Policy Act (NEPA). Whether the action or activity is categorically excluded from NEPA review or not, HUD will comply also with other appropriate requirements of environmental statutes, executive orders, and HUD standards listed in 24 CFR 50.4. The environmental reviews will be performed before award of a grant. Grantees will be expected to adhere to all assurances applicable to environmental concerns as contained in the RFGA and grant agreements.

Authority: Sec. 123, Housing and Urban-Rural Recovery Act of 1983 (Pub. L. 98-181); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: February 23, 1990.

Anna Kondratas,

Assistant Secretary for Community Planning and Development.

[FR Doc. 90-5757 Filed 3-13-90; 8:45 am]

BILLING CODE 4210-29-M

federal register

Wednesday
March 14, 1990

Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Proposed 1990–91 Migratory Game Bird Hunting Regulations (Preliminary); Proposed Rulemaking

DEPARTMENT OF THE INTERIOR

50 CFR Part 20

RIN 1018-AA24

Migratory Bird Hunting; Proposed 1990-91 Migratory Game Bird Hunting Regulations (Preliminary)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rulemaking.

SUMMARY: The U.S. Fish and Wildlife Service (hereinafter the Service) proposes to establish annual hunting regulations for certain migratory game birds. The taking of migratory birds is prohibited unless specifically provided for by regulation. These rules will permit the taking of the designated species during the 1990–91 season. The Service annually prescribes frameworks or outer limits for dates and times when hunting may occur and the number of birds that may be taken and possessed. These frameworks are necessary to allow State selections of final seasons and limits, and to allow recreational harvest at levels compatible with migratory bird population and habitat conditions. The effects of these frameworks are to facilitate the selection of hunting seasons by the States and to further the establishment of migratory bird hunting regulations for 1990–91. These regulations provide hunting opportunities to the public and aid Federal and State governments in the management of migratory game birds.

DATES: The comment period for proposed early-season regulations frameworks for the United States, including Alaska, Hawaii, Puerto Rico, and the Virgin Islands, will end on July 20, 1990; and for late-season proposals (seasons opening on or about October 1 or later) on August 27, 1990. Public Hearings: Early-Season Regulations, including these for the conterminous United States, Alaska, Hawaii, Puerto Rico, and the Virgin Islands—June 21, 1990, at 9 a.m.; Late-Season Regulations—August 2, 1990, at 9 a.m.

ADDRESSES: Both public hearings will be held in the Auditorium, Department of the Interior Building, 18th and C Streets, NW., Washington, DC. Comments and requests to testify may be mailed to Director, (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, room 634—Arlington Square, Washington, DC 20240. Comments received may be inspected from 8 a.m. to 4 p.m. at the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, room 634, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Thomas J. Dwyer, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240 (703) 358–1714.

SUPPLEMENTARY INFORMATION:

Notice of Intention to Establish Open Seasons

This notice announces the intention of the Director, U.S. Fish and Wildlife Service, to establish open hunting seasons, daily bag and possession limits, and shooting hours for certain designated groups or species of migratory game birds for 1990–91 in the contiguous United States, Alaska, Hawaii, Puerto Rico, and the Virgin Islands, under sections 20.101 through 20.107, 20.109 and 20.110 of subpart K of 50 CFR 20.

"Migratory game birds" are those migratory birds so designated in conventions between the United States and several foreign nations for the protection and management of these birds. For the 1990–91 hunting season, regulations will be proposed for certain designated members of the avian families: Anatidae (ducks, geese, brant, and swans); Columbidae (doves and pigeons); Gruidae (cranes); Rallidae (rails, coots, and moorhens and gallinules); and Scolopacidae (woodcock and snipe). These proposals are described under Proposed 1990–91 Migratory Game Bird Hunting Regulations (Preliminary) in this document.

Objectives of the Migratory Bird Hunting Regulations

The objectives of these annual regulations are as follows:

1. To provide an opportunity to harvest a portion of certain migratory game bird populations by establishing legal hunting seasons.

2. To limit harvest of migratory game birds to levels compatible with their ability to maintain their populations or recover from depressed population levels.

3. To avoid the taking of endangered or threatened species so that their continued existence is not jeopardized, and their conservation is enhanced.

4. To limit taking of other protected species where there is a reasonable possibility that hunting is likely to adversely affect their populations.

5. To provide equitable hunting opportunity in various parts of the country within limits imposed by abundance, migration, and distribution patterns of migratory game birds.

6. To assist, at times and in specific locations, in preventing depredations on agricultural crops by migratory game birds.

The management of migratory birds in North America is international in scope, and involves other nations, notably Canada and Mexico. Within the United States, other Federal agencies, State conservation agencies, national and regional conservation groups, universities, and the public provide much support to the achievement of these objectives.

Factors Affecting Regulations Process

This is the first in a series of proposed and final rulemaking documents for migratory game bird hunting regulations. Proposed season frameworks, including daily bag and possession limits, are set forth for various groups of migratory game birds for which these regulations ordinarily do not vary significantly from year to year.

The proposals set forth here and the schedule by which more detailed proposals for these and other species will be developed depend upon a number of factors. Among these are the times when various annual population, habitat, and harvest surveys are conducted and results are available for analysis; times of migration and other biological considerations; and times during which hunting may be allowed. The regulatory process for migratory game birds is strongly influenced by the times when the best and latest information is available for consideration in the development of regulations. For these reasons, the overall regulations process for hunting seasons and limits is divided into the following segments: (1) *Early-seasons*—regulations for migratory game birds in Alaska, Puerto Rico, the Virgin Islands, and Hawaii, and seasons in the remainder of the United States opening prior to October 1; (2) *Late-seasons*—regulations for seasons opening in the remainder of the United States about October 1 and later; and (3) *Tribal*—regulations for migratory game birds on certain Indian reservations and ceded lands. Regulations development for each of the three categories will follow similar but independent schedules. Proposals relating to the harvest of migratory game birds that may be initiated after publication of this proposed rulemaking will be made available for public review in supplemental proposed rulemakings to be published in the **Federal Register.** Also, additional supplemental proposals will be published for public comment in the **Federal Register** as population,

habitat, harvest, and other information becomes available.

Because of the late dates when certain of these data become available, it is anticipated that comment periods on some proposals will necessarily be abbreviated. Special circumstances that limit the amount of time which the Service can allow for public comment are involved in the establishment of these regulations. Specifically, two considerations compress the time in which the rulemaking process must operate: the need, on one hand, to establish final rules at a time early enough in the summer to allow State agencies to adjust their licensing and regulatory mechanisms and, on the other hand, the lack before late-July of current data on the status of most waterfowl.

Publication of Regulatory Documents

The establishment of migratory game bird hunting regulations in the United States involves a series of regulatory announcements published in the **Federal Register** in accordance with the Administrative Procedure Act. The publication of these documents is divided into three phases, as follows:

1. Proposed rulemakings—proposals to amend subpart K (and other subparts when necessary) of 50 CFR part 20, including supplementary proposed migratory game bird hunting regulations, and/or regulations frameworks.

2. Final rulemakings—frameworks. Final migratory game bird regulations frameworks which prescribe shooting hours, season lengths, bag and possession limits, and outside dates within which States may make season selections.

3. Final rulemakings—season selections. Amendments to the various specific sections of subpart K (and other subparts when necessary) of 50 CFR part 20 based on the final regulations frameworks and on season selections communicated by the States to the Service.

Major steps in the 1990–91 regulatory cycle relating to public hearings and **Federal Register** notifications are illustrated in the accompanying diagram. Dates shown relative to publication of **Federal Register** documents are target dates. All dates shown for frameworks and seasons in the Service's regulatory documents are inclusive.

The proposed or final regulations section of this and subsequent documents outline hunting frameworks and guidelines that are organized under 30 headings. These headings are:

1. Shooting hours
2. Frameworks for ducks in the conterminous United States—outside dates, season length and bag limits
3. American Black Ducks
4. Wood Ducks
5. Sea Ducks
6. September Teal Seasons
7. Extra Teal Option
8. Experimental September Duck Seasons
9. Special Scaup Season
10. Extra Scaup Option
11. Mergansers
12. Canvasback and Redhead Ducks
13. Duck Zones
14. Frameworks for geese and brant in the conterminous United States—outside dates, season length and bag limits
15. Tundra Swan
16. Sandhill Cranes
17. Coots
18. Common Moorhens and Purple Gallinules
19. Rails
20. Common Snipe
21. Woodcock
22. Band-tailed Pigeons
23. Mourning Doves
24. White-winged and White-tipped Doves
25. Migratory Bird Hunting Seasons in Alaska
26. Migratory game birds in Puerto Rico and doves and pigeons in the Virgin Islands
27. Migratory game bird seasons for falconers
28. Hawaii Mourning Doves
29. Migratory bird hunting on Indian Reservations
30. Other

Subsequent documents will refer only to numbered items requiring attention. Therefore, items requiring no attention will be omitted and the remaining item numbers will be discontinuous and appear incomplete.

Non-toxic shot regulatory proposals and final regulations are published separately under § 20.21 of subpart C and § 20.108 of subpart K.

Data Used in Regulatory Decisions

The establishment of hunting regulations for migratory game birds in the United States during the 1990–91 season will take into consideration available population information, data from harvest surveys, and information on habitat conditions. Consideration will also be given to accumulated data and trends. The main sources of data are operational surveys conducted by the U.S. Fish and Wildlife Service in cooperation with the Canadian Wildlife Service, Direccion General de Conservacion Ecologica de los Recursos Naturales of Mexico, State and Provincial wildlife agencies, and others. The Service will also consider technical information provided by consultants of the four waterfowl flyway councils. The information from these sources will be analyzed by the Service with an opportunity for the public to review and provide comments on management rationales and proposed regulations, either in public hearings, by correspondence, or other written communications.

Various surveys are used to ascertain the status, condition, and trends of migratory game bird populations. These include annual surveys of major waterfowl wintering habitats in the United States and in portions of Mexico each January; aerial surveys of major waterfowl production areas in the United States and Canada in May and early June for breeding population data, and again in July for production information; nationwide surveys in the United States and Canada of waterfowl hunters and the waterfowl harvest, including their geographical and temporal distributions, and species, age, and sex composition of the harvest; and band recovery information. Waterfowl breeding pair and production surveys also provide information on the abundance, duration, and quality of water and other habitat conditions in major production areas. Information on waterfowl populations and habitat conditions outside the aerial survey area is furnished by cooperating State, Provincial, and private agencies. Banding information provides insight into shooting pressures sustained by migratory game bird populations under different population levels and types of regulations. When viewed over many years, information on harvests and regulations is useful for predicting approximate harvest levels which may result from various regulations changes.

Many of the surveys conducted primarily for ducks also provide information on geese. In addition, satellite imagery is used to monitor the rate at which snow and ice disappear from subarctic and arctic breeding grounds traditionally used by most species and the greatest numbers of North American geese. Field observations of both geese and swans in the fall and winter also provide information on the production success of the past breeding season. Special population surveys are undertaken for many identifiable populations of geese throughout the year.

An annual call-count survey conducted nationwide in the United States in late May and early June provides information on the breeding

population of mourning doves. Information from past years and the current year is used to establish population trends. An annual singing-ground survey is conducted throughout the woodcock breeding range in the eastern United States and Canada. Insight into reproductive success is obtained from a wing-collection survey of woodcock hunters in the United States; data from this survey indicates the age and sex composition of the harvest and its geographical and temporal distribution. Accumulated and current data are examined for possible long-term trends in population size and productivity. Information on white-winged dove populations in Texas and the Southwest is provided by cooperating State agencies. Spring surveys of sandhill cranes are conducted annually with emphasis on the key staging area of the species along the Platte River in central Nebraska and the San Luis Valley of Colorado. The Service also solicits information on these and other species from knowledgeable individuals.

Consultants

The Service is proposing to establish an Early-Season Consultant process. The Late-Season Consultants have been very helpful in the development of waterfowl regulations and the Service intends to extend this arrangement to the early-seasons as well. The consultants provide and interpret technical data and information on migratory bird populations, hunter activities, harvest, and habitat considerations to the Service Regulations Committee. This aids in the development of the proposals prior to the public hearings.

Hearings

Two public hearings pertaining to 1990–91 migratory game bird hunting regulations are scheduled. Both meetings will be conducted in accordance with 455 DM 1 of the Departmental Manual. On June 21 a public hearing will be held at 9 o'clock in the Auditorium of the Department of the Interior Building, on C Street, between 18th and 19th Streets, N.W., Washington, DC. This hearing is for the purpose of reviewing the status of mourning doves, woodcock, band-tailed pigeons, white-winged and white-tipped doves, rails, gallinules and moorhens, common snipe, and sandhill cranes. Proposed hunting regulations will be discussed for these species plus regulations for migratory game birds in Alaska, Puerto Rico, and the Virgin Islands; special September waterfowl seasons in designated States; special sea duck seasons in the Atlantic Flyway, and extended falconry seasons. On August 2 a public hearing will be held at 9 o'clock in the Auditorium of the Department of the Interior Building, address above. This hearing is for the purpose of reviewing the status and proposed regulations for waterfowl not previously discussed at the June 21 public hearing. The public is invited to participate in both hearings.

Persons wishing to participate in these hearings should write the Director (FWS/MBMO), U.S. fish and Wildlife Service, Department of the Interior, Room 634—Arlington Square, Washington, DC 20240, or telephone (703) 358–1714. Those wishing to make statements should file copies of them with the Director before or during each hearing.

Public Comments Solicited

Based on the results of migratory game bird studies now in progress and with due consideration for any data or views submitted by interested parties, the possible amendments resulting from this supplemental rulemaking will specify open seasons, shooting hours, and bag and possession limits for designated migratory game birds in the United States, including Alaska, Hawaii, Puerto Rico, and the Virgin Islands.

The policy of the Department of the Interior is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons are invited to submit written comments, suggestions, or recommendations regarding the proposed amendments.

Final promulgation of migratory game bird hunting regulations will take into consideration all comments received by the Service. Such comments, and any additional information received, may lead to final regulations that differ from these proposals. Interested persons are invited to participate in this rulemaking by submitting written comments to the address indicated under the caption **ADDRESSES.**

Comments received on the proposed annual regulations will be available for public inspection during normal business hours at the Service's office in Room 634–4401 North Fairfax Drive, Arlington, Virginia. The Service will consider, but possibly may not respond in detail to, each comment. Specific comment periods will be established for each series of proposed rulemakings. All relevant comments will be accepted through the closing date of the comment period on the particular proposal under consideration. As in the past, the Service will summarize all comments received during the comment period and respond to them after the closing date.

Flyway Council Meetings

The Service published a final rule in **Federal Register** dated December 22, 1981 (46 FR 62077) which established certain procedures in the development of the annual migratory game bird hunting regulations. This rule, codified at 50 CFR 20, subpart N, took effect on January 21, 1982. One provision is to publish notification of meetings of waterfowl flyway councils where Department of Interior officials will be in attendance. In this regard, Departmental representatives will be present at the following winter meetings of the various flyway councils:

DATES: March 18, 1990—Atlantic Flyway Council, 9 a.m.; Mississippi Flyway Council, 9 a.m.; Central Flyway Council, 8:30 a.m.; Pacific Flyway Council, 9 a.m.; National Flyway Council, 3 p.m.

The Council meetings will be held at the Sheraton-Denver Tech Center, Denver, Colorado.

Migratory Bird Hunting on Indian Reservations

In the September 3, 1985, **Federal Register** (50 FR 35762), the Service implemented guidelines for establishing special migratory bird hunting regulations on Federal Indian reservations and ceded lands, and amended § 20.110 of 50 CFR part 20 by prescribing final hunting regulations for certain tribes in past hunting seasons. The guidelines provide appropriate flexibility for tribal members to exercise their reserved hunting rights while ensuring that the migratory bird resource receives necessary protection. Use of the guidelines is not necessary if a tribe wishes to observe the hunting regulations established in the State(s) in which the reservation is located. On February 23, 1990, (at 55 FR 6584), the Service gave notice of its intent to establish special migratory bird hunting regulations for interested Indian tribes in the 1990–91 hunting season.

Definitions of Flyways

Flyways are administrative units with broad biological-ecological similarities frequently used for reference in setting hunting regulations on many migratory game birds. They are defined as follows:

Atlantic Flyway: Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

Mississippi Flyway: Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin.

Central Flyway: Kansas, Nebraska, North Dakota, Oklahoma, South Dakota, and Texas; Colorado and Wyoming east of the Continental Divide; Montana east of Hill, Chouteau, Cascade, Meagher and Park Counties; and New Mexico east of the Continental Divide but outside the Jicarilla Apache Indian Reservation.

Pacific Flyway: Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington; those portions of Colorado and Wyoming lying west of the Continental Divide; New Mexico west of the Continental Divide plus the Jicarilla Apache Indian Reservation; and in Montana, the counties of Hill, Chouteau, Cascade, Meagher, and Park, and all counties west thereof. Flights of most migratory game birds breeding or produced in Alaska are more strongly oriented to this flyway than to the other flyways.

Definitions of Mourning Dove Management Units

Mourning Dove Management Units are administrative units based upon a reasonable delineation of independent mourning dove population segments encompassing the principal breeding, migration, and United States wintering areas for each population. They are used for reference in setting mourning dove hunting regulations and are defined as follows:

Eastern Management Unit: Alabama, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, and Wisconsin.

Central Management Unit: Arkansas, Colorado, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming.

Western Management Unit: Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington.

NEPA Consideration

NEPA considerations are covered by the programmatic document, "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14)", filed with EPA on June 9, 1988. Notice of Availability was published in the **Federal Register** on June 16, 1988 (53 FR 22582). The Service's Record of Decision was published on August 18, 1988 (53 FR 31341).

Endangered Species Act Consideration

Prior to issuance of the 1990–91 migratory game bird hunting regulations, consideration will be given to provisions of the Endangered Species Act of 1973, as amended, (16 U.S.C. 1531–1543; hereinafter the Act) to insure that hunting is not likely to jeopardize the continued existence of any species designated as endangered or threatened or modify or destroy its critical habitat and is consistent with conservation programs for those species. Consultations under section 7 of this Act may cause changes to be made to proposals in this and future supplemental proposed rulemaking documents.

Regulatory Flexibility Act, Executive Order (E.O.) 12291, and the Paperwork Reduction Act

A Determination of Effects approved by the Director, on December 28, 1989, concluded that the hunting frameworks being proposed for 1990–91 were "major" rules, subject to regulatory analysis. In accordance with Office of Management and Budget instructions, a Final Regulatory Impact Analysis (FRIA) was prepared in 1981 and updated annually since that time. The Service is currently analyzing data to use in a new FRIA which should be completed prior to the 1990–91 season and should incorporate new economic information and waterfowl hunter activity and harvest information.

The Department of the Interior has determined that this document is a major rule under E.O. 12291 and certifies that this document will 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 does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

The Service plans to issue its Memorandum of Law for the migratory game bird hunting regulations at the time the first of these rules is finalized.

Authorship

The primary author of the proposed rules on annual hunting regulations is Morton N. Smith, Office of Migratory Bird Management, working under the direction of Thomas J. Dwyer, Chief, (703) 358–1714.

List of Subjects in 50 CFR 20

Exports, Hunting, Imports, Transportation, Wildlife.

The rules that eventually will be promulgated for the 1990–91 hunting season are authorized under the Migratory Bird Treaty Act, sec. 3, Pub. L. 65–186, 40 Stat. 755 (16 U.S.C. 701–718h); sec. 3(h), Pub. L. 95–616, 92 Stat. 3112 (16 U.S.C. 712).

Dated: February 27, 1990.

Richard N. Smith,

Acting Director.

Proposed 1990–91 Migratory Game Bird Hunting Regulations (Preliminary)

The following general frameworks and guidelines for hunting certain waterfowl, sandhill cranes, mourning doves, white-winged doves, white-tipped doves, Zenaida doves, scaly-naped pigeons, band-tailed pigeons, moorhens and gallinules, rails, coots, common snipe, and woodcock during the 1990–91 season are proposed. Changes or possible changes, when noted, are in relation to 1989–90 final frameworks. In this respect, minor date changes due to annual variation in the calendar dates of specific days of the week, are regarded as "no change." All mentioned dates are inclusive.

In cooperation with the Flyway Councils, the Service is currently reviewing and preparing reports on several regulatory issues. These regulatory issues are shooting hours, the point system, special harvest opportunities for teal and scaup, and zones and splits for ducks. There is no assurance that these reports will provide definitive answers. These reports should, however, guide our efforts in some areas and identify the information needed in other areas. The Service awaits the results of Flyway Council review before offering any proposals concerning support for, or modification of, these regulatory issues.

Items in this proposed rulemaking are subject to change depending on public comments, and additional data and information that may be received later. The proposed frameworks and guidelines, as compared to the 1989–90 final frameworks, are described below:

1. *Shooting hours.* (Possible change.) Although no changes are being offered in this document, shooting hours for waterfowl are currently under assessment. The Service is awaiting Flyway Council review of the assessment report before considering any proposed changes. The alternatives contained in the report currently include, but will not be limited to: (1) use of one-half hour before sunrise

opening for regular and special seasons; (2) restrict daily opening to sunrise for all seasons; and (3) restrict daily opening to sunrise only during special duck seasons or circumstances where certain protected species are at risk. In 1989–90, shooting hours began at one-half hour before sunrise and ended at sunset.

2. *Frameworks for ducks in the conterminous United States—outside dates, season length and bag limits.* (Possible change.) Pending the availability of current duck population, habitat, and harvest information, and the receipt of recommendations from the four Flyway Councils, specific duck framework proposals for opening and closing dates, season lengths, and bag limits are deferred. Closed seasons will be considered by the Service if they are warranted.

Point system: The point system is currently under assessment. The Service is awaiting Flyway Council review of the assessment report before offering any proposals. The alternatives contained in the report currently include, but will not be limited to: (1) continue use as a State option; (2) discontinue use; and (3) continue use with additional restrictions, such as only allowing the point system option in certain areas or under certain conditions. In 1989–90, a restrictive version of the point system with conservative point values was a State option in the Mississippi and Central Flyways.

Exceptions to the regular duck-season frameworks are given in various numbered items that follow.

3. *Amerian black ducks.* (No change.) Continuation of restrictive regulations are proposed by the Service. Specific frameworks are deferred until after the receipt of current population and habitat date for 1990 and 1989–90 harvest data. The Service will continue to consult with Canada concerning the evaluation of their 5-year black duck harvest-reduction project and will ask them to coordinate their black duck harvest plans with us.

4. *Wood ducks.* (Possible change.) In July 1988, the Service identified several needs for proper wood duck management and asked the Atlantic and Mississippi Flyway Councils to review existing harvest strategies and give consideration to their proper evaluation. The Service awaits receipt of these flyway reports and will work with the Councils to develop an overall wood duck harvest management strategy in the 2 Flyways (see Item 8).

5. *Sea ducks.* (No change.) A maximum open season of 107 days for taking scoter, eider, and oldsquaw ducks is proposed, with shooting hours from one-half hour before sunrise to sunset, during the period between September 15, 1990, and January 20, 1991, in all coastal waters and all waters of rivers and streams seaward from the first upstream bridge in Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut and New York; in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 1 mile of open water from any shore, island, and emergent vegetation in New Jersey, South Carolina, and Georgia; and in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 800 yards of open water from any shore, island, and emergent vegetation in Delaware, Maryland, North Carolina, and Virginia; and provided that any such areas have been described, delineated, and designated as special sea duck hunting areas under the hunting regulation adopted by the respective States. In all other areas of these States and in all other States in the Atlantic Flyway, sea ducks may be taken only during the regular open season for ducks and they must be included in the regular duck season daily bag and possession limits.

Within the special sea duck areas, the daily bag limit is 7 and the possession limit is 14 scoter, eider and oldsquaw ducks, singly or in the aggregate. These limits may be in addition to regular duck bag limits during the regulation duck season in the special sea duck hunting areas.

Any State desiring its sea duck season to open in September must make its selection no later than August 9, 1991. Those States desiring their sea duck season to open after September may make their selection at the time they select their regular waterfowl seasons.

6. *September teal season.* (Possible change.) The September teal season is currently under assessment and remained suspended in 1989–90. The Service is awaiting review of the assessment report before considering any proposed changes. The alternatives contained in the report currently include, but will not be limited to: (1) continue use as it occurred during the 1969–87 period; (2) discontinue use; and (3) continue use with additional requirements. The last alternative would continue use after estimates of blue-winged teal breeding populations have sustained an upward trend for several years as measured by the May Breeding Ground Survey. This alternative would require improved data bases in order to monitor more effectively key population parameters if seasons were to continue at low population levels. An annual banding program would be required in order to estimate more accurately the harvest rates and survival rates of teal that winter both within and south of the United States. Modifications in the current harvest survey would be necessary to monitor characteristics of the harvest, including kill of non-target species.

7. *Extra teal option.* (Possible change.) The extra teal option is currently under assessment and remained suspended in 1989–90. The Service is awaiting review of the assessment report before considering any proposed changes. The alternatives contained in the report currently include, but will not be limited to: (1) continue use as it occurred during the 1969–87 period; (2) discontinue use; and (3) continue use with additional requirements. The last alternative would continue use only after breeding populations have sustained an upward trend for several years, as measured by the May Breeding Ground Survey. Additional harvest information would be necesssary to more accurately measure the harvest associated with bonus bird bag limits and to estimate the effect bonus bag limits have on the harvest of all ducks if seasons were to continue at low population levels. More representative bandings of both blue-winged teal and green-winged teal would be necessary to provide more precise estimates of harvest rates and survival rates.

8. *Experimental September Duck Seasons.* (Possible change.) In 1988 and 1989, these seasons in Kentucky, Tennessee and Florida were limited to wood ducks only because of concern about the status of other duck species. The Service believes that these changes warrant an overall review of the September seasons, in concert with the development of new wood duck harvest-management strategies (see Item 4). Presently, preseason banding programs are not meeting the regional requirements for sample size and distribution necesssary to evaluate special seasons for wood ducks on a State-by-State basis. The Service will work with the Councils, but unless arrangements can be made to initiate regional banding programs and to facilitate widespread data collection, these experimental seasons may be further modified or suspended (see Item 4).

9. *Special scaup season.* (Possible change.) The special scaup season is currently under assessment and remainded suspended in 1989–90. The Service is awaiting review of the assessment report before considering any proposed changes. The alternatives

contained in the report currently include, but will not be limited to: (1) continue use as it occurred during the 1966–87 period; (2) discontinue use; and (3) continue use with additional requirements. The last alternative would continue use only after scaup populations showed a sustained, increasing trend as measured by the May Breeding Ground Survey. This alternative would require improved data bases in order to more effectively monitor key population parameters if seasons were to continue at low population levels. Increased banding in major breeding areas would be necessary to calculate more precise band recovery and survival rates, and an improved harvest survey help monitor harvest characteristics, including the harvest of non-target species.

10. *Extra scaup option.* (Possible change.) The extra scaup option is currently under assessment and remained suspended in 1989–90. The Service is awaiting review of the assessment report before considering any proposed changes. The alternatives contained in the report currently include, but will not be limited to: (1) Continue use as it occurred during the 1962–87 period; (2) discontinue use; and (3) continue use with additional requirements. The last alternative would continue use only after scaup populations have shown a sustained, increasing trend as measured by the May Breeding Ground Survey. This alternative will require improved surveys to more accurately measure the harvest associated with bonus scaup bag limits and the effect they have on the harvest of scaup and other ducks if seasons were to continue at low populaton levels. Increased banding of scaup would be necessary to improve representativeness of banded samples and provide more precise estimates of band recovery and survival rates.

11. *Mergansers.* (No change.) States in the Atlantic and Mississippi Flyways may select separate bag limits for mergansers in addition to the regular duck bag limits during the regular duck season. The bag limit is 5 mergansers daily and 10 in possession. Elsewhere, mergansers are included within the regular daily bag and possession limits for ducks. The restriction on hooded mergansers of 1 daily and 2 in possession is continued in the Atlantic, Mississippi, and Central Flyways.

12. *Canvasback and redhead ducks.* (No change.) Proposed seasons and bag limits for canvasbacks and redheads are unchanged from those in effect in 1989. The season was closed nationwide, except in the Pacific Flyway, for canvasbacks during the 1989–90 hunting seson. Redhead bag limits were 2 per day in the Atlantic and 1 per day in the Central and Mississippi Flyways. In the Pacific Flyway, the aggregate daily bag limit of 2 redhead and canvasback was limited to no more than 1 canvasback. Possession limits are twice the daily bag limit. Although there is no change proposed at present, the 3-year average breeding population level identified in the environmental assessment *Proposed Hunting Regulations on Canvasback Ducks, 1983* will guide Service actions in 1990 regarding canvasback seasons.

13. *Duck Zones.* (No change.) Zones and split seasons are currently under assessment. The Service is awaiting Flyway Council review of the assessment report before considering any action. No change is proposed for 1990–91 because any decisions to change zones and splits will likely take until 1991 to implement. The alternatives contained in the report currently include, but will not be limited to: (1) Discontinue use of split seasons or zones, except for zones in certain areas along State borders; (2) restrict the number of zones and splits and the conditions under which they may occur; and (3) continue use on experimental basis only. The last alternative would place additional burden on the States and the Service for acquiring reliable information about the effects of zones and split seasons. States with zones would be required to develop and implement adequate harvest surveys and banding programs and to investigate their accuracy and precision.

The Service believes present duck hunting zones should not be modified and no new duck hunting zones should be initiated in 1990 pending the outcome of the assessment on zones and splits. States in all Flyways may split their waterfowl season into two segments. Previously, States in the Atlantic and Central Flyways, in lieu of zoning, could split their seasons for ducks or geese into three segments. Since it is proposed that new duck zones not be authorized, a 3-way split is also not offered to States not presently utilizing zoning for ducks.

14. *Frameworks for geese and brant in the conterminous United States—outside dates, season length and bag limits.* (No change.) The Canadian Wildlife Service, the four waterfowl Flyway Councils, State conservation agencies, and others traditionally provide population and harvest information used in setting annual regulations for geese and brant. The Midwinter Waterfowl Survey, the past season's waterfowl harvest surveys, and satellite imagery and ground studies for May and June of 1990 will provide additional information.

All Flyways. Seasons and bag limits are deferred pending receipt of additional information and recommendations. No significant changes from those in effect in 1989–90 are anticipated at this time.

15. *Tundra Swan.* (No change.) In Alaska, Montana, Nevada, New Jersey, North Carolina, North Dakota, South Dakota, Utah, and Virginia, an open season for taking a limited number of tundra swans may be selected. Permits will be issued by the States and will authorize each permittee to take no more than 1 tundra swan per season. These seasons will be subject to the following conditions:

In the *Atlantic Flyway*

—The season will be experimental.

—The season may be 90 days and must run concurrently with the snow goose season.

—The States must obtain harvest and hunter participation data.

—In New Jersey, no more than 200 permits may be issued.

—In North Carolina, no more than 6,000 permits may be issued.

—In Virginia, no more than 600 permits may be issued.

In the *Central Flyway*

—In the Central Flyway portion of Montana, no more than 500 permits may be issued. The season must run concurrently with the season for taking geese.

—In North Dakota, no more than 1,000 permits may be issued. The season must run concurrently with the season for taking light geese.

—In South Dakota, no more than 500 permits may be issued. The season must run concurrently with the season for taking light geese.

In the *Pacific Flyway* (except Alaska)

—A 93-day season may be selected between September 30, 1990, and January 21, 1991. Seasons may be split into 2 segments.

—The States must obtain harvest and hunter participation data.

—In Utah, no more than 2,500 permits may be issued.

—In Nevada, no more than 650 permits may be issued. Permits will be valid for Churchill, Lyon, or Pershing Counties.

—In the Pacific Flyway portion of Montana, no more than 500 permits may be issued. Permits will be valid for Cascade, Hill, Liberty, Pondera, Teton, or Toole Counties.

In *Alaska*, an experimental season may be selected to run concurrently

with the duck season. No more than 300 permits may be issued. Permits will be valid in Game Management Unit 22. The State must obtain harvest and hunter participation data.

16. *Sandhill cranes.*

Central Flyway—Regular seasons (No change). Pending evaluation of harvest data from the 1989–90 seasons, sandhill crane hunting seasons may be selected within specified areas in Colorado, Kansas, Montana, North Dakota, South Dakota, Wyoming, New Mexico, Oklahoma and Texas outside the range of the Rocky Mountain Population of sandhill cranes, with no substantial changes in dates from the 1989–90 seasons. The daily bag limit will be 3 and the possession limit 6 sandhill cranes. The provision for a Federal sandhill crane hunting permit is continued in all of the above areas.

Central and Pacific Flyways—Special seasons (No change). Pending evaluation of harvest data from the 1989–90 seasons, sandhill crane hunting seasons within the range of the Rocky Mountain Population may be selected by Arizona, Colorado, Idaho, Montana, New Mexico, Utah and Wyoming subject to the following conditions:

A. Outside dates are September 1-November 30, 1990; except September 1, 1990-January 31, 1991, in the Hatch-Deming Zone of southwestern New Mexico.

B. Season(s) in any State or zone may not exceed 30 days.

C. Daily bag limits may not exceed 3, and season limits may not exceed 9.

D. Participants must have in their possession, while hunting, a valid permit issued by the appropriate State.

E. Numbers of permits, areas open and season dates, protection plans for other species, and other provisions of seasons are consistent with the management plan and approved by the Central and Pacific Flyway Councils.

F. Seasons in Utah, and the Middle Rio Grande Valley and Hatch-Deming zones in New Mexico will be experimental.

17. *Coots.* (No change.) Concurrent with the regular duck season; States in the Atlantic, Mississippi, and Central Flyways may permit a daily bag limit of 15 and a possession limit of 30 coots, while States in the Pacific Flyway may permit 25 coots daily and in possession, singly or in the aggregate with gallinules.

18. *Common Moorhens and Purple Gallinules.* (No change.) States in the Atlantic, Mississippi, and Central Flyways may select hunting seasons of not more than 70 days between September 1, 1990, and January 20, 1991. Any State may split its moorhen/gallinule season into two segments without penalty. The daily bag and possession limits may not exceed 15 and 30 common moorhens and purple gallinules, singly or in the aggregate of the two species, respectively. States may select moorhen/gallinule seasons at the time they select their waterfowl seasons.

States in the Pacific Flyway must select their moorhen/gallinule hunting seasons to run concurrent with their duck seasons. The daily bag and possession limits may not exceed 25 coots and moorhens, singly or in the aggregate of the two species.

19. *Rails.* (No change.) The States included herein may slect seasons between September 1, 1990, and January 20, 1991, on clapper, king, sora, and Virginia rails as follows:

The season length for all species of rails may not exceed 70 days, and any State may split its rail season into two segments without penalty.

Clapper and king rails. A. In Rhode Island, Connecticut, New Jersey, Delaware, and Maryland, the daily bag and possession limits may not exceed 10 and 20 clapper and king rails, respectively, singly or in the aggregate of these two species.

B. In Texas, Louisiana, Mississippi, Alabama, Georgia, Florida, South Carolina, North Carolina, and Virginia, the daily bag and possession limits may not exceed 15 and 30 clapper and king rails, respectively, singly or in the aggregate of the two species.

C. The season will remain closed on clapper and king rails in all other States.

Sora and Virginia rails. In addition to the prescribed limits for clapper and king rails, daily bag and possession limits not exceeding 25, singly or in the aggregate of sora and Virginia rails, may be selected in States in the Atlantic, Mississippi, and Central Flyways, and portions of Colorado, Montana, New Mexico, and Wyoming in the Pacific Flyway. No hunting season is proposed for rails in the remainder of the Pacific Flyway.

20. *Common snipe.* (Possible change.) The Service proposes to change the framework closing date to January 31. This proposed change is based on concern about the potential impacts of late-winter hunting of snipe and the harvest of snipe during their spring migration to the breeding grounds.

States may select hunting seasons between September 1, 1990 and January 31, 1991, not to exceed 107 days. Daily bag and possession limits may not exceed 8 and 16, respectively. Any State may split its snipe season into two segments. States, or portions thereof, may defer selection of snipe seasons until they choose their waterfowl seasons in August.

21. *Woodcock.* (Possible change.) The Service proposes to change the framework closing date to January 31. This proposed change is based on concern about the potential impacts of woodcock harvest during late-winter and during spring migration to their breeding areas and about the downward trend of woodcock populations in both the Eastern and Central Regions.

A. Central and Mississippi Flyways.

States in the Central and Mississippi Flyways may select hunting seasons of not more thn 65 days with daily bag and possession limits of 5 and 10 respectively, to occur between September 1, 1990 and January 31, 1991. States may split their woodcock season without penalty.

B. Atlantic Flyway.

States in the Atlantic Flyway may select hunting seasons of not more than 45 days with daily bag and possession limits of 3 and 6, respectively, to occur between October 1, 1990 and January 31, 1991. States may split their woodcock season without penalty.

New Jersey may select seasons by North and South zones divided by State highway 70. The season in each zone may not exceed 35 days.

22. *Band-tailed pigeons.* (No change.)

Pacific Coast States. California, Oregon, and Washington and the *Nevada* counties of Carson City, Douglas, Lyon, Washoe, Humboldt, Pershing, Churchill, Mineral, and Storey. These States may select hunting seasons not to exceed 16 consecutive days between September 15, 1990, and the Sunday closest to January 1, 1991. The daily bag and possession limits may not exceed 4 band-tailed pigeons.

California may zone by selecting hunting seasons of 16 consecutive days for each of the following two zones:

A. In the counties of Alpine, Butte, Del Norte, Glenn, Humboldt, Lassen, Mendocino, Modoc, Plumas, Shasta, Sierra, Siskiyou, Tehama, and Trinity; and

B. The remainder of the State.

Four-Corner States (Arizona, Colorado, New Mexico, and Utah). These States may select hunting seasons not to exceed 30 consecutive days between September 1 and November 30, 1990. The daily bag and possession limits may not exceed 5 and 10, respectively. The season shall be open only in the areas delineated by the respective States in their hunting regulations. New Mexico may divide its State into a North Zone and a South Zone along a line following U.S. Highway 60 from the Arizona State line

east to Interstate Highway 25 at Socorro and along Interstate Highway 25 from Socorro to the Texas State line. Between September 1 and November 30, 1990, in the North Zone, and October 1 and November 30, 1990, in the South Zone; hunting seasons not to exceed 20 consecutive days in each zone may be selected.

23. *Mourning doves.* (No change). Pending results of the call-count survey and receipt of additional information and recommendations, the Service proposes to offer the following frameworks during the 1990–91 hunting season. Outside framework dates will be September 1, 1990 and January 15, 1991, except as otherwise provided. States in the Eastern (EMU) and Central (CMU) Management Units are offered an option of a season length of 70 half or full days with daily bag and possession limits of 12 and 24, respectively, *or* a season length of 60 half or full days with daily bag and possession limits of 15 and 30, respectively. EMU and CMU States are allowed to select hunting zones without penalty and to split the season into not more than 3 segments. In the Western Management Unit (WMU) Idaho, Nevada, Oregon, Utah, and Washington are offered not more than 30 consecutive days between September 1, 1990 and January 15, 1991; and Arizona and California are offered not more than 60 days to be split between 2 periods, September 1–15, 1990 and November 1, 1990–January 15, 1991; bag and possession limits are 10 and 20, respectively.

24. *White-winged and white-tipped doves.* (Possible change). The Service proposes to offer the following frameworks during the 1990–91 season: Arizona, California, Nevada, New Mexico, and Texas may select hunting seasons between September 1 and December 31, 1990, and daily bag limits as stipulated below.

Arizona may select a hunting season of not more than 30 consecutive days running concurrently with the mourning dove season (see mourning dove frameworks-WMU above). The daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate, no more than 6 of which may be white-winged doves, and a possession limit twice the daily bag limit after opening day.

Nevada, in the counties of Clark and Nye, and in the *California* counties of Imperial, Riverside, and San Bernardino, the daily bag limit of mourning doves and white-winged doves may not exceed 10, singly or in the aggregate. The possession limit is twice the daily bag limit. The season length must conform to the mourning dove season (either a 60-day split season or a 30-day consecutive season as stipulated under mourning dove frameworks-WMU above).

New Mexico may select a hunting season with daily bag and possession limits not to exceed 12 and 24 (or 15 and 30 if the 60-day option for mourning doves is selected) white-winged and mourning doves, respectively, singly or in the aggregate of the 2 species. Dates, limits, and hours are to conform with those for mourning doves.

Texas may select a hunting season of not more than 4 days for the special white-winged dove area of the South Zone. In that portion of the special area *north and west of Del Rio*, the experimental daily bag limit may not exceed 10 white-winged, mourning, and white-tipped doves in the aggregate, of which no more than 2 may be white-tipped doves; the possession limit may not exceed 20 doves in the aggregate, of which no more than 4 may be white-tipped doves. In that portion of the special area *south and east of Del Rio*, the experimental daily bag limit may not exceed 10 white-winged, mourning, and white-tipped doves in the aggregate, of which no more than 5 may be mourning doves and 2 may be white-tipped doves; the possession limit may not exceed 20 doves in the aggregate, of which no more than 10 may be mourning doves and 4 may be white-tipped doves. The experimental daily bag limits are dependent on annual review of the special white-winged dove season.

A severe freeze of citrus trees in the Lower Rio Grande Valley of Texas occurred during December of 1989 and is expected to adversely affect the white-winged dove population for 1990. After assessing the damage to citrus nesting habitat and annual review of the impacts of the special white-winged dove seasons, modifications may be considered.

In addition, Texas may also select a hunting season of not more than 70 (or 60 under the alternative) days to be held between September 1, 1990 (September 20, 1990, in South Zone), and January 25, 1991, and coinciding with the mourning dove season. The daily bag limit may not exceed 12 white-winged, mourning, and white-tipped doves (or 15 under the alternative) in the aggregate, of which not more than 2 may be white-winged and not more than 2 of which may be white-tipped doves. The possession limit may not exceed 24 white-winged, mourning, and white-tipped doves (or 30 under the alternative) in the aggregate, of which not more than 4 may be white-winged doves and not more than 4 of which may be white-tipped doves.

Florida may select a white-winged dove season of not more than 70 (or 60 under the alternative) days to be held between September 1, 1990, and January 15, 1991, and coinciding with the mourning dove season. The daily bag limit of both species in the aggregate may not exceed 12 (or 15 under the alternative), of which not more than 4 may be whitewings. The possession limit of both species in the aggregate may not exceed 24 (or 30 under the alternative) of which not more than 8 may be whitewings.

25. *Migratory bird hunting seasons in Alaska.* (No change.)

Proposed Frameworks for Selecting Open Season Dates for Hunting Migratory Birds in Alaska, 1990–91

Outside Dates: Between September 1, 1990, and January 26, 1991, Alaska may select seasons on waterfowl, snipe, and sandhill cranes, subject to the following limitations:

Shooting Hours: One-half hour before sunrise to sunset daily.

Hunting Seasons:

Ducks, geese, and brant—Not more than 107 consecutive days for ducks, geese, and brant in each of the following: North Zone (State Game Management Units 11–13 and 17–26); Gulf Coast Zone (State Game Management Units 5–7, 9, 14–16, and 10–Unimak Island only); Southeast Zone (State Game Management Units 1–4); Pribilof and Aleutian Islands Zone (State Game Management Unit 10—except Unimak Island); Kodiak Zone (State Game Management Unit 8). The season may be split without penalty in the Kodiak Zone. Exceptions: In State Game Management Units 8, 9(E), 10 (except Unimak Island) and 18, the taking of Canada geese is prohibited. In Units 5 and 6, the taking of Canada geese is only permitted from September 21 through December 16. Throughout the State, there is no open hunting season for Aleutian Canada geese, cackling Canada geese, and emperor geese.

Snipe and sandhill cranes—An open season concurrent with the duck season.

Daily Bag and Possession Limits

Ducks—Except as noted, a basic daily bag limit of not more than 5 and a possession limit of 15 ducks. Daily bag and possession limits in the North Zone are 8 and 24, and in the Gulf Coast Zone they are 6 and 18, respectively. These basic limits may not include more than 2 pintails daily and 6 in possession, and 1 canvasback daily and 3 in possession. In addition to the basic limit, there is a daily bag limit of 15 and a possession

limit of 30 scoter, eider, oldsquaw, harlequin, and American and red-breasted mergansers, singly or in the aggregate of these species.

Geese—A maximum basic daily bag limit of 6 and a possession limit of 12, of which not more than 4 daily and 8 in possession may be Greater white-fronted (white-fronted) or Canada geese, singly or in the aggregate of these species provided that: in State Game Management Units 1–9 and 14–18, no more than 2 daily, or 4 in possession, may be white-fronted geese. Throughout the State, there is no open hunting season for Aleutian and Cackling Canada geese and emperor geese.

Brant—A maximum daily bag limit of 2 and a possession limit of 4.

Common snipe—A maximum daily bag limit of 8 and a possession limit of 16.

Sandhill cranes—A maximum daily bag limit of 3 and a possession limit of 6.

Tundra swan—In Game Management Unit 22 an experimental permit season for tundra swans may be continued.

26. *Migratory game birds in Puerto Rico and in the Virgin Islands.* (No change.)

Proposed Frameworks for Selecting Open Season Dates for Hunting Migratory Birds in Puerto Rico, 1990–91.

Shooting hours: Between one-half hour before sunrise and sunset daily for ducks.

Ducks, Coots, Moorhens, Gallinules, and Snipe

Outside Dates: Between November 5, 1990, and February 28, 1991, Puerto Rico may select hunting seasons as follows.

Hunting Seasons: Not more than 55 days may be selected for hunting ducks, common moorhens (common gallinules), and common snipe. The season may be split into 2 segments.

Daily Bag and Possession Limits:

Ducks—Not to exceed 3 daily and 6 in possession, except that the season is closed on the ruddy duck (*Oxyura jamaicensis*); the White-cheeked pintail (*Anas bahamensis*); West Indian whistling (tree) duck (*Dendrocygna arborea*); fulvous whistling (tree) duck (*Dendrocygna bicolor*), and the masked duck (*Oxyura dominica*), which are protected by the Commonwealth of Puerto Rico.

Coots—There is no open season on coots, i.e., common coots (*Fulica americana*) and Caribbean coots (*Fulica carabaea*).

Common Moorhens—Not to exceed 6 daily and 12 in possession, except that the season is closed on purple gallinules (*Porphyrula martinica*).

Common snipe—Not to exceed 6 daily and 12 in possession.

Closed Areas: No open season for ducks, moorhens and gallinules, and snipe is prescribed in the Municipality of Culebra and on Desecheo Island.

Doves and Pigeons

Outside Dates: Puerto Rico may select hunting seasons between September 1, 1990, and January 15, 1991, as follows.

Hunting Seasons: Not more than 60 days for Zenaida, mourning, and white-winged doves, and scaly-naped pigeons.

Daily Bag and Possession Limits: Not to exceed 10 doves of the species named herein, singly or in the aggregate, and not to exceed 5 scaly-naped pigeons.

Closed Areas: No open season for doves and pigeons is prescribed in the following areas:

Municipality of Culebra and Desecheo Island—closed under Commonwealth regulations.

Mona Island—closed to protect the reduced population of white-crowned pigeon (*Columba leucocephala*), known locally as "Paloma cabeciblanca."

El Verde Closure Area—consisting of those areas of the municipalities of Rio Grande and Loiza delineated as follows: (1) all lands between Routes 956 on the west and 186 on the east, from Route 3 on the north to the juncture of Routes 956 and 186 (Km 13.2) in the south; (2) all lands between Routes 186 and 966 from the juncture of 186 and 966 on the north, to the Caribbean National Forest Boundary on the south; (3) all lands lying west of Route 186 for one (1) kilometer from the juncture of Routes 186 and 956 south to Km 6 on Route 186; (4) all lands within Km 14 and Km 6 on the west and the Caribbean National Forest Boundary on the east; and (5) all lands within the Caribbean National Forest Boundary whether private or public. The purpose of this closure is to afford protection to the Puerto Rican parrot (*Amazona vittata*) presently listed as an endangered species under the Endangered Species Act of 1973.

Cidra Municipality and Adjacent Closure Areas consisting of all of Cidra Municipality and portions of Aguas Buenas, Caguas, Cayey, and Comerio Municipalities as encompassed within the following boundary: beginning on Highway 172 as it leaves the Municipality of Cidra on the west edge, north to Highway 156, east on Highway 156 to Highway 1, south on Highway 1 to Highway 765, south on Highway 765 to Highway 763, south on Highway 763 to the Rio Guavate, west along Rio Guavate to Highway 1, southwest on Highway 1 to Highway 14, west on Highway 14 to Highway 729, north on Highway 729 to Cidra Municipality, and westerly, northerly, and easterly along the Cidra Municipality boundary to the point of beginning. The purpose of this closure is to protect the Plain (Puerto Rican plain) pigeon (*Columba inornata wetmorei*), locally known as "Paloma Sabanera," which is present in the above locale in small numbers and is presently listed as an endangered species under the Endangered Species Act of 1973.

Proposed Framework for Selecting Open Season Dates For Hunting Migratory Birds in the Virgin Islands, 1990–91

Shooting Hours: Between one-half hour before sunrise to sunset daily.

Ducks

Outside Dates: Between December 1, 1990, and January 31, 1991, the Virgin Islands may select a duck hunting season as follows:

Hunting Seasons: Not more than 55 consecutive days may be selected for hunting ducks.

Daily Bag and Possession Limits: Not to exceed 3 daily and 6 in possession, except that the season is closed on the ruddy duck (*Oxyura jamaicensis*); White-cheeked pintail (*Anas bahamensis*); West Indian whistling (tree) duck (*Dendrocygna arborea*); fulvous whistling (tree) duck (*Dendrocygna bicolor*), and the masked duck (*Oxyura dominica*).

Doves and Pigeons

Outside Dates: The Virgin Islands may select hunting seasons between September 1, 1990, and January 15, 1991, as follows.

Hunting Seasons: Not more than 60 days for Zenaida doves and scaly-naped pigeons throughout the Virgin Islands.

Daily Bag and Possession Limits. Not to exceed 10 Zenaida doves and 5 scaly-naped pigeons.

Closed Seasons: No open season is prescribed for common ground-doves or quail doves, or other pigeons in the Virgin Islands.

Local Names for Certain Birds.

Zenaida dove (*Zenaida aurita*)—mountain dove.

Bridled quail dove (*Geotrygon mystacea*)—Barbary dove, partridge (protected).

Common Ground-dove (*Columbina passerina*)—stone dove, tobacco dove, rola, tortolita (protected).

Scaly-naped pigeon (*Columba squamosa*)—red-necked pigeon, scaled pigeon.

27. *Migratory game bird seasons for falconers.* (No change.)

Proposed Special Falconry Frameworks

Falconry is a permitted means of taking migratory game birds in any State meeting Federal falconry standards in 50 CFR 21.29(k). These States may select an extended season for taking migratory game birds in accordance with the following:

Extended Seasons: For all hunting methods combined, the combined length for the extended season, regular season, and any special or experimental seasons shall not exceed 107 days for any species or group of species in a geographical area. Each extended season may be divided into a maximum of 3 segments.

Framework Dates: Seasons must fall between September 1, 1990 and March 10, 1991.

Daily Bag and Possession Limits: Falconry daily bag and possession limits for all permitted migratory game birds shall not exceed 3 and 6 birds, respectively, singly or in the aggregate, during extended falconry seasons, any special or experimental seasons, and regular hunting seasons in all States, including those that do not select an extended season.

Regular Seasons: General hunting regulations, including seasons and hours, apply to falconry in each State listed in 50 CFR 21.29(k). Regular season bag and possession limits do not apply to falconry. The falconry bag limit is not in addition to gun limits.

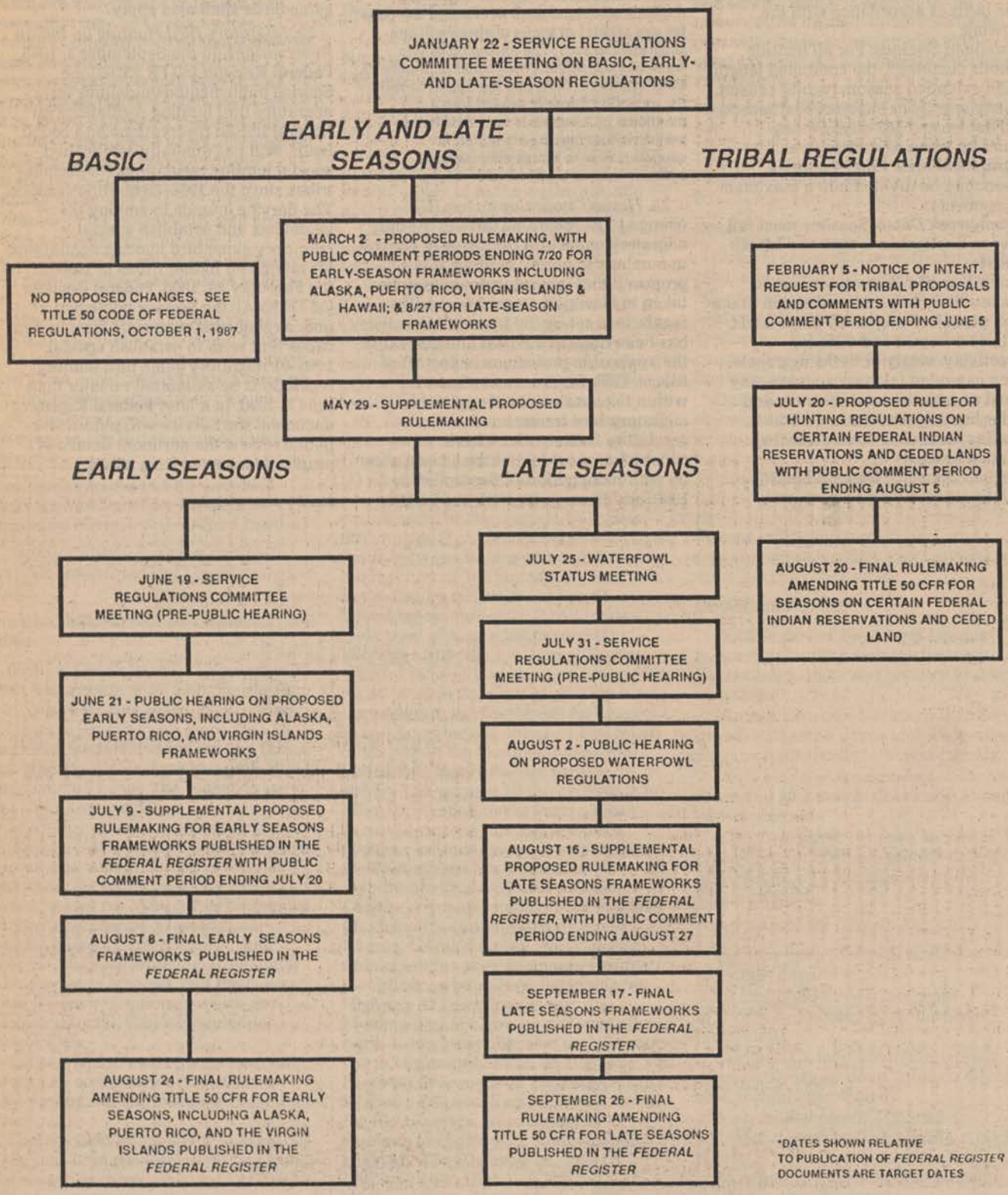
Note: Total season length for all hunting methods combined shall not exceed 107 days for any species or group of species in one geographical area. The extension of this framework to include the period September 1, 1990–March 10, 1991, and the option to split the extended falconry season into a maximum of 3 segments are considered tentative, and may be evaluated in cooperation with States offering such extensions after a period of several years.

28. *Hawaii mourning doves.* (No change.) The mourning dove is the only migratory game bird occurring in Hawaii in numbers to permit hunting. It is proposed that mourning doves may be taken in Hawaii in accordance with regulations set by the State of Hawaii as has been done in the past and subject to the applicable provisions of part 20 of title 50 CFR. Such a season must be within the constraints of applicable migratory bird treaties and annual regulatory frameworks. These constraints provide that the season must be within the period of September 1, 1990, and January 15, 1991, the length may not exceed 60 (or 70 under the alternative) days; and the daily bag and possession limits may not exceed 15 and 30 (or 12 and 24 under the alternative) doves, respectively. Other applicable Federal regulations relating to migratory game birds shall also apply.

29. *Migratory Bird Hunting on Indian Reservations.* In the September 3, 1985, **Federal Register** (50 FR 35762) the Service implemented guidelines for migratory bird hunting regulations on Federal Indian reservations and ceded lands, and has annually established special hunting regulations for certain tribes since the 1985–86 hunting seasons. The Service intends to employ the guidelines and establish special migratory game bird hunting regulations for interested Indian tribes in 1990–91. In the February 23, 1990, **Federal Register** (55 FR 6584), the Service published a notice requesting proposals from Indian tribes that wish to establish special 1990–91 migratory game bird hunting regulations be submitted no later than June 5, 1990. In a later **Federal Register** document the Service will publish for public review the pertinent details of proposals received from tribes.

BILLING CODE 4310-55-M

1990 SCHEDULE OF REGULATIONS MEETINGS AND *FEDERAL REGISTER* PUBLICATIONS*



*DATES SHOWN RELATIVE TO PUBLICATION OF *FEDERAL REGISTER* DOCUMENTS ARE TARGET DATES

[FR Doc. 90-5740 Filed 3-13-90; 8:45 am]
BILLING CODE 4310-55-C

federal register

Wednesday
March 14, 1990

Part V

Department of Education

Technology Education Demonstration Program Notice Inviting Applications for New Awards for Fiscal Year (FY) 1990; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.230]

Technology Education Demonstration Program Notice Inviting Applications for New Awards for Fiscal Year (FY) 1990

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and the Education Department General Administrative Regulations (EDGAR), the notice contains information, application forms, and instructions needed to apply for a grant under this competition.

Purpose of Program: The Technology Education Demonstration Program provides assistance to educational agencies and institutions in developing a technologically literate population through instructional programs in technology education.

Deadline for Transmittal of Applications: June 1, 1990.

Deadline for Intergovernmental Review: August 1, 1990.

Available Funds: $988,000.

Estimated Range of Awards: $150,000–$300,000.

Estimated Average Size of Awards: $247,000.

Estimated Number of Awards; 4.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 24 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals and Nonprofit Organizations), part 75 (Direct Grant Programs), part 77 (Definitions that Apply to Department Regulations) part 79 (Intergovernmental Review of Department of Education Programs and Activities), part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), part 81 (General Education Provisions Act—Enforcement), part 85 (Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)).

Description of Program: The Technology Education Demonstration Program (Pub. L. 100–418, Title VI, subtitle B, chapter 2) provides assistance to local educational agencies; State educational agencies; consortia of public and private agencies, organizations and institutions; or institutions of higher education to establish demonstration programs in technology education for secondary schools, vocational education centers, and community colleges.

Allowable Activities

Funds made available under this program are to be used to develop a model demonstration program for technology education which, to the extent practicable, includes the following components:

(a) Educational course content based on—

(1) An organized set of concepts, processes, and systems that is uniquely technological and relevant to the changing needs of the workplace; and

(2) Fundamental knowledge about the development of technology and its effect on people, the environment, and culture.

(b) Instructional content drawn from introduction to technology education courses in one or more of the following areas:

(1) Communication—efficiently using resources to transfer information to extend human potential.

(2) Construction—efficiently using resources to build structures on a site.

(3) Manufacturing—efficiently using resources to extract and convert raw or recycled materials into industrial and consumer goods.

(4) Transportation—efficiently using resources to obtain time and place utility and to attain and maintain direct physical contact and exchange among individuals and societal units through movement of materials, goods, and people.

(c) Assisting students in developing insight, understanding, and application of technological concepts, processes, and systems.

(d) Educating students in the safe and efficient use of tools, materials, machines, processes, and technical concepts.

(e) Developing student skills, creative abilities, confidence, and individual potential in using technology.

(f) Developing student problem solving and decisionmaking abilities involving technological systems.

(g) Preparing students for lifelong learning in a technological society.

(h) Activity oriented laboratory instruction which reinforces abstract concepts with concrete experiences.

(i) An institute for the purpose of developing teacher capability in the area of technology education.

(j) Research and development of curriculum materials for use in technology education programs.

(k) Multidisciplinary teacher workshops for the interfacing of mathematics, science, and technology education.

(l) Optional employment of a curriculum specialist to provide technical assistance for the program.

(m) Stressing basic remedial skills in conjunction with training and automation literacy, robotics, computer-aided design, and other areas of computer-integrated manufacturing technology.

(n) A combined emphasis on "know-how" and "ability-to-do" in carrying out technological work.

Program Requirements

(a) In addition to the information requested in the application narrative, an application shall include—

(1) A description of policies and procedures for the project that will ensure adequate evaluation of the activities intended to be carried out under the application;

(2) Assurances that Federal funds made available under this program will be so used as to supplement and, to the extent practicable, increase the amount of State and local funds that would be in the absence of those Federal funds be made available for the use specified in the program, and in no case supplant such State or local funds;

(3) A provision for making such reports, in such form and containing such information, as the Secretary may require; and

(4) A description of the manner in which the project will be coordinated, to the extent practicable, with programs under the Job Training Partnership Act, the Carl D. Perkins Vocational Education Act, and other Acts related to the purposes of this program.

(b) Both the products and evaluation results from projects should be able to be disseminated in a manner to benefit the training of teachers, instructional personnel, counselors, and administrators.

Fiscal Requirements

(a) The Federal share of the cost for a Technology Education project shall not exceed 65 percent of the total cost of the project.

(b) Not less than 10 percent of the total cost of a Technology Education project shall be in the form of private sector contributions.

(c) The non-Federal share may be in cash or fairly valued in-kind contributions, including facilities, overhead, personnel, and equipment.

Definition

Technology education means a comprehensive educational process designed to develop a population that is knowledgeable about technology, its

evolution, systems, techniques utilization in industry and other fields, and social and cultural significance.

Other Information

The Secretary wishes to point out the fact that certain provisions in 34 CFR part 75—34 CFR 75.128 and 75.129— are of particular importance to consortia applying for awards under this program. In general, the provisions state that if a group of eligible parties applies for a grant, the members of the group shall either designate one member of the group to apply for the grant or establish a separate, eligible legal entity to apply for the grant. The members of the group shall enter into an agreement that details the activities that each member of the group plans to perform and binds each member of the group to every statement and assurance made by the applicant in the application. The applicant shall submit the agreement with its application.

If the Secretary makes a grant to a group of eligible applicants, the applicant for the group is the grantee and is legally responsible for the use of all grant funds and ensuring that the project is carried out by the group in accordance with Federal requirements. Each member of the group is legally responsible to carry out the activities it agrees to perform and use the funds that it receives under the agreement in accordance with Federal requirements that apply to the grant.

Priority

Section 6112(b)(1)(B) of the statute provides that, to the extent feasible, the Secretary give priority to model demonstration projects that address the largest number of components described in paragraphs (a) through (k) of the "Allowable Activities" section of this notice. However, given the limited amount of funding available for this program, the Secretary has determined that it is not feasible for projects to address a large number of those components. Accordingly, to carry out the statutory priority, the Secretary gives preference to applications that meet the following competitive priority:

Projects addressing the components described in paragraph (i), (j), or (k), or any combination of those components, of the "Allowable Activities" section of this notice.

Under 34 CFR 75.105(c)(2)(i) the Secretary awards up to 15 points to an application that meets this competitive priority in a particularly effective way. These points are in addition to any points the application earns under the selection criteria for the program.

Selection Criteria

(a)(1) The Secretary uses the following selection criteria to evaluate applications for new grants under this competition.

(2) The maximum score for all of these criteria is 100 points.

(3) The maximum score for each criterion is indicated in parentheses.

(b) The criteria—(1) Meeting the purpose of the authorizing statute. (30 points) The Secretary reviews each application to determine how well the project will meet the purposes of the Technology Education Demonstration Program, including consideration of—

(i) The objectives of the project; and

(ii) How the objectives of the project further the purposes of the Technology Education Demonstration Program.

(2) Extent of need for the project. (20 points) The Secretary reviews each application to determine the extent to which the project meets specific needs recognized in the Technology Education Demonstration Program, including consideration of—

(i) The needs addressed by the project;

(ii) How the applicant identified those needs;

(iii) How those needs will be met by the project; and

(iv) The benefits to be gained by meeting those needs;

(3) *Plan of operation.* (20 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(i) The quality of the design of the project;

(ii) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(iii) How well the objectives of the project relate to the purpose of the program;

(iv) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(v) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition.

(4) *Quality of key personnel.* (7 points)

(i) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraph (b)(4)(i) (A) and (b) will commit to the project; and

(D) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(ii) To determine personnel qualifications under paragraphs (b)(4)(i) (A) and (B), the Secretary considers—

(A) Experience and training in fields related to the objectives of the project; and

(B) Any other qualifications that pertain to the quality of the project.

(5) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(i) The budget is adequate to support the project; and

(ii) Costs are reasonable in relation to the objectives of the project.

(6) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(i) Are appropriate to the project; and

(ii) To the extent possible, are objective and produce data that are quantifiable.

(Cross-reference: See 34 CFR 75.590 Evaluation by the grantee.)

(7) *Adequacy of resources.* (3 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

Additional Factors

In making awards under this program, the Secretary considers, in addition to the selection criteria, the geographical distribution of projects funded under this program.

Intergovernmental Review of Federal Programs

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR part 79.

The objective of the Executive Order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply

with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive Order. If you want to know the name and address of any State Single Point of Contact, see the list published in the **Federal Register** on September 15, 1988, pages 38342–38343.

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372–CFDA #84.230, U.S. Department of Education, room 4161, 400 Maryland Avenue, SW., Washington, DC 20202–0125.

Proof of mailing will be determined on the same basis as applications (see CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, DC time) on the date indicated in this notice.

Please note that the above address is not the same address as the one to which the applicant submits its completed application. Do not send applications to the above address.

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA# 84.230), Washington, DC 20202–4725.

or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA# 84.230), Room #3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC 20202–4725.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgement to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 732–2495.

(3) The applicant must indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number of the competition under which the application is being submitted.

Application Instructions and Forms

This notice has two appendices: Appendix A is divided into three parts plus a statement regarding estimated public reporting burden and various assurances and certifications. These parts and additional materials are organized in the same manner that the submitted application should be organized. The parts and additional materials are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

Part II: Budget Information—Non-Construction Programs (Standard Form 424A) and instructions.

Part III: Application Narrative.

Additional Materials

Estimated Public Reporting Burden.

Assurances—Non-Construction Programs (Standard Form 424B).

Certification regarding Debarment, Suspension, and Other Responsibility Matters: Primary Covered Transactions (ED Form GCS–008) and instructions.

Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form GCS–009) and instructions.

Note: ED Form GCS–009 is intended for the use of grantees and should not be transmitted to the Department.

Certification Regarding Drug-Free Workplace Requirements: Grantees Other than Individuals (ED 80–0004).

Certification Regarding Lobbying for Grants and Cooperative Agreements (ED 80–0008).

Note: This form is required if requesting, making, or entering into a grant or cooperative agreement for more than $100,000.

Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions, and Disclosure of Lobbying Activities Continuation Sheet (Standard Form LLL–A.)

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. No grant may be awarded unless a completed application form has been received.

Appendix B contains questions and answers to assist potential applicants.

FOR FURTHER INFORMATION CONTACT: Robert L. Miller, Program Improvement Branch, Division of National Programs, Office of Vocational and Adult Education, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 4512, Mary E. Switzer Building), Washington, DC 20202–7242. Telephone (202) 732–2428.

Program Authority: 20 U.S.C. 5101 through 5106.

Dated: March 5, 1990.

Betsy Brand,

Assistant Secretary, Office of Vocational and Adult Education.

BILLING CODE 4000-01-M

Appendix A

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED	Applicant Identifier
3. DATE RECEIVED BY STATE	State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier V230A0

1. TYPE OF SUBMISSION:
Application: ☐ Construction ☒ Non-Construction
Preapplication: ☐ Construction ☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name:

Organizational Unit:

Address (give city, county, state, and zip code):

Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐
A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify):

8. TYPE OF APPLICATION:
☐ New ☐ Continuation ☐ Revision
If Revision, enter appropriate letter(s) in box(es): ☐ ☐
A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

9. NAME OF FEDERAL AGENCY:
U. S. Department of Education

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 8 4 . 2 3 0
TITLE: Technology Education Demonstration Program

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT:

Start Date	Ending Date

14. CONGRESSIONAL DISTRICTS OF:
a. Applicant
b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:
DATE
b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

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.

Item: Entry:

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.)

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. Tech. Ed. Demo. Program	84.230	$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:

23. Remarks

SF 424A (4-88) Page 2
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BILLING CODE 4000-01-C

Part II—Budget Information

Instructions for the SF-424A

General Instructions: This form is designed so that application can be made for funds from the Technology Education Demonstration Program (CFDA No. 84.230). For the Technology Education Demonstration Program (CFDA No. 84.230), sections A, B, and C should include budget estimates for the entire project period.

Note: Sections D and E need not be completed to apply for this program.

All applications should contain a breakdown by the object class categories shown in section B, Lines 6a through 6j.

Section A. Budget Summary. Line 1, Columns (a) through (g)—Enter on Line 1 the catalog program title in Column (a) and the catalog program number in Column (b). Leave Columns (c) and (d) blank. Enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the entire project period.

Note: The figure reported in section A, Line 1, Column (f) should be the same as the figure reported in section C, line 8, column (e).

Section B. Budget Categories. Line 6a through 6i—Fill in the total requirements for Federal funds by object class categories for the entire project period.

Line 6a—Personnel: Show salaries and wages to be paid to personnel employed in the project. Fees and expenses for consultants must be included in Line 6f.

Line 6b—Fringe Benefits: Include contributions for Social Security, employee insurance, pension plans, etc. Leave blank if fringe benefits to personnel are treated as part of the indirect cost rate.

Line 6c—Travel: Indicate the amount requested for travel of employees.

Line 6d—Equipment: Indicate the cost of nonexpendable personal property which has a useful life of more than one year and an acquisition cost of $200–$5,000 or more per unit.

Line 6e—Supplies: Include the cost of consumable supplies to be used in this project. These should be items which cost less than $200–$5,000 per unit with a useful life of less than two years.

Line 6f—Contractual: Show the amount to be used for: (a) Procurement contracts (except those which belong on other lines such as supplies and equipment listed above); and (b) subgrants or payments for consultants and secondary recipient organizations such as affiliates, cooperating institutions, delegate agencies, etc.

Line 6g—Construction: Construction expenses are not allowable under the Technology Education Demonstration Program (CFDA No. 84.230).

Line 6h—Other: Indicate all direct costs not clearly covered by Lines 6a through 6g. If there are trainee costs or stipends, enter the total cost of these expenses. The maximum allowance for stipends maybe the larger of either the minimum wage prescribed by State or local law or the minimum hourly wage set by the Fair Labor Standard Act per contact hour.

Line 6i—Total Direct Charges: Show total of Lines 6a through 6h.

Line 6j—Show the amount of indirect cost to be charged to the project.

Note: Except for grants to Federally recognized Indian tribes, the indirect cost rate for training projects cannot exceed eight percent of total direct charges.

Line 6k—Enter the total of the amounts on Line 6i and 6j.

Section C. Non-Federal resources.

Line 8—Enter any amounts of non-Federal resources that will be used on the grant. If any in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the catalog program title.

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 the totals of Columns (b), (c) and (d).

Note: Grant recipients under the Technology Education Demonstration Program (CFDA No. 84.230) are required to ensure that not less than 35 percent of the total cost of the demonstration project conducted under this program is provided from non-Federal sources. In other words, the amount shown on Line 8, Column (e), must be at least 35 percent of the amount shown in section A, Line 1, Column (g).

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project.

Line 16. Enter in column (a) the catalog program title. In Columns (b) and (c), as appropriate, enter the amounts of Federal funds which will be needed to complete the project over the succeeding funding period(s) (usually in years).

Note: If the proposed project is longer than eighteen months, then funds should be requested for two budget periods. The first budget period should be thirteen months. The second budget period should not exceed eleven months. Continuation awards are subject to the conditions in 34 CFR 75.253.

Section F. Other Budget Information. Prepare a detailed Budget Narrative that explains, justifies, and/or clarifies the budget figures shown in sections A, B, and C.

Instructions for Part III—Application Narrative

Before preparing the Application Narrative, an applicant should read carefully the description of the program, the information regarding the competitive priority, and the selection criteria the Secretary uses to evaluate applications.

The narrative should encompass each function or activity for which funds are being requested and should—

1. Begin with an Abstract; that is, a summary of the proposed project;

2. Describe the proposed project in light of each of the selection criteria in the order in which the criteria are listed in this application package; and

3. Include the information in the "Program Requirements" section of this notice.

Please limit the Application Narrative to no more than 30 double-spaced, typed, 8½" x 11" pages (on one side only).

Include as an appendix to the Application Narrative supporting documentation, also on 8½" x 11" paper, (e.g., letters of support, footnotes, resumes, etc.) or any other pertinent information that might assist the Secretary in reviewing the application.

Instructions for Estimated Public Reporting Burden

Under terms of the Paperwork Reduction Act of 1980, as amended, and the regulations implementing that Act, the Department of Education invites comment on the public reporting burden in this collection of information. Public reporting burden for this collection of information is estimated to average 20 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. You may send comments regarding this burden to the U.S. Department of Education, Information Management and Compliance Division, Washington, DC 20202–4651; and to the Office of Management and Budget, Paperwork Reduction Project, OMB 1830–0013, Washington, DC 20503.

(Information collection approved under OMB control number 1830 0013. Expiration date: March 31, 1991.)

BILLING CODE 4000-01-M

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

Standard Form 424B (4-88)
Prescribed by OMB Circular A-102

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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 andto 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

SF 424B (4-88) Back

Certification Regarding Debarment, Suspension, and Other Responsibility Matters Primary Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, Section 85.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211). Copies of the regulations may be obtained by contacting the U.S. Department of Education, Grants and Contracts Service, 400 Maryland Avenue, S.W. (Room 3633 GSA Regional Office Building No. 3), Washington, D.C. 20202-4725, telephone (202) 732-2505.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

(1) The prospective primary participant 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 covered transactions by any Federal department or agency;

(b) Have not within a three-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 for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Organization Name | PR/Award Number or Project Name

Name and Title of Authorized Representative

Signature | Date

ED Form GCS-008, (REV.12/88)

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's 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.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion–Lower Tier Covered Transactions," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, Section 85.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211). Copies of the regulations may be obtained by contacting the person to which this proposal is submitted.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Organization Name | PR/Award Number or Project Name

Name and Title of Authorized Representative

Signature | Date

ED Form GCS-009, (REV. 12/88)

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

ED Form GCS-009, (REV. 12/88)

Certification Regarding Drug-Free Workplace Requirements Grantees Other Than Individuals

This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988, 34 CFR Part 85, Subpart F. The regulations, published in the January 31, 1989 Federal Register, require certification by grantees, prior to award, 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 agency determines to award the grant. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment (see 34 CFR Part 85, Sections 85.615 and 85.620).

The grantee certifies that it will 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 a 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 of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

(e) Notifying the agency within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction;

(f) Taking one of the following actions, within 30 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; 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).

Organization Name | PR/Award Number or Project Name

Name and Title of Authorized Representative

Signature | Date

ED 80-0004

Certification Regarding Drug-Free Workplace Requirements

Grantees Who Are Individuals

This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988, 34 CFR Part 85, Subpart F. The regulations, published in the January 31, 1989 Federal Register, require certification by grantees, prior to award, that their conduct of grant activity will be drug-free. The certification set out below is a material representation of fact upon which reliance will be placed when the agency determines to award the grant. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment (see 34 CFR Part 85, Sections 85.615 and 85.620).

The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance in conducting any activity with the grant.

Organization Name (As Appropriate) PR/Award Number or Project Name

Printed Name

Signature Date

ED 80-0005

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:
☐ a. contract
b. grant
c. cooperative agreement
d. loan
e. loan guarantee
f. loan insurance

2. Status of Federal Action:
☐ a. bid/offer/application
b. initial award
c. post-award

3. Report Type:
☐ a. initial filing
b. material change
For Material Change Only:
year _____ quarter ____
date of last report _____

4. Name and Address of Reporting Entity:
☐ Prime ☐ Subawardee
Tier ____, *if known:*
Congressional District, *if known:*

5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
Congressional District, *if known:*

6. Federal Department/Agency:

7. Federal Program Name/Description:
CFDA Number, *if applicable:* _____

8. Federal Action Number, *if known:*

9. Award Amount, *if known:*
$

10. a. Name and Address of Lobbying Entity
(if individual, last name, first name, MI):

b. Individuals Performing Services *(including address if different from No. 10a)*
(last name, first name, MI):

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply):*
$ _____ ☐ actual ☐ planned

12. Form of Payment *(check all that apply):*
☐ a. cash
☐ b. in-kind; specify: nature _____
value _____

13. Type of Payment *(check all that apply):*
☐ a. retainer
☐ b. one-time fee
☐ c. commission
☐ d. contingent fee
☐ e. deferred
☐ f. other; specify: _____

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____
Print Name: _____
Title: _____
Telephone No.: _____ **Date:** _____

Federal Use Only:

Authorized for Local Reproduction
Standard Form - LLL

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Certification Regarding Lobbying For Grants and Cooperative Agreements

Submission of this certification is required by Section 1352, Title 31 of the U.S. Code and is a prerequisite for making or entering into a grant or cooperative agreement over $100,000.

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 making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement.

(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 grant 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 subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact on which the Department of Education relied when it made or entered into this grant or cooperative agreement. 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 than $100,000 for each such failure.

Organization Name | PR/Award (or Application) Number or Project Name

Name and Title of Authorized Representative

Signature | Date

ED 80-0008 12/89

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by OMB
0348-0046

Reporting Entity: _____ Page _____ of _____

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Standard Form - LLL-A

BILLING CODE 4000-01-C

Appendix B

Potential applicants frequently direct questions to officials of the Department regarding application notices and programmatic and administrative regulations governing various direct grant programs. To assist potential applicants the Department has assembled the following most commonly asked questions.

Q. Can we get an extension of the deadline?

A. No. A closing date may be changed only under extraordinary circumstances. Any change must be announced in the **Federal Register** and apply to all applicants. Waivers for individual applications *cannot* be granted, regardless of the circumstances.

Q. We just missed the deadline for a previous Department of Education competition. May we submit the application we prepared for it under this competition?

A. Yes, however, the likelihood of success is not good. A properly prepared application must meet the specifications of the competition for which it is submitted.

Q. How can I best ensure that my application is received on time and is considered under the correct competition?

A. Applicants should carefully follow the instructions for transmittal of applications that are set forth in this notice. Be sure to clearly indicate in Block 10 of the face page of the application (Standard Form 424) the CFDA number—84.230—and the title of the program—Technology Education Demonstration Program—representing the competition in which the application should be considered.

Q. Will you help us prepare our application?

A. We are happy to provide general program information. Clearly, it would not be appropriate for staff to participate in the actual writing of an application, but we can respond to specific questions about application requirements, selection criteria, and the competitive priority. Applicants should understand that this previous contact is not required, nor will it in any way influence the success of an application.

Q. How long should an application be?

A. The Department of Education is making a concerted effort to reduce the volume of paperwork in discretionary program applications. However, the scope and complexity of projects is too variable to establish firm limits on length. Your application should provide enough information to allow the review panel to evaluate the significance of the project against the criteria of the competition. We recommend that you address all of the selection criteria in an "Application Narrative" of no more than thirty pages in length. Supporting documentation may be included in appendices to the Application Narrative. Some examples:

(1) Staff qualifications. These should be brief. They should include the person's title and role in the proposed project and contain only information about his or her qualifications that are relevant to the proposed project. Qualifications of consultants should be provided and be similarly brief. Resumes may be included in the appendices.

(2) Copies of evaluation instruments proposed to be used in the project in instances where such instruments are not in general use.

(3) Assurance of praticipation of an agency other than the applicant, if such participation is critical to the project.

Q. How should my application narrative be organized?

A. The application narrative should be organized to follow the exact sequence of the components in the selection criteria in this notice

Q. How do I provide an assurance?

A. Except for SF–424B, "Assurances—Non-Construction Programs," simply state in writing that you are meeting a prescribed requirement.

Q. What is the earliest start date I can propose for a project under this competition?

A. The earliest proposed project start date for the Technology Education Demonstration Program should be no sooner than September 1, 1990. All awards will be made by September 30, 1990; project start dates later than October 1, 1990 may be proposed, subject to negotiations.

Q. Please explain the cost-sharing requirements for the Technology Education Demonstration Program.

A. The key to understanding the cost-sharing requirements for this program is to remember that all percentages are expressed in terms of the total cost of a project, i.e., the sum of the Federal and non-Federal shares. The fiscal requirements for the Technology Education Demonstration Program specify that the Federal share for a project shall not exceed 65% of the total cost of the project. Thus, the non-Federal share for a project shall represent at least 35% of the total cost of the project.

Of the 35% non-Federal share, at least 10% of the total cost of the project shall derive from private sector sources. The other 25% of the total cost of the project may derive from any non-Federal source(s), including the private sector.

For a project with a total cost of $100,000, a proposed budget might look like this:

$65,000	Federal share.
10,000	Non-Federal share from private sector.
+25,000	Non-Federal share from any non-Federal source(s).
$100,000	Total cost of project.

As the treatment of cost-sharing requirements is not uniform across all Federal programs, prospective applicants are encouraged to telephone the Department of Education contact person for this program for further clarification of budget requirements.

Q. How many copies of the application should I submit and must they be bound?

A. Current Government-wide policy is that only an original and two copies need be submitted. However, an original and six copies will be greatly appreciated in order that each panelist and panel chair receive a complete copy of the application for review. The binding of applications is optional. At least one copy should be left unbound to facilitate any necessary reproduction. Applications should not include foldouts, photographs, audio-visuals, or other materials that are hard-to-duplicate. Any hard-to-duplicate material included in an application will not be duplicated and may not be reviewed by all panelists.

Q. When will I find out if I'm going to be funded?

A. You can expect to receive notification within 4 months of the deadline for transmittal of applications.

Q. Can I obtain copies of reviewers' comments?

A. Upon written request, reviewers' comments will be mailed to applicants.

Q. If my application receives high scores from the reviewers, does that mean that I will receive funding?

A. Not necessarily. It is often the case that the number of applications scored highly by the reviewers exceeds the dollars available for funding projects under a particular competition. The order of selection, which is based on the scores of all the applications and other relevant factors, determines the applications that can be funded.

Q. Will my application be returned?

A. We do not return copies of the applications.

Q. What happens during negotiations?

A. During negotiations technical and budget issues may be raised. These are

issues that have been identified during panel and staff reviews that require clarification. Sometimes issues are stated as "conditions." These are issues that have been identified as so critical that the award cannot be made unless those conditions are met. Questions may also be raised about the proposed budget. Generally, these issues are raised because there is inadequate justification or explanation of a particular budget item, or because the budget item seem unimportant to the successful completion of the project. If you are asked to make changes that you feel could seriously affect the project's success, you may provide reasons for not making the changes or provide alternative suggestions. Similarly, if proposed budget reductions will, in your opinion, seriously affect the project activities, you may explain why and provide additional justification for the proposed expenses. An award cannot be made until all negotiation issues have been resolved.

Q. Where can copies of the **Federal Register**, EDGAR regulations, and Federal statutes be obtained?

A. Copies of these materials can usually be found at your local library. If not, they can be obtained from the Government Printing Office by writing to: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Telephone: (202) 783-3238. When requesting copies of regulations or statutes, it is helpful to use the specific name, public law number, or part number. The materials referenced in this notice should be referred to as follows:

(1) Omnibus Trade and Competitiveness Act of 1988, Public Law 100-418, title VI, subtitle B, chapter 2.

(2) Education Department General Administrative Regulations, 34 CFR parts 74, 75, 77, 79, 80, 81, and 85.

[FR Doc. 90-5752 Filed 3-13-90; 8:45 am]

BILLING CODE 4000-01-M

federal register

Wednesday
March 14, 1990

Part VI

Department of Education

Jacob K. Javits Gifted and Talented Students Education Program; Notice Inviting Applications for New Awards for Fiscal Year 1990

DEPARTMENT OF EDUCATION

[CFDA No. 84.206A]

Jacob K. Javits Gifted and Talented Students Education Program Notice Inviting Applications for New Awards for Fiscal Year (FY) 1990

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and the Education Department General Administrative Regulations (EDGAR), the notice contains information, application forms, and instructions needed to apply for a grant under this competition.

Purpose of Program: Provides financial assistance to State and local educational agencies, institutions of higher education, and other public and private agencies and organizations, to encourage research, demonstration projects, personnel training, and similar activities designed to help build a nationwide capability in elementary and secondary schools to identify and meet the special educational needs of gifted and talented students.

Deadline for Transmittal of Application: 4/30/90.

Deadline for Intergovernmental Review: 6/29/90.

Available Funds: $1.0 million.

Estimated Range of Awards: $165,000–$225,000.

Estimated Average Size of Awards: $200,000.

Estimated Number of Awards: 5.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Budget Period: 12 months.

Applicable Regulations

The following regulations apply to the Gifted and Talented Program:

The Education Department General Administrative Regulations (EDGAR) in 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations), part 75 (Direct Grant Programs), part 77 (Definitions that apply to Department Regulations), part 79 (Intergovernmental Review of Department of Education Programs and Activities), part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), part 81 (General Education Provisions Act—Enforcement), and part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

Description of the Program

The Gifted and Talented Program is authorized by the Jacob K. Javits Gifted and Talented Students Education Act of 1988, Title IV, part B of the Elementary and Secondary Education Act of 1965, as amended.

Definitions

The following definitions apply to the terms used this notice:

(a) *Gifted and talented students* means children and youths who—

(1) Give evidence of high performance capability in such areas as intellectual, creative, artistic, or leadership capacity or in specific academic fields; and

(2) Require services or activities not ordinarily provided by the school in order to develop such capabilities fully.

(b) *Hawaiian native* means any individual any of whose ancestors were natives prior to 1778 of the area that now comprises the State of Hawaii.

(c) *Hawaiian native organization* means any organization recognized by the Governor of the State of Hawaii primarily serving and representing Hawaiian natives.

(d) *Institution of higher education* has the same meaning given such term in section 435(b) of the Higher Education Act of 1965, as amended.

Eligible Parties

The following are eligible to apply under this program.

(a) State educational agencies.

(b) Local educational agencies.

(c) Institutions of higher education.

(d) Other public agencies ad private agencies and organizations (including Indian tribes and organizations as defined by the Indian Self-Determination and Education Assistance Act and Hawaiian native organizations).

Uses of Funds

(a) Projects assisted under this program may include—

(1) Preservice and inservice training (including fellowships) for personnel (including leadership personnel) involved in the education of gifted and talented students;

(2) Establishment and operation of model projects and exemplary programs for the identification and education of gifted and talented students, including summer programs and cooperative programs involving business, industry, and education;

(3) Strengthening the capability of State educational agencies and institutions of higher education to provide leadership and assistance to local educational agencies and nonprofit private schools in the planning, operation and improvement of programs for the identification and education of gifted and talented students; and

(4) Programs of technical assistance and information dissemination.

(b) Grantees must use funds received under this program to supplement and make more effective the expenditure of State and local funds, and of Federal funds made available under chapter 2 of title I and title II of the Elementary and Secondary Education Act of 1965 for the education of gifted and talented students.

Participation of Private School Students

Applicants must make provision for the equitable participation of students and teachers in private nonprofit elementary and secondary schools, including the participation of teachers and other personnel in preservice and inservice training programs supported under the Act.

Priorities

Absolute Priorities

The Secretary gives an absolute preference to applications that meet one or both of the following priorities:

(a) Applications that propose to identify gifted and talented students who may not be identified through traditional assessment methods (including economically disadvantaged individuals, individuals of limited English proficiency, and individuals with handicaps) and provide education programs designed to include gifted and talented students from such groups; or

(b) Applications that propose programs and projects designed to develop or improve the capability of schools in an entire State or region of the Nation through cooperative efforts and participation of State and local educational agencies, institutions of higher education, and other public and private agencies and organizations (including business, industry, and labor), to plan, conduct, and improve programs for the identification and education of gifted and talented students.

Under 34 CFR 75.105(c)(3), the Secretary funds under this competition only applications that meet one or both of these absolute priorities.

Service Priority

In approving applications under this program, the Secretary ensures that at least one half of the applications approved contain a component designed to serve gifted and talented students who are economically disadvantaged individuals.

Invitational Priorities

The Secretary is particularly interested in applications that meet one of more of the following invitational priorities:

(a) Inservice and preservice training that enables classroom teachers to provide individualized instruction to gifted and talented children;

(b) Inservice and preservice training, including fellowships, that enhance teacher ability and school capacity to instruct gifted and talented children in particular disciplines;

(c) Projects that serve gifted and talented children through schools of choice, including magnet school programs;

(d) Projects that seek to discover and cultivate the potential of highly able students within the regular classroom;

(e) Model projects that are based on relevant research and literature for identifying and instructing the gifted and talented student populations that will be served;

(f) Model projects that use multiple criteria for selecting highly able students for admission into a gifted and talented program, rather than a single measure such as a standardized test;

(g) Projects that encourage highly able students who are not being identified through traditional assessment methods to develop and display their skills and talents over an extended period in order to increase their prospects for admission into a gifted program;

(h) Training for parents of gifted and talented students in nurturing their children's gifts and talents.

However, under 34 CFR 75.105(c)(1) an application that meets one or more of these invitational priorities does not receive competitive or absolute preference over other applications.

Selection Criteria

(a) (1) The Secretary uses the following selection criteria to evaluate applications for new grants under the Gifted and Talented Program.

(2) The maximum score for all of these criteria is 100 points.

(3) The maximum score for each criterion is indicated in parentheses.

(b) *The criteria*—(1) *Meeting the purposes of the authorizing statute.* (30 points) The Secretary reviews each application to determine how well the project will meet the purpose of the Jacob K. Javits Gifted and Talented Students Education Act of 1988, including consideration of—

(i) The objectives of the project; and

(ii) How the objectives of the project further the purposes of the authorizing statute.

Note to Applicants: A statement of the purposes of the authorizing statute is found in the Purpose of Program section of this notice.

(2) *Extent of need for the project.* (20 points) The Secretary reviews each application to determine the extent to which the project meets specific needs recognized in the statute that authorizes the program, including consideration of—

(i) The needs addressed by the project;

(ii) How the applicant identified those needs;

(iii) How those needs will be met by the project; and

(iv) The benefits to be gained by meeting those needs.

(3) *Plan of operation.* (20 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(i) The quality of the design of the project;

(ii) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(iii) How well the objectives of the project relate to the purposes of the program;

(iv) The quality of the applicant plan to use its resources and personnel to achieve each objective;

(v) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition; and

(vi) For grants under a program that requires the applicant to provide an opportunity for participation of students enrolled in private schools, the quality of the applicant's plan to provide that opportunity.

(4) *Quality of key personnel.* (7 points)

(i) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time each person referred to in paragraph (b)(4)(i) (A) and (B) will commit to the project; and

(D) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(ii) To determine personnel qualifications under paragraphs (b)(4)(i) (A) and (B), the Secretary considers—

(A) Experience and training in fields related to the objectives of the project; and

(B) Any other qualifications that pertain to the quality of the project.

(5) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(i) The budget is adequate to support the project; and

(ii) Costs are reasonable in relation to the objectives of the project.

(6) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(i) Are appropriate to the project; and

(ii) To the extent possible, are objective and produce data that are quantifiable.

(**Cross-references:** See 34 CFR 75.590 Evaluation by the grantee.)

(7) *Adequacy of resources.* (3 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

Intergovernmental Review of Federal Programs

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR part 79.

The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive order. If you want to know the name and address of any State Single Point of Contact, see the list published in the **Federal Register** on September 15, 1989, pages 38342–38343.

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA#84.206A, U.S. Department of Education, Room 4161, 400 Maryland Avenue SW., Washington, DC 20202-0125.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, DC time) on the date indicated in this notice.

Please note that this address is not the same address as the one to which the applicant submits its completed application. Do not send application to the above address.

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA#84.206A), Washington, DC 20202-4725.

or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA#84.206A), Room #3633, Regional Office Building #3, 7th and D Streets SW., Washington, DC.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a Stated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgment to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 732-2495.

(3) The applicant must indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and letter, if any—of the competition under which the application is being submitted.

Do not transmit the application to the secretary's office. The application control center is the official receipt point for grant applications.

Application Instructions and Forms

The appendix to this application is divided into three parts plus a statement regarding estimated public reporting burden and various assurances and certifications. These parts and additional materials are organized in the same manner that the submitted application should be organized. The parts and additional materials are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4-88)) and instructions.

Part II: Budget Information—Non-Construction Programs (Standard Form 424A) and instructions.

Part III: Application Narrative.

Additional Materials:

Estimated Public Reporting Burden.

Assurances—Non-Construction Programs (Standard Form 424B).

Certification regarding Debarment, Suspension, and Other Responsibility Matters: Primary Covered Transactions (ED Form GCS-008) and instructions.

Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form GCS-009) and instructions.

(Note: ED Form GCS-009 is intended for the use of grantees and should not be transmitted to the Department)

Certification Regarding Drug-Free Workplace Requirements: Grantees Other Than Individuals (ED 80-0004).

Certification Regarding Lobbying for Grants and Cooperative Agreements (ED 80-0008).

(Note: This form is required if requesting, making, or entering into a grant or cooperative agreement for more than $100,000)

Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions; and Disclosure of Lobbying Activities Continuation Sheet (Standard Form LLL-A).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. No grant may be awarded unless a completed application form has been received.

For Further Information Contact: L. Ann Benjamin, U.S. Department of Education, Office of Educational Research and Improvement, 555 New Jersey Avenue NW., Washington, DC 20208-5643; Phone: (202) 357-6187.

Program Authority: 20 U.S.C. 3061-3068.

Dated: March 8, 1990.

Christopher T. Cross,

Assistant Secretary, Office of Educational Research and Improvement.

BILLING CODE 4000-01-M

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED	Applicant Identifier
3. DATE RECEIVED BY STATE	State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

1. TYPE OF SUBMISSION:

Application	Preapplication
☐ Construction	☐ Construction
☒ Non-Construction	☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name:

Organizational Unit:

Address (give city, county, state, and zip code):

Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN):

1 - _ _ _ _ _ _ _ _ - _ _

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:

☒ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

9. NAME OF FEDERAL AGENCY:

U.S. Department of Education

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 8 4 - 2 0 5 A

TITLE: Jacob K. Javits Gifted and Talented Students Education Program

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT

Start Date	Ending Date

14. CONGRESSIONAL DISTRICTS OF:

a. Applicant

b. Project

15. ESTIMATED FUNDING:

a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 REV 4-88
Prescribed by OMB Circular A-102
OEAI

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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.

Item: Entry:

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.)

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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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).

Lines 1-4, Columns (c) through (g.) (continued)

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 — Show the 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.

BILLING CODE 4000-01-C

Instructions for Part III—Application Narrative

Before preparing the application narrative, an applicant should read carefully the description of the program, the information regarding priorities, and the selection criteria the Secretary uses to evaluate applications.

The Narrative should encompass each function or activity for which funds are being requested and should:

1. Begin with an abstract, that is, a summary of the proposed project;

2. Describe the proposed project in light of each of the selection criteria in the order in which these criteria are listed in this notice;

3. Describe how the proposed project will meet one or both of the absolute priorities and any of the invitational priorities listed in this notice;

4. Clearly identify any component of the project that will serve gifted and talented students who are economically disadvantaged.

5. According to EDGAR, 34 CFR 75.591, grantees are required to cooperate in any Federal evaluation of their projects. Recipients of funds under the Jacob K. Javits Gifted and Talented Students Education Program shall collect the following data for evaluation, and applicants shall describe in their grant application their plan for collecting this data:

Demographic information on participants, including number of participants, grade levels served, racial/ethic composition, socio-economic composition, and evidence of special needs;

A description of services provided to participants; and

Measures which demonstrate the progress made in achieving the project's stated goals and objectives, such as increased enrollment of students in gifted and talented programs, academic achievement and improvements in teacher's skills and attitudes.

This data will be used in evaluating project effectiveness and in evaluating continuation applications.

6. Include any other pertinent information that might assist the Secretary in reviewing the application, including the scope and degree of service and when it will be delivered. The application should enable reviewers to make clear linkage between the proposed project and specific project tasks, operation, and service delivery.

Please limit the application narrative to no more than 30 double-spaced, typed pages (on one side only). Supplemental documentation (not to exceed 25 pages) may be attached to the program narrative and is not counted as part of the 30 pages of narrative.

Estimated Public Reporting Burden

Under terms of the Paperwork Reduction Act of 1980, as amended, and the regulations implementing that Act, the Department of Education invites comment on the public reporting burden in this collection of information. Public reporting burden for this collection of information is estimated to average 30 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. You may send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, DC 20202–4651; and to the Office of Management and Budget, Paperwork Reduction Project 1850–0653, Washington, DC 20503.

(Information collection approved under OMB control number 1850–0635. Expiration date: 5/31/92)

BILLING CODE 4000–01–M

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant.

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse, (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U S C § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made. and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases

8. Will comply with the provisions of the Hatch Act (5 U.S.C §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U S C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

Standard Form 424B (4-88)
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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 andto 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

SF 424B (4-88) Back

BILLING CODE 4000-01-C

Assurances—Jacob K. Javits Gifted and Talented Students Education Program

The applicant hereby assures and certifies that it will:

1. If it provides for service delivery, provide for the equitable participation of students and teachers in private nonprofit elementary and secondary schools, including the participation of teachers and other personnel in preservice and inservice training programs supported under the Act;

2. Use the funds received under the Javits Program to supplement and make more effective the expediture of State and local funds, and of Federal funds made available under Chapter 2 of Title I and Title II of the Elementary and Secondary Education Act of 1965 for the education of gifted and talented students.

Signature

Name

Title

Date

Gifted and Talented Program

Data Sheet

Please check the priority or priorities your proposed program or project will address.

Absolute Priorities: (The application must address one or both of these priorities.)

—The identification of gifted and talented students who may not be identified through traditional assessment methods (including economically disadvantaged individuals, individuals of limited English proficiency, and individuals with handicaps) and the provision of education programs designed to include gifted and talented students from such groups; and

—Programs and projects designed to develop or improve the capability of schools in an entire State or region of the Nation through cooperative efforts and participation of State and local educational agencies, institutions of higher education, and other public and private agencies and organizations (including business, industry, and labor), to plan, conduct, and improve programs for the identification and education of gifted and talented students.

Service Priority

—The application contains a component designed to serve gifted and talented students who are economically disadvantaged individuals.

BILLING CODE 4000-01-M

Certification Regarding Debarment, Suspension, and Other Responsibility Matters Primary Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, Section 85.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211). Copies of the regulations may be obtained by contacting the U.S. Department of Education, Grants and Contracts Service, 400 Maryland Avenue, S.W. (Room 3633 GSA Regional Office Building No. 3), Washington, D.C. 20202-4725, telephone (202) 732-2505.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

(1) The prospective primary participant 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 covered transactions by any Federal department or agency;

(b) Have not within a three-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 for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Organization Name | PR/Award Number or Project Name

Name and Title of Authorized Representative

Signature | Date

ED Form GCS-008, (REV.12/88)

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's 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.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

ED Form GCS-008, (REV. 12/88)

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, Section 85.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211). Copies of the regulations may be obtained by contacting the person to which this proposal is submitted.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Organization Name | PR/Award Number or Project Name

Name and Title of Authorized Representative

Signature | Date

ED Form GCS-009, (REV. 12/88)

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

ED Form GCS-009, (REV. 12/88)

Certification Regarding Drug-Free Workplace Requirements Grantees Other Than Individuals

This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988, 34 CFR Part 85, Subpart F. The regulations, published in the January 31, 1989 Federal Register, require certification by grantees, prior to award, 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 agency determines to award the grant. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment (see 34 CFR Part 85, Sections 85.615 and 85.620).

The grantee certifies that it will 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 a 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 of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

(e) Notifying the agency within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction;

(f) Taking one of the following actions, within 30 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; 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).

Organization Name PR/Award Number or Project Name

Name and Title of Authorized Representative

Signature Date

ED 80-0004

Certification Regarding Lobbying For Grants and Cooperative Agreements

Submission of this certification is required by Section 1352, Title 31 of the U.S. Code and is a prerequisite for making or entering into a grant or cooperative agreement over $100,000.

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 making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement.

(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 grant 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 subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact on which the Department of Education relied when it made or entered into this grant or cooperative agreement. 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 than $100,000 for each such failure.

Organization Name | PR/Award (or Application) Number or Project Name

Name and Title of Authorized Representative

Signature | Date

ED 80-0008 12/89

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0346-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:
☐ a. contract
b. grant
c. cooperative agreement
d. loan
e. loan guarantee
f. loan insurance

2. Status of Federal Action:
☐ a. bid/offer/application
b. initial award
c. post-award

3. Report Type:
☐ a. initial filing
b. material change
For Material Change Only:
year _____ quarter _____
date of last report _____

4. Name and Address of Reporting Entity:
☐ Prime ☐ Subawardee
Tier _____, *if known:*

Congressional District, *if known:*

5. If Reporting Entity in No. 4 is Subawardee, Enter name and Address of Prime:

Congressional District, *if known:*

6. Federal Department/Agency:

7. Federal Program Name/Description:

CFDA Number, *if applicable:* _____

8. Federal Action Number, *if known:*

9. Award Amount, *if known:*
$

10. a. Name and Address of Lobbying Entity
(if individual, last name, first name, MI):

b. Individuals Performing Services *(including address if different from No. 10a)*
(last name, first name, MI):

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply):*
$ _____ ☐ actual ☐ planned

12. Form of Payment *(check all that apply):*
☐ a. cash
☐ b. in-kind; specify: nature _____
value _____

13. Type of Payment *(check all that apply):*
☐ a. retainer
☐ b. one-time fee
☐ c. commission
☐ d. contingent fee
☐ e. deferred
☐ f. other; specify: _____

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____
Print Name: _____
Title: _____
Telephone No.: _____ **Date:** _____

Federal Use Only:

Authorized for Local Reproduction
Standard Form - LLL

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by OMB
0348-0046

Reporting Entity: _____ **Page** _____ **of** _____

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Standard Form - LLL-A

[FR Doc. 90-5791 Filed 3-13-90; 8:45 am]

BILLING CODE 4000-01-C

federal register

Wednesday
March 14, 1990

Part VII

Department of Transportation

Research and Special Programs Administration

Oakland, California; Nuclear Free Zone Act; Inconsistency Ruling

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Inconsistency Ruling No. IR-30; Docket IRA-47]

City of Oakland, California; Nuclear Free Zone Act

APPLICANT: United States Department of the Navy.

REGULATIONS AFFECTED: City of Oakland Nuclear Free Zone Act.

APPLICABLE FEDERAL REQUIREMENTS: Hazardous Materials Transportation Act (HMTA) (Public Law 93-633, 49 U.S.C. App. 1801 *et seq*) and the Hazardous Materials Regulations (HMR) (49 CFR parts 171 through 180) issued thereunder.

MODES AFFECTED: All.

ISSUE DATE: March 9, 1990.

SUMMARY: This inconsistency ruling is the opinion of the Office of Hazardous Materials Transportation (OHMT) of the Department of Transportation (DOT) concerning whether the Nuclear Free Zone Act of the City of Oakland, California, is inconsistent with the HMTA and the HMR and thus preempted by section 112(a) of the HMTA. This ruling was applied for and is issued under the procedures set forth at 49 CFR 107.201-107.209.

RULING: Insofar as they apply to the transportation of hazardous materials, including the loading, unloading, and storage incidental to that transportation, the following provisions of the Nuclear Free Zone Act (NFZA) of the City of Oakland, California, are inconsistent with the HMTA and the HMR and thus preempted under section 112(a) of the HMTA (49 U.S.C. App. 1811(a)):

(1) The definitions of "nuclear weapon" and "hazardous radioactive material" in section 11;

(2) The prenotification requirements of section 5.a.i.;

(3) The routing requirements of section 5.a.ii. and the related City Council resolution providing for the designation of City street routes;

(4) The mode of transportation requirements of section 5.a.ii;

(5) The placarding requirement of section 5.a.iv.;

(6) The confirmation of the ban on spent nuclear fuel through the Port of Oakland in section 5.b.;

(7) The prohibition of radioactive materials storage in section 6;

(8) The prohibition of "nuclear weapons work" in sections 4 and 11.d.;

(9) The information reporting requirements of sections 10 b. and d.;

(10) The inspection provisions of section 5.a.iii.;

(11) The fee provisions of section 10.c.; and

(12) The enforcement provisions of sections 10.e., f., and g.

Insofar as they apply to the transportation of hazardous materials, including the loading, unloading, and storage incidental to that transportation, the following provisions of Chapter 17.68 of the City of San Jose's Code are consistent with the HMTA and the HMR because they are not requirements:

(1) The statements of purpose in section 2; and

(2) The findings in section 3.

This ruling does not address the consistency of any provisions not described above. It also does not address the consistency of any provisions of the Nuclear Free Zone Act as applied to any activities other than the transportation of hazardous materials, including the loading, unloading, and storage incidental to such transportation.

FOR FURTHER INFORMATION CONTACT: Edward H. Bonekemper III, Senior Attorney, Office of the Chief Counsel, Research and Special Programs Administration, Department of Transportation, Washington, DC 20590-0001 [Tel. (202) 366-4400].

I. Background

On May 17, 1989, the U.S. Department of the Navy (DON) filed an inconsistency ruling application. That application requested a ruling concerning the consistency of the Nuclear Free Zone Act of the City of Oakland, California, with the HMTA and the HMR.

DON contends that several provisions of that Act, which actually is a City ordinance, are inconsistent with the HMTA and the HMR.

On June 27, 1989, OHMT published a Public Notice and Invitation to Comment (54 FR 27104) soliciting public comments on DON's application. On September 25, 1989, OHMT published a notice (54 FR 39253) extending the rebuttal comment period.

Comments in support of findings of inconsistency were filed by the Applicant and by the Edison Electric Institute/Utility Nuclear Waste and Transportation Program, the Department of Energy, and McGil Specialized Carriers, Inc. Comments supporting findings of consistency were filed by the City of Oakland. Mr. Douglas Vollgraff submitted comments supporting some findings of inconsistency and one finding of consistency.

II. General Authority and Preemption Under the HMTA

The HMTA at section 112(a) (49 U.S.C. App. section 1811 (a)) preempts "* * * any requirement, of a State or political subdivision thereof, which is inconsistent with any requirement set forth in the [the HMTA], or in a regulation issued under [the HMTA]." This express preemption provision makes it evident that Congress did not intend the HMTA and its regulations to completely occupy the field of transportation so as to preclude any state and local requirements that are not "inconsistent."

In the HMTA's Declaration of Policy (section 102) and in the Senate Commerce Committee language reporting out what became section 112 of the HMTA, Congress indicated a desire for uniform national standards in the field of hazardous materials transportation. Congress inserted the preemption language in section 112(a) "in order to preclude a multiplicity of state and local regulations and the potential for varying as well as conflicting regulations in the area of hazardous material transportation" (S. Rep. No. 1192, 93rd Cong., 2d Sess. 37 (1974)). Through its enactment of the HMTA, Congress gave the Department the authority to promulgate uniform national standards. While the HMTA did not totally preclude state or local action in this area, Congress intended, to the extent possible, to make such state or local action unnecessary The comprehensiveness of the HMR, issued to implement the HMTA, severely restricts the scope of historically permissible state or local activity.

Although advisory in nature, inconsistency rulings issued by OHMT under 49 CFR part 107 provide an alternative to litigation for a determination of the relationship between Federal requirements and those of a state or political subdivision. If a state or political subdivision requirement is found to be inconsistent, the state or local government may apply to OHMT for a waiver of preemption. 49 U.S.C. App. section 1811(b); 49 CFR 107.215-107.225.

In issuing its advisory inconsistency rulings concerning preemption under the HMTA, OHMT is guided by the principles enunciated in Executive Order 12612 entitled "Federalism" (52 FR 41685, Oct. 30, 1987). Section 4(a) of that Executive Order authorizes preemption of state laws only when the Federal statute contains an express preemption provision, there is other firm and palpable evidence of Congressional

intent to preempt, or the exercise of state authority directly conflicts with the exercise of Federal authority. The HMTA, of course, contains an express preemption provision, which OHMT has implemented through regulations and interpreted in a long series of inconsistency rulings beginning in 1978.

Since these proceedings are conducted purusant to the HMTA and the HMR, only the question of statutory preemption under HMTA will be considered. A court might find a non-Federal requirement preempted for other reasons, such as statutory preemption under another Federal statute, preemption under state law, or preemption by the Commerce Clause of the U.S. Constitution because of an undue burden on interstate commerce. However, OHMT does not make such determinations in an inconsistency ruling proceeding.

OHMT has incorporated into its procedures (49 CFR 107.209(c)) the following criteria for determining whether a state or local requirement is consistent with, and thus not preempted by, the HMTA:

(1) Whether compliance with both the non-Federal requirement and the Act or the regulations issued under the Act is possible; and

(2) The extent to which the non-Federal requirement is an obstacle to the accomplishment and execution of the Act and the regulations issued under the Act.

These criteria are based upon, and supported by, U.S. Supreme Court decisions on preemption. These include *Hines* v *Davidowtiz*, 312 U.S. 52 (1941); *Florida Lime & Avocado Growers, Inc.* v. *Paul*, 373 U.S. 132 (1963); and *Ray* v. *Atlantic Richfield Co.*, 435 U.S. 151 (1978).

The first criterion, the "dual compliance" test, concerns those non-Federal requirements which are irreconcilable with Federal requirements; that is, compliance with the non-Federal requirement causes the Federal requirement to be violated, or *vice versa*. The second criterion, the "obstacle" test, involves determining whether a state or local requirement is an obstacle to executing and accomplishing the purposes of the HMTA and the HMR; a requirement constituting such an obstacle is inconsistent. Application of this second criterion requires an analysis of the non-Federal requirement in light of the requirements of the HMTA and the HMR, as well as the purposes and objectives of Congress in enacting the HMTA and the manner and extent to which those purposes and objectives have been carried out through OHMT's regulatory program.

III. The Application for Inconsistency Ruling

On May 17, 1989, the Department of the Navy (DON), through Mr. Lawrence L. Lamade, its General Counsel, applied for an inconsistency ruling concerning the Oakland Nuclear Free Zone Act (NFZA).

In its application, DON, preliminarily describes the scope of the NFZA. DON states that the NFZA applies to the transport of any nuclear weapon or hazardous radioactive material and that the scope of the NFZA is evidenced by its stated purpose to "make Oakland a nuclear free zone."

DON stresses that the NFZA addresses the transportation of nuclear weapons or other "hazardous radioactive materials" through, or over, Oakland and that it applies to *all* "hazardous radioactive materials," regardless of their classification under the HMR. Section 11.g. of the NFZA defines "Hazardous Radioactive Materials" as:

* * * any radioactive isotope(s) resulting from the operation of, or intended for use in, nuclear fission reactors or nuclear weapons; the refined products of spent nuclear fission reactors, or of any device or component of a device that has been used to contain or process radioactive isotopes; or the tailings or similar debris resulting from the mining of uranium or other radioactive elements except as specifically exempted herein.

However, DON points out that Subsections 12.h. and i. exempt (1) nuclear medicine research programs, (2) "unclassified" research, study, evaluation or teaching, (3) the operation of particle accelerators, (4) the construction and operation of experimental fusion reactors, and (5) consumer uses of radioactive material, from the provisions of the NFZA.

Because section 11.a. defines "person" as any "natural person, corporation, college or university, laboratory, institution, governmental agency, or other entity," DON argues that the NFZA is applicable to the activities and operations of both private entities and the Federal Government. Thus, says DON, the NFZA applies to any nuclear weapon or radioactive material which is generated, utilized, or transported in, through, or over the City of Oakland.

DON contends that several provisions of the NFZA are inconsistent with the HMTA and the HMR under both the "obstacle" and "dual compliance" tests described above.

First, citing numerous prior inconsistency rulings and 49 CFR part 177, appendix A, DON asserts that a 45-day advance notice provision is inconsistent because of delays and diversions resulting therefrom. It also argues that the requirement for 45 days' advance notice to the City concerning radioactive materials transportation is inconsistent because it applies to Department of Defense shipments exempt from the HMR under 49 CFR 173.7(b) and because it may violate the disclosure prohibitions of 10 CFR 73.21, which is incorportated by reference in 49 CFR173.22(c).

Second, DON contends that routing requirements of the NFZA are inconsistent. The NFZA provides that, after a public hearing, the City Council will determine the safest route and means of transportation for radioactive materials transportation. According to DON, this process is inconsistent with the HMR's classification of radioactive materials and the routing requirements of 49 CFR 177.825, particularly the provision for transportation of highway route controlled quantities (HRCQ) of radioactive materials on preferred routes (Interstate highways and state-designated routes).

Other grounds advanced by DON for the alleged inconsistency of this process are the NFZA's application to non-HRCQ radioactive materials and shipments excluded from regulation by the HMR, the City Council's unfettered discretion to select routes, and delays that will result from this process—particularly from a requirement that at least 15 days' public notice follow the Council's selection of a route.

Third, DON argues that the NFZA contains an inconsistent placarding requirement, specifically a requirement for a sign reading "Transportation of Hazardous Radioactive Materials" clearly visible at least 150 feet in each direction. DON alleges an inconsistency with the placarding system of 49 CFR 172.500–558, particularly with 49 CFR 172.556 concerning radioactive materials placarding. It cites language in Inconsistency Ruling (IR) No. IR–24 (53 FR 19848, May 31, 1988) that "HMR placarding provisions do completely occupy the field and, therefore, preempt all state and local placarding and warning sign requirements for hazardous materials transportation which are not identical to the Federal requirements."

Fourth, DON cites several inconsistency rulings to support its contention that the following transportation ban in the NFZA is inconsistent: "The present ban by the Port of Oakland on transportation of spent nuclear fuel rods through the Port is hereby confirmed and made permanent." DON states that the authority to ban or prohibit

transportation is exclusively Federal and quotes the following language from IR-3 (Decision on Appeal), 47 FR 18457, 18458 (April 29, 1982):

> A unilateral local ban is a negation, rather than an exercise, of local responsibility, since it isolates the local jurisdiction from the risks associated with the commercial life of the nation.

Finally, DON aruges that fee and criminal penalty provisions of the NFZA are inconsistent insofar as they relate to, or support, inconsistent provisions.

IV. Public Comments Against Consistency

Comments favoring a finding of inconsistency were filed by the Edison Electric Institute/Utility Nuclear Waste and Transportation Program (UWASTE), the Department of Energy (DOE), McGil Specialized Carriers, Inc. (McGil), Mr. Douglas Vollgraff, and DON.

UWASTE primarily addresses its comments to the NFZA's section 5 restrictions on the transportation of "hazardous radioactive materials through or over Oakland" and its section 10 provisions (Enforcement, Sanctions, and Citizens Suits) to the extent they apply to transportation activities. First, it cites IR-18, 52 FR 200 (Jan. 2, 1987), for the proposition that the NFZA's section 3 findings are not a "requirement" and thus are not subject to preemption under the HMTA.

However, UWASTE says that the City's finding that 130 local communities have enacted similar nuclear free zone provisions makes OHMT's ruling in this matter significant. It contends that the Department of Transportation (DOT) has specifically provided a very limited role for local governments in regulating the transportation of radioactive materials by providing in 49 CFR 177.825 that their role in the routing of HRQC radioactive materials is solely one of being consulted by states designating preferred routes for such transportation.

UWASTE argues that the definition of "hazardous radioactive material" in section 11.g. of the NFZA, which determines what materials are subject to the transportation restrictions of section 5.a. thereof, creates a hazard class that is different from those in the HMR and, therefore, is inconsistent under the obstacle test. It cites several inconsistency rulings and a court decision in support of this contention.

Furthermore, citing IR-8 (Appeal), 52 FR 13005 (Apr. 20, 1987), and IR-27, 54 FR 16326 (Apr. 21, 1989), correction 54 FR 20001 (May 9, 1989), UWASTE also argues that the NFZA section 5.a.i. requirement for 45 days' notice to the City prior to transportation of hazardous radioactive materials is inconsistent with the HMR. It contends that this area is exclusively Federal by virtue of the HMR provisions at 49 CFR 173.22 and 177.825 and the NRC regulations (10 CFR 71.97 and 73.97) incorporated therein by reference. It further argues that the notice provision is inconsistent because it is open-ended as to what information the City may require as part of the required notice and any such requirement may conflict with the HMR.

Furthermore, UWASTE asserts that section 5.a.ii. of the NFZA impermissibly provides that the City Council, after public hearings, shall determine the safest route and means of transportation for radioactive materials. It says that the hearing itself could result in the disclosure of NRC-"safeguards" information.

UWASTE's primary contention on this point, however, is that the selection of highway routes for radioactive materials transportation has been exhaustively dealt with by 49 CFR 177.825 and that the only role provided for local governments is participation in state designations of preferred routes for highway transportation of HRCQ radioactive materials. Likewise, it contends, DOT's decision not to promulgate routing standards for railroad transportation makes it even less appropriate for a locality to make rail routing decisions. In addition, UWASTE points out that any Oakland routing decisions necessarily would affect the routes prior to and after travel through Oakland.

Furthermore, UWASTE contends that the City has no authority to dictate the appropriate mode of transportation because that is exclusively a Federal determination. It cites *City of New York* v. *United States Department of Transportation*, 715 F.2d 732 (2d Cir. 1983), *cert. denied and appeal dismissed*, 465 U.S. 1055 (1984), for the proposition that the HMTA requires DOT to provide for an adequate level of safety in each mode of transport but does not require DOT to maximize public safety by mandating the use of particular modes of transportation. It concludes that the City cannot dictate the mode of transportation once DOT has determined that radioactive materials transportation can be conducted safely by rail and highway.

UWASTE next focuses on section 5.a.iii. of the NFZA, which empowers the City to monitor radioactive materials shipments. It contends that this provision is inconsistent because it ties the monitoring to other inconsistent NFZA provisions and could delay monitored shipments.

UWASTE also argues the section 5.a.iv. is inconsistent; that section requires display of a sign warning "Transportation of Hazardous Radioactive Materials" clearly visible for 150 feet in each direction. In support of its contention that hazardous materials transportation placarding is an exclusively Federal area of regulation, UWASTE cites IR-24, *supra;* IR-2, 44 FR 75566 (Dec. 20, 1979); IR-3, 46 FR 18918 (Mar. 26, 1981); *Kappelmann* v. *Delta Air Lines, Inc.*, 539 F.2d 165 (D.C. Cir. 1976), *cert. denied*, 429 U.S. 1061 (1977); and *National Tank Truck Carriers Inc.* v. *City of New York*, 677 F.2d 270 (2d Cir. 1982).

Similarly, UWASTE states that section 5.b. of the NFZA, which bans transportation of spent nuclear fuel rods through the Port of Oakland, purports to exercise authority in an exclusively Federal field. In support of its position, UWASTE quotes the following language from IR-3 (Appeal): "A unilateral local ban is a negation, rather than an exercise, of local responsibility, since it isolates the local jurisdiction from the risks associated with the commercial life of the nation." 47 FR at 18458 (Apr. 29, 1982).

Finally, UWASTE argues that the enforcement, sanctions and fees provisions of section 10 of the NFZA are inconsistent because the NFZA's transportation provisions themselves are inconsistent in their entirety as applied to commercial shipments of radioactive materials.

DOE submitted comments which parallel those of UWASTE and specifically characterize as "inconsistent" the NFZA provisions concerning hazard classes and definitions, prenotification, means of transport, routing, shipment monitoring, warning signs, ban on shipments through the Port of Oakland, reporting and information requirements, and fees and enforcement provisions.

DOE cites numerous inconsistency rulings for the principle that defining and classifying hazardous materials for regulation of transportation thereof is an exclusively Federal function. It says that the City's definition of "hazardous radioactive materials" significantly differs from the HMR definitions of hazardous materials in 49 CFR part 172, appendix A and part 173, subpart I.

Furthermore, DOE addresses the NFZA's application to nuclear weapons shipments:

> * * * the Act is inconsistent insofar as it applies to nuclear weapons shipments. Many of the components of a nuclear weapon are not classified as hazardous materials in the HMR and thus are not regulated by the HMR.

49 CFR 172 and 173. Furthermore, the transport of radioactive materials escorted by personnel specifically designated by or under the authority of the Department of Energy (DOE) or the Department of Defense (DOD) for national security purposes is exempt from the regulation under the HMR. 49 CFR 173.7. Nuclear weapons shipments are escorted by personnel designated by or under the authority of DOE for national security purposes. Thus, regulation of nuclear weapons is inconsistent with the HMR.

Concerning the City's prenotification requirements, DOE argues that the HMR completely occupies this field with respect to radioactive materials and cites several inconsistency rulings for the proposition that state and local requirements for greater prenotification are inconsistent. DOE specifically alleges inconsistency of the NFZA prenotification requirements with 49 CFR 173.22, including the incorporation by reference therein of 10 CFR 73.37(c).

Like UWASTE, DOE cites 49 CFR 177.825; *City of New York* v. *U.S. Department of Transportation, supra,* and several inconsistency rulings to support its argument that the City's asserted authority to determine routes and modes of transportation are inconsistent with the HMTA and the HMR.

DOE contends that the above-discussed provisions would result in significant delay, restriction and possible prevention of radioactive materials transportation and, therefore, are inconsistent. It quotes IR–8 (Appeal), *supra,* as follows:

> While states do have a role in effectuating the safe transportation of radioactive materials, it does not follow that they have unfettered discretion to take actions which have the effect of restricting or delaying transportation being conducted in compliance with Federal law.

Next, DOE argues that the NFZA monitoring provisions are inconsistent because they provide too much discretion to local officials to determine the "adequacy of safety" of hazardous materials shipments, they relate to inconsistent provisions of the NFZA, and they improperly require that carriers stop and wait for inspections.

DOE advances the same arguments as UWASTE concerning the alleged inconsistency of the NFZA provisions concerning hazardous warning signs and the Port of Oakland ban.

In addition, DOE addressed reporting and information requirements contained in sections 10.b. and 10.d. of the NFZA. It cites IR–19, 52 FR 24404 (June 30, 1987), correction 52 FR 29468 (Aug. 7, 1987), for the proposition that state and local information and documentation requirements exceeding those in the HMR are inconsistent.

Finally, DOE argues that the fee provisions of section 10.c. are inconsistent insofar as they support inconsistent provisions of the NFZA and that the enforcement provisions of sections 10.e, f., and g. of the NFZA are inconsistent insofar as they provide a means to enforce inconsistent provisions of the NFZA.

Mr. Douglas Vollgraff submitted comments supporting findings of inconsistency with respect to several NFZA provisions. First, he argues that the NFZA definition of "hazardous radioactive materials" is inconsistent because it includes radioactive materials that are excluded from regulation by the HMR. Second, he states that the NFZA definition of "person" is inconsistent because it includes governmental agencies and thus conflicts with 49 CFR 177.806(b).

Third, Mr. Vollgraff sees several problems with section 5 of the NFZA:

> Section 5 of the ordinance provides a number of areas which can be construed to limit or eliminate the transportation of radioactive hazardous materials. The 45 day notification period and public hearing of a shipment of radioactive materials through the city of Oakland will serve as a method to severely curtail, if not eliminate, the shipment of radioactive material being considered. In addition the security and safe handling of such a shipment would be severely questioned, in light of probable public protest actions. The selection process of an approved route by the City Council is inconsistent with section 177.825 of the HMR, and will serve as another method to curtail the transportation of radioactive materials. Finally, the ban on the transportation of spent nuclear fuel rods is purely a federal jurisdictional question and not within the scope of a municipal government.

Finally, Mr. Vollgraff says that section 9.c., concerning fees, could severely limit the transportation of radioactive materials and presumes guilt on the part of motor carriers.

In its comments, McGil indicates that it is a carrier of radioactive materials and also a plaintiff in a lawsuit challenging the legality of the NFZA, *Issakides* v. *City of Oakland,* No. C–89–1477–JPV, which is pending in the U.S. District Court for the Northern District of California. McGil provides extensive comments concerning the desirability of regulatory uniformity in the field of hazardous materials transportation. It concludes those comments with the following statement:

> The transportation of hazardous materials must be conducted in a uniform manner without the stockpiling of shipments in a particular locale waiting to enter the jurisdiction of another, or diverting to circuitous paths and increasing the time and length of transport to avoid a specific municipality's scheme of regulation.

McGil next contends that NFZA section 5.a.ii, requiring the City Council to determine routes, is inconsistent with 49 CFR 177.825 to the extent that it purports to allow the City to ban transportation of radioactive materials on Interstate highways. It points out that § 177.825 requires HRCQ radioactive materials to be transported on preferred routes, which are Interstate System highways and routes designated by "state routing agencies." The 49 CFR 171.8 definition of such agencies, McGil says, does not include municipalities, and the City thus has no authority to designate preferred routes for HRCQ radioactive materials transportation.

(McGil and other commenters rely upon appendix A to 49 CFR part 177, a policy statement of RSPA concerning radioactive materials transportation. In light of the recent deletion of appendix A from the CFR (55 FR 4423, Feb. 8, 1990), however, all comments concerning that Appendix are irrelevant and have been disregarded in deciding this matter.)

Next, McGil asserts that the City's 45-day advance notice requirement is inconsistent with the HMTA and the HMR. It specifically points to 49 CFR 177.853(a), which requires all hazardous materials transported by highway to be transported without unnecessary delay It also cites several inconsistency rulings in which prenotification requirements were found inconsistent. In addition, it quotes the following language from a Federal court decision finding hazardous materials transportation curfews inconsistent with the HMTA:

> In addition to causing unnecessary delays, time restrictions defeat Congress' intent for uniformity in the transportation of hazardous materials. If states decide to place time restraints of this nature on the transportation of hazardous materials, the movement of such materials could be seriously impeded. Therefore, even though the curfew regulation does not directly conflict with HMTA, it is inconsistent in that it undermines the full purposes of the Act and is preempted.

National Tank Truck Carriers, Inc. v. *Burke,* 535 F. Supp. 509, 518–9 (D. R.I. 1982) (citing IR–2, *supra*), *aff'd* 698 F.2d 559 (1st Cir. 1983).

In support of its argument that the NFZA provision controlling the mode of transportation is inconsistent, McGil cites two court cases. First, it cites *South Dakota Dep't of Pub. Safety ex rel. Melgaard* v. *Haddenham,* 339 N.W.2d 786 (1983), where a local ordinance limiting fireworks transportation to

highway carriers was found inconsistent with the HMTA. Second, it cites *City of New York* v. *United States Department of Transportation, supra,* for the proposition that radioactive wastes could not be compelled to be transported by barge.

Finally, McGil contends that the placarding requirement of NFZA's section 5.a.iv. is inconsistent for several reasons. First, it says that such requirements imposed by different cities would cause delays as drivers attempted to comply with various and possibly conflicting placarding requirements. Second, it quotes IR–2, *supra,* which states that different placarding requirements imposed by states and localities detract from the DOT system and might cause confusion. Third, it quotes 49 CFR 172.502(b), which states that "[n]o person may affix or display any sign or other device on a transport vehicle * * * that by its color, design, shape, or content could be confused with any placard prescribed in this subpart." Fourth, it quotes a specific HMR radioactive materials placarding requirmement in 49 CFR 172.507(a) and concludes that the Oakland requirement could be confused with the HMR requirement and thus is expressly preempted by 49 CFR 172.502(b).

In response to a comment by Mr. Vollgraff (described below) supporting the NFZA placarding requirement, DON filed a rebuttal comment. DON contends that this NFZA provision will hinder, rather than assist, emergency response personnel and is inconsistent with the HMR radioactive materials placarding requirements in 49 CFR 172.556 and 172.507 and labeling requirements in 49 CFR 172.403. Also, it argues that 49 CFR 172.328 does not justify this NFZA provision; it says that this HMR section requires marking of cargo tanks with the proper shipping name of gases (in addition to placarding) to facilitate appropriate emergency response and that the parallel provisions for radioactive materials are those requiring necessary safety information on package labels. It cites IR–2, IR–3 and IR–24, all *supra,* as holding that state and local placarding and other hazard warning requirements are inconsistent with the HMR if they are in addition to, or different from, the HMR placarding requirements.

V. Public Comments Supporting Consistency

As indicated in the preceding paragraph, Mr. Vollgraff submitted a comment supporting the consistency of the NFZA placarding requirement. He states that the identification of radioactive materials during shipment will assist emergency response teams in the event of an incident. He also says that the NFZA provision has a counterpart in 49 CFR 172.328(c), which concerns the transportation of gases in cargo tanks.

The City of Oakland filed extensive rebuttal comments supporting the consistency of its NFZA. It says that the NFZA was adopted by City voters at a general election and then by the City Council. The City says it is in the process of implementing the transportation requirements of section 5 of the NFZA.

The City describes two lawsuits concerning its NFZA which are pending in the U.S. District Court for the Northern District of California. They are *Issakides* v. *City of Oakland, supra,* and *United States* v. *City of Oakland,* No. C–89–3305–TEH. The City contends that the preemption questions at issue in this proceeding are the same as those before the Court and that, therefore, this proceeding should be stayed or the application dismissed.

Alternatively, the City requests that the consistency of the NFZA requirements be construed in light of several City Council actions taken with respect to implementation of the NFZA. First, it indicates that the Council has adopted the following recommendations made by the City Manager:

1. Exempt from regulation shipments of radioactive materials below 5,000 curies going directly to hospitals or medical facilities for research in or application of nuclear medicine;
2. Exempt from regulation shipments of radioactive materials consisting of smoke detectors, light-emitting watches or clocks, or other similar consumer uses;
3. Designate the city street routes from/to all Port of Oakland terminals to/from the interstate highway system; and
4. Provide for annual public hearings to determine and designate other City street routes, depending on points of origination and destination, for the transport of hazardous radioactive materials.

Second, the City indicates that the Council, in response to the filing of the complaint in *Issakides,* adopted a resolution concerning the transportation requirements. That resolution provides:

> The transportation regulations contained in Sections 5(a)(i), 5(a)(ii), and 5(a)(iv) of the Ordinance do not apply and will not be enforced with respect to shipments of hazardous radioactive materials on interstate or state highways * * * *

With respect to the designation of routes under section 5.a.ii., the City says there is no inconsistency because there are no diversions of transportation, no significant delays, no permits and no bans. The City says that, by executing the above-quoted City Council resolutions, its routing regulations do not apply to "transports" over state and Interstate highways and that it has designated the City street routes to be used for transportation between those highways and the port teminals. It adds that other City street routes will be designated when commonly-used origination and destination points are determined and that then only annual public hearings will be required to determine the safest routes of transportation.

Under the above-described City-street designation system, says the City, there will be no diversions to other jurisdictions and no significant restrictions or delays because transporters will have advance knowledge for the designated City street routes. Furthermore, the City argues that there is no inconsistency with the 49 CFR 177.825 requirements that HRCQ radioactive materials be transported on perferred routes or that non-HRCQ radioactive materials be transported over routes selected to minimize radiological risks and without unnecessary delay. The City, however, does concede that it is not clear whether its [determination of] "safest" routes coincides with an assessment of radiological risk. It also cites *National Tank Truck Carriers, Inc* v.*City of New York,* 677 F.2d 270 (2d Cir. 1982), as upholding the principle of local community routing of hazardous materials.

Concerning the monitoring of shipments under section 5.a.iii. of the NFZA, the City states that it has not yet developed administrative procedures for monitoring and thus a decision on inconsistency would be premature. In addition, it cites IR–17, 51 FR 20926 (June 9, 1986), as upholding a State of Illinois regulation providing for inspection of all shipments of spent fuel.

The City contends that section 5.b. of the NFZA does not impose any regulations on spent fuel shipments but merely confirms action previously taken by the Port of Oakland. It asserts that it is not clear whether the NFZA provision binds the Port of Oakland because the Board of Port Commissioners is independent of City Council and is vested with exclusive control and management of Port facilities. On this issue, the City concludes by arguing that the NFZA (in section 3) merely calls upon the Port Board to implement its provisions, that its drafters apparently intended not to bind the Port Commissioners by the terms of the NFZA, and that section 5.b. is ineffectual in binding the City or Port even if it constitutes regulatory action.

In support of the consistency of NFZA section 10(c) fee provision, the City quotes from IR-17, *supra*: "[s]o long as a state-imposed fee is not an element of an inconsistent transportation requirement, there is no basis for preemption under the HMTA." 51 FR at 20934. The City says that it intends to impose a fee of $75.00 on each shipment over 5,000 curies and that the fee would defray the costs of route designations and shipment monitoring. It says that any ruling on diversion or delay would be premature and that the fee is consistent because it is assessed for implementation of consistent regulations. Finally, it cites *New Hampshire Motor Transport Ass'n* v. *Flynn*, 751 F.2d 43 (1st Cir. 1984), in which the Court noted that DOT possesses the authority to promulgate rules to preempt local action regarding fees but has not done so.

Finally, the City contends that the NFZA section 10.f. penalty provisions are consistent because they are intended to enforce consistent routing requirements.

VIII. Ruling

Preliminary Issue

The City contends that the DON application should be dismissed or this proceeding stayed pending Court resolution of the issues. DON's application, however, raises significant preemption issues under the HMTA, and all parties engaged in hazardous materials transportation or the regulation of that transportation will be served by OHMT's addressing those issues.

In responding to a similar dismissal/stay request in another matter, the Secretary of Transportation personally signed a letter describing the nature of the inconsistency process and the assistance to the courts which inconsistency rulings can provide:

> This department's Inconsistency Ruling process provides a forum for differing views on the consistency of State and local requirements with the Federal HMTA and concomitant regulations. The DOT, which has been designated as the responsible government agency to administer the HMTA, is knowledgeable concerning the competing interests of the parties and committed to carrying out the intent of Congress in issuing these advisory opinions.
>
> Twenty-four [now 27] advisory Inconsistency Rulings have been issued in the past decade. These rulings provide a consistent, precedential body of opinions which have been deemed helpful to courts, State and local governments, the transportation industry and other parties interested in HMTA preemption issues. It is not unusual for a court case to be pending while an Inconsistency Ruling application is filed. In fact, several Inconsistency Rulings have been issued while cases were providing in the court. Moreover, in these cases courts considered the Department's views before rendering their decisions. In fact, should the DOT ruling be rendered prior to the Court's consideration of the case, it may be helpful to the Federal Judge determining HMTA preemption issues.

Letter quoted in IR-27, 54 FR at 16328 (Apr. 21, 1989).

Consistent with its policy of liberally construing the threshold requirements for obtaining inconsistency rulings, IR-21, 52 FR 37072 (Oct. 2, 1987), OHMT will address in this ruling the preemption issues raised in DON's application.

Statements of Intent To Regulate

Section 2 of the NFZA includes the following statements:

> The purpose of this Act is to make Oakland a nuclear free zone by:
>
> * * * * *
>
> b. Regulating the transportation of nuclear weapons and hazardous radioactive materials through Oakland, and informing the citizens of Oakland before such transportation takes place;
>
> c. Banning the storage or reprocessing of hazardous materials in Oakland * * *.

Several prior inconsistency rulings have indicated that state or local government statements of intent to regulate hazardous materials transportation are not inconsistent with the HMTA or the HMR. IR-9, 49 FR 46644 (Nov. 27, 1984); IR-12, 49 FR 46650 (Nov. 27, 1984); IR-15, 49 FR 46656 (Nov. 27, 1984); IR-18, *supra*. This principle results from the fact that the HMTA preemption provision applies only to state and local "requirements." 49 U.S.C. App. 1811(b).

Therefore, the above-quoted statements of purpose, which reflect an intent to regulate but do not themselves require or prohibit anything, are not inconsistent with the HMTA. This same principle applies to all of section 2 (Purpose) and section 3 (Findings) of the NFZA.

Language in those sections, however, may be useful in construing other sections of the NFZA—particularly in determining the meaning of the NFZA as modified by later City Council actions.

Definition of Hazardous Materials

The transportation requirements of the NFZA apply to "nuclear weapons" and other "hazardous radioactive materials." Those terms are defined in section 11 of the NFZA as follows:

> c. "Nuclear weapon" is any device the intended explosion of which results from the energy released by reactions involving atomic nuclei, either fission or fusion or both. Nuclear weapon includes the means of transporting, guiding, propelling, triggering, or detonating the weapon. Nuclear weapon also includes any component of a nuclear weapon, i.e., any device, radioactive or non-radioactive, the primary intended function of which is to contribute to the operation of a nuclear weapon or to be a part of a nuclear weapon.
>
> g. "Hazardous radioactive material" is any radioactive isotope(s) resulting from the operation of, or intended for use in, nuclear fission reactors or nuclear weapons; the refined products of spent nuclear fission reactors, or of any device or component of a device that has been used to contain or process radioactive isotopes; or the tailings or similar debris resulting from the mining of uranium or other radioactive elements except as specifically exempted herein.
>
> h. Nothing in this Act shall be construed to prohibit research on and the application of nuclear medicine or consumer uses of radioactive material for smoke detectors, light-emitting watches and clocks, and other similar applications.

Also, the City Council adopted a resolution exempting from the regulations "shipments of radioactive materials below 5,000 curies going directly to hospitals or medical facilities for research in or application of nuclear medicine."

On the other hand, the HMR contain different and more complex difinitions of radioactive materials subject to regulation under the HMR. Specifically, 49 CFR 173.403 contains definitions, *inter alia*, of the following terms relating to which radioactive materials are regulated in what manner under the HMR:

A_1
A_2
Depleted uranium
Design
Enriched uranium
Exclusive use
Fissile material
Highway route controlled quantity
Limited quantity of radioactive material
Low specific activity material (LSA)
Natural thorium
Natural uranium
Normal form radioactive material
Radiation level
Radioactive article
Radioactive contents
Radioactive material
Special form radioactive material
Specific activity
Uncompressed gas
Unirradiated thorium
Unirradiated uranium

The following definition of "radioactive material" in that HMR section demonstrates the highly technical and interrelated nature of these definitions: " 'Radioactive material' means any material having a

specific activity greater than 0.002 microcuries per gram (uCi/g) (see definition of 'specific activity')."

The result of the City's definitions of "nuclear weapon" and "hazardous radioactive material" is the regulation of the transportation of materials not regulated under the HMTA, including the regulation of radioactive materials having a specific activity of 0.002 vCi/g or less, and the HMR, as well as the exclusion of certain hazardous materials regulated thereunder.

Local hazardous materials definitions which result in regulation of more or different materials as hazardous materials than the HMR are obstacles to uniformity in transportation regulation and thus are inconsistent with the HMTA and the HMR. IR-5, 47 FR 51991 (Nov. 18, 1982) and IR-6, 48 FR 760 (Jan. 6, 1983). The specific problems with different hazardous materials definitions were discussed in, among others, two earlier inconsistency rulings:

> The key to hazardous materials transportation safety is precise communication of risk. The proliferation of differing State and local systems of hazard classification is antithetical to a uniform, comprehensive system of hazardous materials transportation safety regulations.

IR-6, 48 FR at 764.

> If every jurisdiction were to assign additional requirements on the basis of independently created and variously named subgroups of radioactive materials, the resulting confusion of regulatory requirements would lead directly to the increased likelihood of reduced compliance with the HMR and subsequent decrease in public safety.

IR-12, 49 FR at 46651 (Nov. 27, 1984).

For those reasons, the Federal role in defining hazard classes and hazardous materials is exclusive, and thus such state and local definitions differing from the HMR are inconsistent with the HMR. IR-18, 52 FR 200 (Jan. 2, 1987); IR-18 (Appeal), 53 FR 28850 (July 29, 1988); IR-19, 52 FR 24404 (June 30, 1987), correction, 52 FR 29468 (Aug. 7, 1987); IR-19 (Appeal), 53 FR 11600 (Apr. 7, 1988); IR-20, 52 FR 24396 (June 30, 1987), correction, 52 FR 29468 (Aug. 7, 1987); IR-21, 52 FR 37072 (Oct. 2, 1987); IR-21 (Appeal), 53 FR 46735 (Nov. 18, 1988); IR-26, 54 FR 16314 (Apr 21, 1989), correction, 54 FR 21526 (May 19, 1989); *Missouri Pacific RR Co.* versus *Railroad Commission of Texas*, 671 F. Supp. 466 (W.D. Tex. 1987), *aff'd on other grounds* 850 F.2d 264 (5th Cir 1988), *cert. denied*, 109 S. Ct. 794 (1989); *Union Pacific RR Co.* versus *City of Las Vegas*, CV-LV-85-932 HDM (D. Nev 1986).

Because the City's definitions of "nuclear weapon" and "hazardous radioactive material" significantly differ from the HMR definitions of regulated radioactive materials, use of those definitions as a basis for regulating the transportation (e.g., routing and placarding) of certain radioactive materials is inconsistent with the HMR and, therefore, preempted.

Prenotification Requirement

Section 5.a.i. of the NFZA requires any person transporting hazardous radioactive materials through Oakland to notify the City at least 45 days in advance. Under section 5.a.11., those 45 days are to be used for a City Council hearing, with sufficient advance publicity, concerning the proposed transportation, and thereafter for at least 15 days of advance public notice of the City Council-selected route(s). There is nothing in the later City Council actions described in the City's rebuttal comments indicating that the 45-day prenotification requirement has been eliminated or modified.

That 45-day prenotification requirement is clearly inconsistent with the HMTA and the HMR. It is at odds with 49 CFR 177.853, which directs highway shipments to proceed without unnecessary delay, and 49 CFR 174.14, which directs rail shipments to be expedited within a specified time frame.

In IR-6, 48 FR 760 (Jan. 6, 1983); IR-8 (Appeal), 52 FR 13000 (Apr. 20, 1987); and IR-16, 50 FR 20872 (May 20, 1985), prenotification requirements of much shorter duration ("advance notice" with no time requirement, 15 days, and 48 hours, respectively) were found to be inconsistent. IR-6, *supra*, indicated that local requirements for advance notice of hazardous materials transportation have potential to delay and redirect traffic and thus are inconsistent.

IR-8 (Appeal), *supra*, specifically addressed this issue with respect to radioactive materials:

> Through its rulemaking process and related studies, DOT has determined what prenotification (including information, documentation and certification) requirements are necessary for the safe transportation of radioactive materials. In the process of analyzing rulemaking comments and studies it has commissioned or examined, DOT has determined what prenotification requirements are not necessary. This field has been totally occupied by the HMR. State and local provisions either authorizing less prenotification or requiring greater prenotification than the HMR, therefore, constitute obstacles to the accomplishment and execution of the objectives of the HMTA and the HMR, are inconsistent, and are preempted.

52 FR at 13005.

Therefore, the NFZA's 45-day prenotification requirement is inconsistent with the HMTA and the HMR under both the "obstacle" and "dual compliance" tests.

Routing Requirements

Section 5.a.ii. of the NFZA also authorizes the City Council, following publicity and a hearing, to determine the "safest route" of transportation and clearly implies that a carrier of radioactive materials must use that route. The City's rebuttal comments indicate that the City Council, after enactment of the NFZA, directed the designation of certain City street routes and provided that the NFZA's transportation provisions "will not be enforced" with respect to radioactive materials shipments on interstate or state highways. It is significant that the City has not exempted those highways from the provisions of the NFZA but merely determined not to enforce those provisions on those highways, at least at this time.

The City, therefore, has asserted its authority to designate specific routes for the transportation of "hazardous radioactive materials" over City streets and State and Interstate highways. Such routing requirements are inconsistent with the specific HMR routing regulations for radioactive materials set forth in 49 CFR 177.825.

Section 177.825(a) requires highway carriers of radioactive materials required to be placarded to operate on routes that minimize radiological risk. It requires each carrier to consider certain criteria in determining the route and also provides that the routing requirement does not apply when there is only one practicable route or when the carrier is operating on a "preferred highway" (explained below).

Section 177.825(b) requires highway carriers of "highway route controlled quantities" of radioactive materials to operate on "preferred routes," which are Interstate System highways or State-designated routes, selected by the carrier to reduce time in transit. All State-designated routes are identified in a "Registry of State-designated Routes" maintained by RSPA. 49 CFR 177.825(b)(1)(ii). In issuing § 177.825(b), RSPA determined that routing requirements for the transportation of radioactive materials in other modes of transportation were not necessary at that time. See 46 FR 5300 (Jan. 19, 1981).

The effect of these HMR routing requirements on state and local routing requirements for radioactive materials was addressed by the RSPA

Administrator in IR-8 (Appeal), *supra*, as follows:

> * * * the Department, through promulgation of 49 CFR 177.825, has established a near total occupation of the field of routing * * * requirements relating to the transportation of radioactive materials. Thus, state and local radioactive materials transportation routing * * * requirements other than (1) those identical to Federal requirements or (2) state designated * * * routes under 49 CFR § 177.825(b), are very likely to be inconsistent and thus preempted under section 112(a) of the HMTA. 52 FR at 13003.

Therefore, state and local routing restrictions on radioactive materials required to be placarded are inconsistent with the HMR unless they are identical to 49 CFR 177.825(a). IR-16, IR-18 (Appeal), IR-21, IR-21 (Appeal), all *supra*. Likewise, state and local routing restrictions on highway route controlled quantities of radioactive materials are inconsistent with the HMR—except for state, *not* local, designations of preferred routes pursuant to 49 CFR 177.825(b). IR-8 (Appeal), IR-16, 50 FR 20872 (May 20, 1985), IR-18, IR-18 (Appeal), IR-20, all *supra; Jersey Central Power & Light Co.* v. *State of New Jersey*, No. 84-5883 (D. N.J., Dec. 27, 1984), *appeal dismissed as moot*, 772 F.2d 35 (3rd Cir. 1985). Finally, RSPA has determined that, at this time, there is no need for highway routing requirements for other kinds of radioactive materials or any routing requirements for the transportation of any radioactive materials in other modes of transportation.

The local government routing case cited by the City, *National Tank Truck Carriers, Inc.* v. *City of New York*, 677 F.2d 270 (2d Cir. 1982), *aff'g City of New York* v. *Ritter Transportation, Inc.*, 515 F. Supp. 663 (S.D. N.Y. 1981), dealt with liquefied gases, for which there are no comprehensive HMR routing provisions similar to those for radioactive materials. Thus, that case is irrelevant to this proceeding.

In this instance, the City has asserted the authority to designate routes for HRCQ radioactive materials—an authority which can be exercised only by a state. In addition, it has admitted that its determination of "the safest route" may not be the equivalent of the § 177.825(a) "minimize radiological risk" standard; in any event, this determination is left to carriers, not cities or states, by that HMR provision.

Therefore, the City's NFZA section 5.a.ii. provisions concerning the routing of radioactive materials transportation and its related City Council resolution providing for the designation of City street routes for such transportation are both inconsistent with the HMR, specifically 49 CFR 177.825.

Mode of Transportation Requirements

Section 5.a.ii. of the NFZA also provides that the City Council, after publicity and a hearing, shall determine the safest means of transportation for all shipments of "hazardous radioactive materials."

Selection of one mandated mode of transportation results in a prohibition of transportation by any other mode of transportation. Such a prohibition is inconsistent with the HMTA. This principle was demonstrated in *South Dakota Dep't of Pub. Safety ex rel. Melgaard* v. *Haddenham*, 339 N.W.2d 786 (1983), where the Court found a State regulation allowing fireworks delivery by motor vehicle inconsistent with, and preempted by, the HMTA to the extent that it prohibited rail, air or water transportation of fireworks.

As indicated by several commenters, the decision of the Court of Appeals for the Second Circuit in *City of New York* v. *United States Department of Transportation, supra*, held that DOT was not required by the HMTA to choose the safest mode of transportation for hazardous materials but instead was directed to ensure adequate safety of hazardous materials transportation in all modes of transportation.

For these reasons, the NFZA provision requiring City Council selection of the safest means of transportation constitutes a ban on transportation of radioactive transportation by certain modes of transportation and, therefore, is inconsistent with the HMTA.

Transportation Delays

The 45-day prenotification requirement of § 5.a.e.i. of the NFZA and the City Council review provisions of § 5.a.ii. of the NFZA also are inconsistent with the HMTA and the HMR because of the virtual certainty that they will cause delay in hazardous materials transportation.

Concerns about delays of hazardous materials transportation have been expressed in several inconsistency rulings:

> The manifest purpose of the HMTA and the Hazardous Materials Regulations is safety in the transportation of hazardous materials. Delay in such transportation is incongruous with safe transportation.

IR-2, 44 FR at 75571.

> The mere threat of delay may redirect commercial hazardous materials traffic into other jurisdictions that may not be aware of or prepared for a sudden, possibly permanent, change in traffic patterns.

IR-3, 46 FR at 18921. See IR-20 and IR-21 (Appeal), both *supra*.

> Since safety risks are "inherent in the transportation of hazardous materials in commerce" [49 U.S.C. 1801], an important aspect of transportation safety is that transit time be minimized. This precept has been incorporated in the HMR at 49 CFR 177.853, which directs highway shipments to proceed without unnecessary delay, and at 49 CFR 174.14, which directs rail shipments to be expedited within a stated time frame.

IR-6, 49 FR at 765; see also IR-16, 50 FR at 20879 and IR-19, 53 FR 24409.

The 45-day prenotification requirement and the City Council review requirements are virtually certain to cause unreasonable delays and diversions to other jurisdictions of hazardous materials transportation. Therefore, those requirements are inconsistent with the HMR under the "obstacle" test.

In addition, by causing carriers to choose between compliance with them or to comply with the "without unnecessary delay" requirements of the HMR, those requirements also are inconsistent with the HMR under the "dual compliance" standard.

Prohibitions of Transportation

Section 5.b. of the NFZA states: "The present ban by the Port of Oakland on transportation of spent nuclear fuel rods through the Port is hereby confirmed and made permanent." The City's rebuttal comments concerning this provision are ambiguous. First, the City states that this language may have some legal effect, but then it concludes that the language is not legally binding because the Commissioners of the Port have independent legal authority.

As indicated earlier, if this language is merely precatory and reflects the views of the City but does not constitute a legally binding requirement, it is not subject to the preemption language of the HMTA. If, on the other hand, the language constitutes a legal ban on transportation of particular hazardous materials, it is inconsistent with the HMTA and the HMR. IR-3, *supra*; IR-3 (Appeal), *supra*; IR-10, 49 FR 46645 (Nov. 27, 1984), correction 50 FR 9939 (Mar. 12, 1985); IR-16, *supra*; IR-20, *supra*.

The power to ban, rather than to channel or guide, hazardous materials traffic is exclusively Federal. "A unilateral local ban is a negation, rather than an exercise, of local responsibility, since it isolates the local jurisdiction from the risks associated with the commercial life of the nation." IR-3 (Appeal), 47 FR at 18457. Thus, a County ordinance prohibiting the transportation

of spent nuclear fuel or radioactive waste transportation into a County for storage on nuclear power plant sites were held inconsistent with the HMTA and preempted in *Jersey Central Power & Light Co.* v. *Township of Lacey*, 772 F.2d 1103 (3d Cir. 1985), *cert. denied*, 475 U.S. 1013 (1986).

A similar transportation prohibition issue arises under section 6 of the NFZA, which prohibits *inter alia*, storage of "hazardous radioactive materials" in the City, and under section 4 of the NFZA, which provides: "No person shall, within the City of Oakland, knowingly engage in nuclear weapons work. [See section 11 for definitions and exclusions."] In section 11.d., "Nuclear weapons work" is defined as:

> any work that has as its purpose the development, testing, production, possession, maintenance or *storage* of nuclear weapons, the components of nuclear weapons, or any secret or classified research or evaluation of nuclear weapons. [Emphasis added.]

Because the definition of "transports" and "transportation" subject to regulation under the HMTA includes "any movement of property by any mode, and any loading, unloading, or *storage* incidental thereto," [emphasis added], sections 4 and 11.d. of the NFZA constitute an inconsistent ban on the transportation-related storage of certain radioactive materials.

This result is supported not only by *Jersey Central Power & Light Co.* v. *Township of Lacey*, 772 F.2d 1103 (3d Cir. 1985), *cert. denied*, 475 U.S. 1013 (1986) but also by *Consolidated Rail Corp.* v. *John Hancock*, C.A. 79-0983-MA (D. Mass. 1979), where a town order requiring a railroad to remove its railcars containing vinyl chloride from the town was held inconsistent.

In summary, the prohibition of the transportation of radioactive materials transportation is inconsistent, IR-16 and IR-20, both *supra*, and this principle applies even to radioactive materials transportation which RSPA has expected from the requirements of the HMR. IR-20, *supra*.

Therefore, sections 5.b., 6, 4 and 11.d. of the NFZA are inconsistent with the HMTA and the HMR to the extent that they constitute prohibitions upon the transportation of any radioactive materials, including the storage of such materials incidental to the transportation thereof.

Placarding Requirements

Section 5.a.iv. of the NFZA requires that each vehicle engaged in transportation of "hazardous radioactive materials" "have signs warning 'Transportation of Hazardous Radioactive Materials' clearly visible for at least 150 feet in each direction."

However, placards and other hazard warning requirements are inconsistent if they are in addition to or different from Federal placarding requirements. IR-2, IR-3, IR-24, 53 FR 19848 (May 31, 1988) all *supra; Kappelmann* v. *Delta Air Lines, Inc.*, 539 F.2d 165 (D.C. Cir. 1976), *cert. denied*, 429 U.S. 1061 (1977); *National Tank Truck Carriers, Inc.* v. *City of New York*, 677 F.2d 270 (2d Cir. 1982).

This issue was addressed in an early Inconsistency Ruling:

> Hazard warning systems are another area where [DOT] perceives the Federal role to be exclusive * * * * Additional, different requirements imposed by States or localities detract from the DOT systems and may confuse those to whom the DOT are meant to impart information.

IR-2, 44 at 75568.

Shortly thereafter both DOT and a Federal Court found a City of Boston requirement for different placards and product identification inconsistent with the HMTA and the HMR. IR-3, *supra; American Trucking Ass'ns* v. *City of Boston*, 12 Envtl. L. Rep. (Envtl. L. Inst.) 20,789 (D. Mass. 1981).

Finally, in IR-24, *supra*, a definitive statement was made on the exclusive Federal nature of placarding requirements:

> It is OHMT's view that the HMR placarding provisions do completely occupy the field and, therefore, preempt all state and local placarding and warning sign requirements for hazardous materials transportation which are not identical to the Federal requirements. This is true with respect to requirements applying solely to pickups and deliveries, as well as to requirements applying to through-traffic, because all such non-identical requirements create confusion and undermine the uniform system of hazard communication necessary for the safe transportation of hazardous materials. Transportation viewed as being a mere pickup or delivery by one jurisdiction actually may be just the beginning or end of multi-state transportation through numerous local jurisdictions.

53 FR 19848 at 19850. The Court decision in *National Paint & Coatings Ass'n Inc.* v. *City of New York*, No. CV-84-4525 (E.D. N.Y. 1985), denying summary judgment against a local placarding requirement, which was cited in the City's rebuttal comments, preceded the foregoing clear pronouncement of preemptive intent in IR-24, *supra*.

In summary, the placarding requirement of section 5.a.iv. of the NFZA is inconsistent with the HMTA and the HMR. It can only cause confusion and undermine compliance with the radioactive materials placarding requirements of 49 CFR 172.556, the related requirements of part 172, subpart F, and the prohibition in section 172.502(b) against display of "any sign or other device on a transport vehicle, portable tank, or freight container, that by its color, design, shape or content could be confused with any placard prescribed in this subpart."

Information Requirements

Sections 10.b. and d. of the NFZA contain information reporting requirements applicable, *inter alia*, to transporters and shippers of "hazardous radioactive materials."

To the extent that these sections require the submission of written accident/incident reports, they are redundant with Federal requirements (e.g., 49 CFR 171.16), tend to undercut compliance with the HMR requirements and thus are inconsistent. IR-2, IR-3, IR-3 (Appeal), all *supra*. This principle particularly applies to radioactive materials incident reporting requirements because of the possible overlap and conflict with NRC reporting requirements incorporated by reference in the HMR. IR-8, *supra*. The field of incident reporting for radioactive materials transportation has been totally occupied by the HMR. IR-8 (Appeal), *supra*.

In addition, no other information requirements may be imposed by the City as a condition for transporting radioactive materials in the City:

> DOT and NRC have determined what information and documentation requirements are needed for the safe transportation of radioactive materials, and state and local requirements going beyond them create confusion, impose burdens on transporters, are obstacles to the accomplishment of the HMTA's objectives, and thus are inconsistent.

IR-8 (Appeal), 52 FR at 13004.

Therefore, the information requirements of sections 10. b. and d. of the NFZA are inconsistent insofar as they relate to the transportation of radioactive materials, including the loading, unloading and storage incidental thereto.

Inspections

Section 5.a.iii. of the NFZA requires City monitoring of radioactive materials transport through or over Oakland and the assessment of the adequacy of safety and notice provisions relating thereto.

Hazardous materials transportation inspection requirements relating to Federal or consistent requirements are encouraged by RSPA and are consistent. IR-2, *supra*; IR-8, 49 FR 46637 (Nov. 27, 1984); IR-15, *supra*; IR-17, *supra*; IR-20,

supra; IR-27, *supra; Colorado Pub. Utilities Commission* v. *Harmon,* No. CV 88-Z-1524 (D. Colo. 1989). On the other hand, such inspection requirements relating to inconsistent provisions are themselves inconsistent. IR-20, IR-21, IR-21 (Appeal), IR-27, all *supra.*

Because none of the NFZA provisions relating to the transportation of radioactive materials is consistent with both the HMTA and the HMR, the inspection provisions of section 5.a.iii. of the NFZA are inconsistent with the HMTA and the HMR.

Fee Requirements

Section 10.c. of the NFZA provides that the City shall assess reasonable fees for the implementation of the NFZA.

Reasonable fees on hazardous materials transportation to fund consistent activities are consistent. IR-17, IR-17 (Appeal), IR-27, all *supra; New Hampshire Motor Transport Assn.* v. *Flynn, supra; Colorado Public Utilities Comm.* v. *Harmon,* No. CV 88-2-1524 (D. Colo. 1989). However, fees which are unreasonably high or related to inconsistent activities are inconsistent. IR-11, IR-13, IR-15, IR-18 (Appeal), IR-19, IR-27, all *supra; New Hampshire Motor Transport Ass'n.* v. *Flynn, supra.*

Because of the transportation provisions of the NFZA are inconsistent with the HMTA or the HMR, the fee provisions of section 10.c. of the NFZA are inconsistent insofar as they apply to the transportation of radioactive materials.

Enforcement Provisions

Hazardous materials transportation enforcement provisions are consistent insofar as they apply to violations of consistent substantive requirements. IR-3, IR-27, both *supra.* However, they are inconsistent insofar as they apply to violations of inconsistent substantive requirements. IR-18, IR-18 (Appeal), IR-27, all *supra; Jersey Central Power & Light Co.* v. *Township of Lacey,* 772 F.2d 1103 (3d Cir. 1985); *cert. denied,* 475 U.S. 1013 (1986).

Because none of the NFZA's transportation provisions is consistent, the enforcement provisions of sections 10. e., f. and g. of the NFZA are inconsistent insofar as they relate to those transportation provisions.

Summary

For the foregoing reasons and on the basis of this record, I make the following findings.

Insofar as they apply to the transportation of radioactive materials, including the loading, unloading and storage incidental to that transportation, the following provisions of the Nuclear Free Zone Act of the City of Oakland, California, are inconsistent with the HMTA and the HMR and thus preempted under section 112(a) of the HMTA (49 U.S.C. 1811(a)):

(1) The definitions of "nuclear weapon" and "hazardous radioactive material" in section 11;

(2) The prenotification requirements of section 5.a.i.;

(3) The routing requirements of section 5.a.ii. and the related City Council resolution providing for the designation of City street routes;

(4) The mode of transportation requirements of section 5.a.ii.;

(5) The placarding requirement of section 5.a.iv.;

(6) The confirmation of the ban on spent nuclear fuel through the Port of Oakland in section 5.b.;

(7) The prohibition of radioactive materials storage in section 6;

(8) The prohibition of "nuclear weapons work" in sections 4 and 11.d.;

(9) The information reporting requirements of sections 10. b. and d.;

(10) The inspection provisions of section 5.a.iii;

(11) The fee provisions of section 10.c; and

(12) The enforcement provisions of section 10. e., f., and g.

Insofar as they apply to the transportation of radioactive materials, including the loading, unloading and storage incidental to that transportation, the following provisions of the Nuclear Free Zone Act of the City of Oakland, California, are consistent with the HMTA and the HMR because they are not requirements:

(1) The statements of purpose in section 2; and

(2) The findings in section 3.

This ruling does not address the consistency of any provisions not described above. It also does not address the consistency of any provisions of the NFZA as applied to any activities other than the transportation of hazardous materials, including the loading, unloading and storage incidental to such transportation.

Any appeal of this ruling must be filed within 30 days of service in accordance with 49 CFR 107.211.

Alan I. Roberts,

Director, Office of Hazardous Materials Transportation.

[FR Doc. 90-5829 Filed 3-13-90; 8:45 am]

BILLING CODE 4910-60-M

federal register

Wednesday
March 14, 1990

Part VIII

Environmental Protection Agency

40 CFR Part 300

National Priorities List for Uncontrolled Hazardous Waste Sites; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL-3745-3]

National Priorities List for Uncontrolled Hazardous Waste Sites

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency ("EPA") is amending the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 CFR part 300, which was promulgated on July 16, 1982, pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"). CERCLA has since been amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA") and is implemented by Executive Order 12580 (52 FR 2923, January 29, 1987). CERCLA requires that the NCP include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States, and that the list be revised at least annually. The National Priorities List ("NPL"), initially promulgated as appendix B of the NCP on September 8, 1983 (48 FR 40658), constitutes this list and is being revised today by the addition of 1 site, United Heckathorn Co., Richmond, CA. Based on a review of public comments on this site, EPA has decided that it meets the eligibility requirements of the NPL and is consistent with the Agency's listing policies. Information supporting this action is contained in the appropriate Superfund Public Dockets.

This rule results in a final NPL of 1,082 sites, 93 of them in the Federal section; 136 sites are proposed to the NPL, 24 of them in the Federal section. Final and proposed sites total 1,218.

EFFECTIVE DATE: The effective date for this amendment to the NCP shall be March 14, 1990. This rule is being made effective immediately in order to preserve any claims for natural resource damages against any possible future suggestions that such claims are barred under CERCLA section 113(g). Due to the limited effect of NPL listing, no party is prejudiced by making this listing immediately effective.

ADDRESSES: Addresses for the Headquarters and appropriate Regional docket follow. For further details on what these dockets contain, see section I of the **"SUPPLEMENTARY INFORMATION"** portion of this preamble.

Beverly Whitehead, Headquarters, U.S. EPA CERCLA Docket Office, OS-245, Waterside Mall, 401 M Street SW., Washington, DC 20460, 202/382-3046.

Lisa Nelson, U.S. EPA Region 9, 1235 Mission Street, San Francisco, CA 94103, 415/744-1914.

FOR FURTHER INFORMATION CONTACT: Robert Myers, Hazardous Site Evaluation Division, Office of Emergency and Remedial Response (OS-230), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC, 20460, or the Superfund Hotline, Phone (800) 424-9346 (382-3000 in the Washington, DC, metropolitan area).

SUPPLEMENTARY INFORMATION:

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I. Introduction

Background

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. sections 9601-9657 ("CERCLA" or the "Act"), in respone to the dangers of uncontrolled hazardous waste sites. CERCLA was amended in 1986 by the Superfund Amendments and Reauthorization Act ("SARA"), Public Law No. 99-499, stat. 1613 *et seq.* To implement CERCLA, the Environmental Protection Agency ("EPA or "the Agency") promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 CFR part 300, on July 16, 1982 (47 FR 31180) pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP, further revised by EPA on September 16, 1985 (50 FR 37624) and November 20, 1985 (50 FR 47912), sets forth guidelines and procedures needed to respond under CERCLA to releases and threatened releases of hazardous substances, pollutants, or contaminants. On December 21, 1988 (53 FR 51394), EPA proposed revisions to the NCP in response to SARA.

Section 105(a)(8)(A) of CERCLA, as amended by SARA, requires that the NCP include "Criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extend practicable taking into account the potential urgency of such action, for the purpose of taking removal action." Removal action involves cleanup or other actions that are taken in respone to releases or threats of releases on a short-term or temporary basis (CERCLA section 101(23)). Remedial action tends to be long-term in nature and involves response actions that are consistent with a permanent remedy for a release (CERCLA section 101(24)). Criteria for determining priorities for possible remedial actions financed by the Trust Fund established under CERCLA are included in the Hazard Ranking System ("HRS"), which EPA promulgated as appendix A of the NCP (47 FR 31219, July 16, 1982).

On December 23, 1988 (53 FR 51962), EPA proposed revisions to the HRS in response to CERCLA section 105(c), added by SARA. EPA intends to issue the revised HRS as soon as possible. However, until the revised HRS is in effect, EPA will continue to use the current HRS in accordance with CERCLA section 105(c)(1) and Congressional intent, as explained in 54 FR 13299 (March 31, 1989).

Based in large part on the HRS criteria, and pursuant to section 105(a)(8)(B) of CERCLA, as amended by SARA, EPA prepared a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States (the "National Priorities List" or "NPL"). The list has been promulgated as appendix B of the NCP. A site can undergo CERCLA-financed remedial action only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.66(c)(2) and 300.68(a).

As is stated in CERCLA section 105(a)(8)(b), the NPL is a listing of "releases or threatened releases" of hazardous substances, pollutants, or contaminants. For simplicity, the discussion below may refer to these "releases or threatened releases" simply as "releases", "facilities", or "sites".

An original NPL of 406 sites was promulgated on September 8, 1983 (48 FR 40658). Pursuant to CERCLA section 105(a)(8)(B), which requires that the NPL be revised at least annually, the NPL has been updated periodically, most recently on November 21, 1989 (54 FR 48184). The Agency also has proposed adding new sites to the NPL, most recently on October 26, 1989 (54 FR 43778).

EPA may delete sites from the NPL when no further response is appropriate, as provided in the NCP at 40 CFR 300.66(c)(7). To date, the Agency has deleted 28 sites from the final NPL, most recently on September 22, 1989 (54 FR 38994), when Cecil Lindsey, Newport, Arkansas, was deleted.

This rule adds the United Heckathorn Co. site to the NPL. EPA has carefully considered public comments submitted and has made certain modifications in response to those comments. This rule results in a final NPL of 1,082 sites, 93 of them in the Federal section; 136 sites remain in proposed status, 24 of them in the Federal section. With these changes, final and proposed sites now total 1,218.

Information Available to the Public

The Headquarters and Region 9 public dockets for the NPL (see **ADDRESSES** portion of this notice) contain documents relating to the evaulation and scoring of United Heckathorn Co. The dockets are available for viewing, by appointment only, after the appearance of this notice. The hours of operation for the Headquarters docket are from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Please contact the EPA Region 9 for docket hours.

The Headquarters docket contains HRS score sheets and a Documentation Record describing the information used to compute the score; a list of documents referred in the Documentation Record; comments received; and the Agency's response to those comments. The Agency's responses are contained in the "Support Document for the Revised National Priorities List—Final Rule, March 1990."

The Region 9 docket includes all information available in the Headquarters docket as well as the actual reference documents, which contain the data principally relied upon by EPA in calculating or evaluating the HRS scores for United Heckathorn Co. These reference documents are available only in Region 9, and may be viewed, by appointment only. An informal written request, rather than a formal request, should be the ordinary procedure for obtaining copies of any of these documents.

II. Purpose and Implementation of the NPL

Purpose

The primary purpose of the NPL is stated in the legislative history of CERCLA (Report of the Senate Committee on Environment and Public Works, Senate Rep. No. 96–848, 96th Cong., 2d Sess. 60 (1980)):

> The priority lists serve primarily informational purposes, identifying for the States and the public those facilities and sites or other releases which appear to warrant remedial actions. Inclusion of a facility or site on the list does not in itself reflect a judgment of the activities of its owner or operator, it does not require those persons to undertake any action, nor does it assign liability to any person. Subsequent government action in the form of remedial actions or enforcement actions will be necessary in order to do so, and these actions will be attended by all appropriate procedural safeguards.

The purpose of the NPL, therefore, is primarily to serve as an informational and management tool. The initial identification of a site for the NPL is intended primarily to guide EPA in determining which sites warrant further investigation to assess the nature and extent of the public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. The NPL also serves to notify the public of sites EPA believes warrant further investigation.

Implementation

A site may undergo remedial action financed by the Trust Fund established under CERCLA ("Superfund") only after it is placed on the final NPL as outlined in the NCP at 40 CFR 300.66(c)(2) and 300.68(a). However, EPA may take enforcement actions under CERCLA or other applicable statutes against responsible parties regardless of whether the site is on the NPL, although, as a practical matter, the focus of EPA's enforcement actions has been and will continue to be on NPL sites. Similarly, in the case of removal actions, EPA has the authority to act at any site, whether listed or not, that meets the criteria of the NCP at 40 CFR 300.65–67.

EPA's policy is to pursue cleanup of NPL sites using the appropriate response and/or enforcement actions available to the Agency, including authorities other than CERCLA. Listing a site will serve as notice to any potentially responsible party that the Agency may initiate CERCLA-financed remedial action. The Agency will decide on a site-by-site basis whether to take enforcement or other action under CERCLA or other authorities, proceed directly with CERCLA-financed response actions and seek to recover response costs after cleanup, or do both. To the extent feasible, once sites are on the NPL, EPA will determine high-priority candidates for Superfund-financed response action and/or enforcement action through both State and Federal initiatives. These determinations will take into account which approach is more likely to most expeditiously accomplish cleanup of the site while using CERCLA's limited resources as efficiently as possible.

Remedial response actions will not necessarily be funded in the same order as a site's ranking on the NPL—that is, its HRS score. The information collected to develop HRS scores is not sufficient in itself to determine either the extent of contamination or the appropriate response for a particular site. EPA relies on further, more detailed studies in the remedial investigation/feasibility study (RI/FS) to address these concerns.

The RI/FS determines the nature and extent of the threat posed by the release or threatened release. It also takes into account the amount of contaminants in the environment, the risk to affected populations and environment, the cost to correct problems at the site, and the response actions that have been taken by potentially responsible parties or others. Decisions on the type and extent of action, if any, to be taken at these sites are made in accordance with the criteria contained in subpart F of the NCP. After conducting these additional studies, EPA may conclude that it is not desirable to initiate a CERCLA remedial action at some sites on the NPL because of more pressing needs at other sites, or because a private party cleanup is already underway pursuant to an enforcement action. Given the limited resources available in the Trust Fund, the Agency must carefully balance the relative needs for response at the numerous sites it has studied. It is also possible that EPA will conclude after further analysis that the site does not warrant remedial action.

RI/FS at Proposed Sites. An RI/FS may be performed at proposed sites (or even non-NPL sites) pursuant to the Agency's removal authority under CERCLA, as outlined in the NCP at 40 CFR 300.68(a)(1). Section 101(23) of CERCLA defines "remove" or "removal" to include "such actions as may be necessary to monitor, assess and evaluate the release or threat of release * * *." The definition of "removal" also includes "action taken under section 104(b) of this Act * * *," which authorizes the Agency to perform studies, investigations, and other information-gathering activities.

Although an RI/FS generally is conducted at a site after the site has been placed on the NPL, in a number of circumstances the Agency elects to conduct an RI/FS at a proposed NPL site in preparation for a possible CERCLA-financed remedial action, such as when the Agency believes that a delay may create unnecessary risks to human health or the environment. In addition, the Agency may conduct an RI/FS to assist in determining whether to conduct a removal or enforcement action at a site.

Facility (Site) Boundaries. The Agency's position is that the NPL does not describe releases in precise geographical terms, and that it would be neither feasible nor consistent with the

limited purpose of the NPL (as the mere identification of releases), for it to do so.

CERCLA section 105(a)(8)(B) directs EPA to list national priorities among the known "releases or threatened releases" of hazardous substances. Thus, the purpose of the NPL is merely to identify releases of hazardous substances that are priorities for further evaluation. Although a CERCLA "facility" is broadly defined to include any area where a hazardous substance release has "come to be located" (CERCLA section 101(9)), the listing process itself is not intended to define or reflect the boundaries of such facilities or releases.[1] Of course, HRS data upon which the NPL placement was based will, to some extent, describe which release is at issue; that is, the NPL site would include all releases evaluated as part of that HRS analysis (including noncontiguous releases evaluated under the NPL aggregation policy, *see* 48 FR 40663 (September 8, 1983)).

EPA regulations do provide that the "nature and extent of the threat presented by a release" will be determined by an RI/FS as more information is developed on site contamination (40 CFR 300.68(d)). During the RI/FS process, the release may be found to be larger or smaller than was originally known, as more is learned about the source and the migration of the contamination. However, this inquiry focuses on an evaluation of the *threat* posed; the boundaries of the release need not be defined, and in any event are independent of the NPL listing. Moreover, it generally is impossible to discover the full extent of where the contamination "has come to be located" before all necessary studies *and* remedial work are completed at a site; indeed, the boundaries of the contamination can be expected to change over time. Thus, in most cases, it will be impossible to describe the boundaries of a release with certainty.

For these reasons, the NPL need not be amended if further research into the extent of the contamination expands the apparent boundaries of the release. Further, the NPL is only of limited significance, as it does not assign liability to any party or to the owner of any specific property. *See* Report of the Senate Committee on Environment and Public Works, Senate Rep. No. 96–848, 96th Cong., 2d Sess. 60 (1980), quoted at 48 FR 40659 (September 8, 1983). If a party contests liability for releases on discrete parcels of property, it may do so if and when the Agency brings an action against that party to recover costs or to compel a response action at that property.

At the same time, however, the RI/FS or the Record of Decision (which defines the remedy selected) may offer a useful indication to the public of the areas of contamination at which the Agency is considering taking a response action, *based on information known at that time.* For example, EPA may evaluate (and list) a release over a 400-acre area, but the Record of Decision may select a remedy over 100 acres only. This information may be useful to a landowner seeking to sell the other 300 acres, but it would result in no formal change in the fact that a release is included on the NPL. The landowner (and the public) also should note in such a case that if further study (or the remedial construction itself) reveals that the contamination is located on or has spread to other areas, the Agency may address those areas as well.

This view of the NPL as an initial identification of a release that is not subject to constant re-evaluation is consistent with the Agency's policy of not rescoring NPL sites:

> EPA recognizes that the NPL process cannot be perfect, and it is possible that errors exist or that new data will alter previous assumptions. Once the initial scoring effort is complete, however, the focus of EPA activity must be on investigating sites in detail and determining the appropriate response. New data or errors can be considered in that process. . . [T]he NPL serves as a guide to EPA and does not determine liability or the need for response.

(49 FR 37081 (September 21, 1984)).[2]

III. NPL Update Process

There are three mechanisms for placing sites on the NPL. The principal mechanism, and the one used in evaluating United Heckathorn Co., is the application of the HRS. The HRS serves as a screening device to evaluate the relative potential of uncontrolled hazardous substances to cause human health or safety problems, or ecological or environmental damage. The HRS score is calculated by estimating risks presented in three potential "pathways" of human or environmental exposure: ground water, surface water, and air. Within each pathway of exposure, the HRS considers three categories of factors "that are designed to encompass most aspects of the likelihood of exposure to a hazardous substance through a release and the magnitude or degree of harm from such exposure": (1) Factors that indicate the presence or likelihood of a release to the environment; (2) factors that indicate the nature and quantity of the substances presenting the potential threat; and (3) factors that indicate the human or environmental "targets" potentially at risk from the site. Factors within each of these three categories are assigned a numerical value according to a set scale. Once numerical values are computed for each factor, the HRS uses mathematical formulas that reflect the relative importance and interrelationships of the various factors to arrive at a final site score on a scale of 0 to 100. The resultant HRS score represents an estimate of the relative "probability and magnitude of harm to the human population or sensitive environment from exposure to hazardous substances as a result of the contamination of ground water, surface water, or air" (47 FR 31180, July 16, 1982). Those sites that score 28.50 or greater on the HRS are eligible for the NPL.

The other two mechanisms for adding sites to the NPL are described in previous preambles updating the NPL, most recently EPA's February 21, 1990 final rule (55 FR 6154).

IV. Disposition of Sites

This final rule promulgates a site proposed in Update #10 (54 FR 43778, October 26, 1989):

Group	Rank	St	Site name	City/ county
11	502	CA	United Heckathorn Co.	Richmond.

EPA has reviewed the comments received on the site, including a late comment received February 6, 1990, and has revised the score accordingly. EPA's responses to the comments are included in "Support Document for the Revised National Priorities List—Final Rule, March 1990", available with this rule in the Headquarters and Region 9 Superfund dockets. Today's rule results in a total of 112 non-Federal sites and 24

[1] Although CERCLA section 101(9) sets out the definition of "facility" and not "release," those terms are often used interchangeably. (See CERCLA section 105(a)(8)(B), which defines the NPL as a list of "releases" as well as of the highest priority "facilities.") (For ease of reference, EPA also uses the term "site" interchangeably with "release" and "facility.")

[2] See also *City of Stoughton, Wisc.* v. *U.S. EPA*, 858 F. 2d 747, 751 (D.C. Cir. 1988):

> Certainly EPA could have permitted further comment or conducted further testing [on proposed NPL sites]. Either course would have consumed further assets of the Agency and would have delayed a determination of the risk priority associated with the site. Yet * * * "the NPL is simply a rough list of priorities, assembled quickly and inexpensively to comply with Congress' mandate for the Agency to take action straightaway." *Eagle-Picher [Industries* v. *EPA] II*, 759 F. 2d [921,] at 932 [(D.C. Cir. 1985)].

Federal facility sites that continue to be proposed pending completion of response to comment, resolution of technical issues and resolution of various policy issues (Table 1). All sites that remain proposed will be considered for future final rules. Although these sites remain proposed, the comment periods have not been extended or reopened.

TABLE 1.—NPL PROPOSALS

Update No.	Date/ Federal Register citation	Number of sites/Federal facility sites	
		Proposed	Remaining proposed
1	9/8/83 48 FR 40674	132/1	1/0
2	10/15/84 49 FR 40320	208/36	16/3
3	4/10/85 50 FR 14115	26/6	0/0
4	9/18/85 50 FR 37950	38/3	0/0
5	6/10/86 51 FR 21099	43/2	4/0
6	1/22/87 52 FR 2492	63/1	7/0
7	6/24/88 53 FR 23988	215/14	57/2
8	5/5/89 54 FR 19526	10/0	5/0
9	7/14/89 54 FR 29820	0/52	0/17
10	10/26/89 54 FR 43778	23/2	22/2
ATSDR	8/16/89 54 FR 33846	2/0	0/0
Total		760/117	112/24

V. Contents of the NPL

The 1 new site added to the NPL in today's rule (Table 1) has been incorporated into the NPL in order of its HRS score, although EPA modified the order to reflect top priorities designated by the States, as discussed in greater detail in previous rulemakings, the most recent on March 31, 1989 (54 FR 13296).

The NPL appears at the end of this final rule and will be codified as part of appendix B to the NCP. Sites on the NPL are arranged according to their scores on the HRS. The NPL is presented in groups of 50 sites to emphasize that minor differences in HRS scores do not necessarily represent significantly different levels of risks. Except for the first group, the score range within the groups, as indicated in the list, is less than 4 points. EPA considers the sites within a group to have approximately the same priority for response actions. For convenience, the sites are numbered. For further information, see, most recently, 55 FR 6154 (February 21, 1990).

VI. Regulatory Impact Analysis

The costs of cleanup actions that may be taken at sites are not directly attributable to placement on the NPL, as explained below. Therefore, the Agency has determined that this rulemaking is not a "major" regulation under Executive Order 12291. EPA has conducted a preliminary analysis of economic implications of today's amendment to the NCP. EPA believes that the kinds of economic effects associated with this revision generally are similar to those effects identified in the regulatory impact analysis (RIA) prepared in 1982 for the revisions to the NCP pursuant to section 105 of CERCLA and the economic analysis prepared when amendments to the NCP were proposed (50 FR 5882, February 12, 1985). The Agency believes the anticipated economic effects related to adding 1 site to the NPL can be characterized in terms of the conclusions of the earlier RIA and the most recent economic analysis. This rule was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

Costs

EPA has determined that this rulemaking is not a "major" regulation under Executive Order 12291 because inclusion of a site on the NPL does not itself impose any costs. It does not establish that EPA necessarily will undertake remedial action, nor does it require any action by a private party or determine its liability for site response costs. Costs that arise out of site responses result from site-by-site decisions about what actions to take, not directly from the act of listing itself. Nonetheless, it is useful to consider the costs associated with responding to the site included in this rulemaking.

The major events that follow the proposed listing of a site on the NPL are a search for potentially responsible parties and a remedial investigation/ feasibility study (RI/FS) to determine if remedial actions will be undertaken at a site. Design and construction of the selected remedial alternative follow completion of the RI/FS, and operation and maintenance (O&M) activities may continue after construction has been completed.

EPA initially bears costs associated with responsible party searches. Responsible parties may bear some or all the costs of the RI/FS, remedial design and construction, and O&M, or EPA and the States may share costs.

The State cost share for site cleanup activities has been amended by section 104 of SARA. For privately-owned sites, as well as at publicly-owned but not publicly-operated sites, EPA will pay for 100% of the costs of the RI/FS and remedial planning, and 90% of the costs associated with remedial action. The State will be responsible for 10% of the remedial action. For publicly-operated sites, the State cost share is at least 50% of all response costs at the site, including the RI/FS and remedial design and construction of the remedial action selected. After the remedy is built, costs fall into two categories:

- For restoration of ground water and surface water, EPA will share in startup costs according to the criteria in the previous paragraph for 10 years or until a sufficient level of protectiveness is achieved before the end of 10 years.
- For other cleanups, EPA will share for up to 1 year the cost of that portion of response needed to assure that a remedy is operational and functional. After that, the State assumes full responsibilities for O&M.

In previous NPL rulemakings, the Agency estimated the costs associated with these activities (RI/FS, remedial design, remedial action, and O&M) on an average per site and total cost basis. EPA will continue with this approach, using the most recent (1988) cost estimates available; the estimates are presented below. However, there is wide variation in costs for individual sites, depending on the amount, type, and extent of contamination. Additionally, EPA is unable to predict what portions of the total costs responsible parties will bear, since the distribution of costs depends on the extent of voluntary and negotiated response and the success of any cost-recovery actions.

Cost category	Average total cost per site [1]
RI/FS	1,300,000
Remedial design	1,500,000
Remedial Action	[2] 25,000,000
Net present value of O&M [3]	[2] 3,770,000

[1] 1988 U.S. Dollars.
[2] Includes State cost-share.
[3] Assumes cost of O&M over 30 years, $400,000 for the first year and 10% discount rate.
Source: Office of Program Management, Office of Emergency and Remedial Response, U.S. EPA.

Costs to the State of California associated with today's final rule arise

from the required State cost-share of: (1) 10% of remedial actions and 10% of first-year O&M costs at privately-owned sites and sites that are publicly-owned but not publicly-operated; and (2) at least 50% of the remedial planning (RI/FS and remedial design), remedial action, and first-year O&M costs at publicly-operated sites. States will assume the cost for O&M after EPA's period of participation. Using the budget projections presented above, the cost to California of undertaking Federal remedial planning and actions, but excluding O&M costs, would be approximately $2.78 million. State O&M costs cannot be accurately determined because EPA, as noted above, will share O&M costs for up to 10 years for restoration of ground water and surface water, and it is not known if the United Heckathorn Co. site will require this treatment and for how long. Assuming EPA involvement for 10 years is needed, State O&M costs would be approximately $2.3 million.

Placing a hazardous waste site on the final NPL does not itself cause firms responsible for the site to bear costs. Nonetheless, a listing may induce firms to clean up the sites voluntarily, or it may act as a potential trigger for subsequent enforcement or cost-recovery actions. Such actions may impose costs on firms, but the decisions to take such actions are discretionary and made on a case-by-case basis. Consequently, precise estimates of these effects cannot be made. EPA does not believe that every site will be cleaned up by a responsible party. EPA cannot project at this time which firms or industry sectors will bear specific portions of the response costs, but the Agency considers: the volume and nature of the waste at the sites; the strength of the evidence linking the wastes at the site to the parties; the parties' ability to pay; and other factors when deciding whether and how to proceed against the parties.

Economy-wide effects of this amendment to the NCP are aggregations of efforts on firms and State and local governments. Although effects could be felt by some individual firms and States, the total impact of this amendment on output, prices, and employment is expected to be negligible at the national level, as was the case in the 1982 RIA.

Benefits

The real benefits associated with today's amendment are increased health and environmental protection as a result of increased public awareness of potential hazards. In addition to the potential for more Federally-financed remedial actions, expansion of the NPL could accelerate privately-financed, voluntary cleanup efforts. Listing sites as national priority targets also may give States increased support for funding responses at particular sites.

As a result of the additional CERCLA remedies, there will be lower human exposure to high-risk chemicals, and higher-quality surface water, ground water, soil, and air. These benefits are expected to be significant, although difficult to estimate in advance of completing the RI/FS at these sites.

VII. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act of 1980 requires EPA to review the impacts of this action on small entities, or certify that the action will not have a significant impact on a substantial number of small entities. By small entities, the Act refers to small businesses, small government jurisdictions, and nonprofit organizations.

While modifications to the NPL are considered revisions to the NCP, they are not typical regulatory changes since the revisions do not automatically impose costs. The placing of sites on the NPL does not in itself require any action of any private party, nor does it determine the liability of any party for the cost of cleanup at the site. Further, no identifiable groups are affected as a whole. As a consequence, it is hard to predict impacts on any group. Placing a site on the NPL could increase the likelihood that adverse impacts to responsible parties (in the form of cleanup costs) will occur, but EPA cannot identify the potentially affected business at this time nor estimate the number of small businesses that might be affected.

The Agency does expect that certain industries and firms within industries that have caused a proportionately high percentage of waste site problems could be significantly affected by CERCLA actions. However, EPA does not expect the impacts from the listing of this site to have a significant economic impact on a substantial number of small businesses.

In any case, economic impacts would occur only through enforcement and cost-recovery actions, which are taken at EPA's discretion on a site-by-site basis. EPA considers many factors when determining that enforcement actions to take, including not only the firm's contribution to the problem, but also the firm's ability to pay.

The impacts (from cost recovery) on small governments and nonprofit organizations would be determined on a similar case-by-case basis.

List of Subjects in 40 CFR Part 300

Air pollution control, Chemicals, Hazardous materials, Intergovernmental relations, Natural resources, Oil pollution, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

Dated: March 9, 1990.

Mary A. Gade,

Deputy Assistant Administrator, Office of Solid Waste and Emergency Response.

PART 300—[AMENDED]

40 CFR part 300 is amended as follows:

1. The authority citation for part 300 continues to read as follows:

Authority: 42 U.S.C. 9605; 42 U.S.C. 9620; 33 U.S.C. 1321(c)(2); E.O. 11735 (38 FR 21243); E.O. 12580 (52 FR 2923).

2. Appendix B of part 300 is revised to read as set forth below.

Note: 1. A determination as to the contract history of any DoD contractor with contracts in excess of $25,000 annually can be made through a review of the Individual Procurement Action Report (DD Form 350) System as prescribed by 48 CFR subpart 4.6 of the DoD FAR Supplement (reference (b)), DoD Instruction 4105.61 (reference (c)), and DoD 4105.61M (reference (d)).

BILLING CODE 6560-50-M

Appendix B-National Priorities List

National Priorities List (by Rank)
March 1990

NPL Rank	EPA Reg	St	Site Name	City/County
			Group 1 (HRS Scores 75.60 - 58.54)	
1	02	NJ	Lipari Landfill	Pitman
2	03	DE	Tybouts Corner Landfill *	New Castle County
3	03	PA	Bruin Lagoon	Bruin Borough
4	02	NJ	Helen Kramer Landfill	Mantua Township
5	01	MA	Industri-Plex	Woburn
6	02	NJ	Price Landfill *	Pleasantville
7	02	NY	Pollution Abatement Services *	Oswego
8	07	IA	LaBounty Site	Charles City
9	03	DE	Army Creek Landfill	New Castle County
10	02	NJ	CPS/Madison Industries	Old Bridge Township
11	01	MA	Nyanza Chemical Waste Dump	Ashland
12	02	NJ	GEMS Landfill	Gloucester Township
13	05	MI	Berlin & Farro	Swartz Creek
14	01	MA	Baird & McGuire	Holbrook
15	02	NJ	Lone Pine Landfill	Freehold Township
16	01	NH	Somersworth Sanitary Landfill	Somersworth
17	05	MN	FMC Corp. (Fridley Plant)	Fridley
18	06	AR	Vertac, Inc.	Jacksonville
19	01	NH	Keefe Environmental Services	Epping
20	08	MT	Silver Bow Creek/Butte Area	Sil Bow/Deer Lodge
21	08	SD	Whitewood Creek *	Whitewood
22	06	TX	French, Ltd.	Crosby
23	05	MI	Liquid Disposal, Inc.	Utica
24	01	NH	Sylvester *	Nashua
25	03	PA	Tysons Dump	Upper Merion Twp
26	03	PA	McAdoo Associates *	McAdoo Borough
27	06	TX	Motco, Inc. *	La Marque
28	05	OH	Arcanum Iron & Metal	Darke County
29	08	MT	East Helena Site	East Helena
30	06	TX	Sikes Disposal Pits	Crosby
31	04	AL	Triana/Tennessee River	Limestone/Morgan
32	09	CA	Stringfellow *	Glen Avon Heights
33	01	ME	McKin Co.	Gray
34	06	TX	Crystal Chemical Co.	Houston
35	02	NJ	Bridgeport Rental & Oil Services	Bridgeport
36	08	CO	Sand Creek Industrial	Commerce City
37	06	TX	Geneva Industries/Fuhrmann Energy	Houston
38	01	MA	W.R. Grace & Co Inc (Acton Plant)	Acton
39	05	MN	Reilly Tar (St. Louis Park Plant) *	St. Louis Park
40	05	MN	New Brighton/Arden Hills	New Brighton
41	04	FL	Schuylkill Metals Corp.	Plant City
42	02	NJ	Vineland Chemical Co., Inc.	Vineland
43	02	NJ	Burnt Fly Bog	Marlboro Township
44	03	PA	Publicker Industries Inc.	Philadephia
45	02	NY	Old Bethpage Landfill	Oyster Bay
46	02	NJ	Shieldalloy Corp.	Newfield Borough
47	04	FL	Reeves Southeast Galvanizing Corp	Tampa
48	08	MT	Anaconda Co. Smelter	Anaconda
49	10	WA	Western Processing Co., Inc.	Kent
50	05	WI	Omega Hills North Landfill	Germantown

National Priorities List (by Rank)
March 1990

NPL Rank	EPA Reg	St	Site Name	City/County
			Group 2 (HRS Scores 58.41 - 56.16, except for State top priority sites)	
51	04	FL	American Creosote (Pensacola Plt)	Pensacola
52	02	NJ	Caldwell Trucking Co.	Fairfield
53	02	NY	GE Moreau	South Glen Falls
54	06	OK	Tar Creek (Ottawa County)	Ottawa County
55	07	KS	Cherokee County	Cherokee County
56	05	IN	Seymour Recycling Corp. *	Seymour
57	05	OH	United Scrap Lead Co., Inc.	Troy
58	04	FL	Peak Oil Co./Bay Drum Co.	Tampa
59	02	NJ	Brick Township Landfill	Brick Township
60	02	NJ	Brook Industrial Park	Bound Brook
61	05	MI	American Anodco, Inc.	Ionia
62	10	WA	Frontier Hard Chrome, Inc.	Vancouver
63	05	WI	Janesville Old Landfill	Janesville
64	05	MI	Northernaire Plating	Cadillac
65	04	SC	Kalama Specialty Chemicals	Beaufort
66	04	SC	Independent Nail Co.	Beaufort
67	05	WI	Janesville Ash Beds	Janesville
68	04	FL	Davie Landfill	Davie
69	05	OH	Miami County Incinerator	Troy
70	10	WA	ALCOA (Vancouver Smelter)	Vancouver
71	04	FL	Gold Coast Oil Corp.	Miami
72	10	WA	General Electric(Spokane Shop)	Spokane
73	09	AZ	Tucson International Airport Area	Tucson
74	05	IN	International Minerals (E. Plant)	Terre Haute
75	05	WI	Wheeler Pit	La Prairie Township
76	09	CA	Operating Industries, Inc. Lndfll	Monterey Park
77	02	NY	Wide Beach Development	Brant
78	09	CA	Iron Mountain Mine	Redding
79	05	MI	Gratiot County Landfill *	St. Louis
80	01	RI	Picillo Farm *	Coventry
81	01	MA	New Bedford Site *	New Bedford
82	06	LA	Old Inger Oil Refinery *	Darrow
83	05	OH	Chem-Dyne *	Hamilton
84	04	SC	SCRDI Bluff Road *	Columbia
85	01	CT	Laurel Park, Inc. *	Naugatuck Borough
86	08	CO	Marshall Landfill *	Boulder County
87	05	IL	Outboard Marine Corp. *	Waukegan
88	06	NM	South Valley *	Albuquerque
89	01	VT	Pine Street Canal *	Burlington
90	03	WV	West Virginia Ordnance *	Point Pleasant
91	07	MO	Ellisville Site *	Ellisville
92	08	ND	Arsenic Trioxide Site *	Southeastern ND
93	07	IA	Aidex Corp. *	Council Bluffs
94	05	WI	N.W. Mauthe Co., Inc. *	Appleton
95	04	TN	North Hollywood Dump *	Memphis
96	04	KY	A.L. Taylor (Valley of Drums) *	Brooks
97	09	GU	Ordot Landfill *	Guam
98	04	MS	Flowood Site *	Flowood
99	08	UT	Rose Park Sludge Pit *	Salt Lake City
100	07	KS	Arkansas City Dump *	Arkansas City

National Priorities List (by Rank)
March 1990

NPL Rank	EPA Reg	St	Site Name	City/County
			Group 3 (HRS Scores 55.97 - 52.29)	
101	02	NJ	Scientific Chemical Processing	Carlstadt
102	08	CO	California Gulch	Leadville
103	02	NJ	D'Imperio Property	Hamilton Township
104	05	MN	Oakdale Dump	Oakdale
105	05	IL	Parsons Casket Hardware Co.	Belvidere
106	05	IL	A & F Material Reclaiming, Inc.	Greenup
107	03	PA	Douglassville Disposal	Douglassville
108	05	MN	Koppers Coke	St. Paul
109	01	MA	Plymouth Harbor/Cannon Eng. Corp.	Plymouth
110	10	ID	Bunker Hill Mining & Metallurg	Smelterville
111	02	NY	Hudson River PCBs	Hudson River
112	02	NJ	Universal Oil Products(Chem Div)	East Rutherford
113	09	CA	Aerojet General Corp.	Rancho Cordova
114	10	WA	Com Bay, South Tacoma Channel	Tacoma
115	03	PA	Osborne Landfill	Grove City
116	08	UT	Portland Cement (Kiln Dust 2 & 3)	Salt Lake City
117	01	CT	Old Southington Landfill	Southington
118	02	NY	Syosset Landfill	Oyster Bay
119	02	NY	Circuitron Corp.	East Farmingdale
120	09	AZ	Nineteenth Avenue Landfill	Phoenix
121	10	OR	Teledyne Wah Chang	Albany
122	10	WA	Midway Landfill	Kent
123	02	NY	Sinclair Refinery	Wellsville
124	04	AL	Mowbray Engineering Co.	Greenville
125	05	MI	Spiegelberg Landfill	Green Oak Township
126	04	FL	Miami Drum Services	Miami
127	02	NJ	Reich Farms	Pleasant Plains
128	10	ID	Union Pacific Railroad Co.	Pocatello
129	02	NJ	South Brunswick Landfill	South Brunswick
130	03	PA	Raymark	Hatboro
131	04	AL	Ciba-Geigy Corp. (McIntosh Plant)	McIntosh
132	04	FL	Kassauf-Kimerling Battery	Tampa
133	05	IL	Wauconda Sand & Gravel	Wauconda
134	05	MI	Bofors Nobel, Inc.	Muskegon
135	06	TX	Bailey Waste Disposal	Bridge City
136	01	NH	Ottati & Goss/Kingston Steel Drum	Kingston
137	05	MI	Ott/Story/Cordova Chemical Co.	Dalton Township
138	05	MI	Thermo-Chem, Inc.	Muskegon
139	09	CA	Brown & Bryant, Inc.(Arvin Plant)	Arvin
140	03	VA	Greenwood Chemical Co.	Newtown
141	02	NJ	NL Industries	Pedricktown
142	05	MN	St. Regis Paper Co.	Cass Lake
143	04	KY	Brantley Landfill	Island
144	04	NC	Aberdeen Pesticide Dumps	Aberdeen
145	01	VT	Burgess Brothers Landfill	Woodford
146	02	NJ	Ringwood Mines/Landfill	Ringwood Borough
147	04	FL	Whitehouse Oil Pits	Whitehouse
148	04	GA	Hercules 009 Landfill	Brunswick
149	02	NY	Jones Sanitation	Hyde Park
150	01	VT	Parker Sanitary Landfill	Lyndon

National Priorities List (by Rank)
March 1990

NPL Rank	EPA Reg	St	Site Name	City/County
			Group 4 (HRS Scores 52.29 - 49.33)	
151	05	MI	Velsicol Chemical (Michigan)	St. Louis
152	05	OH	Summit National	Deerfield Township
153	02	NY	Love Canal	Niagara Falls
154	03	DE	Coker's Sanitation Service Lndfls	Kent County
155	05	MI	Rockwell International (Allegan)	Allegan
156	05	MN	Pine Bend Sanitary Landfill	Dakota County
157	07	IA	Lawrence Todtz Farm	Camanche
158	05	IN	Fisher-Calo	LaPorte
159	04	FL	Pioneer Sand Co.	Warrington
160	05	MI	Springfield Township Dump	Davisburg
161	03	PA	Hranica Landfill	Buffalo Township
162	04	NC	Martin-Marietta, Sodyeco, Inc.	Charlotte
163	03	DE	E.I. Du Pont (Newport Plant Lf)	Newport
164	03	PA	Hellertown Manufacturing Co.	Hellertown
165	04	FL	Zellwood Ground Water Contamin	Zellwood
166	05	MI	Packaging Corp. of America	Filer City
167	05	WI	Muskego Sanitary Landfill	Muskego
168	10	ID	Kerr-McGee Chemical(Soda Springs)	Soda Springs
169	02	NY	Hooker (S Area)	Niagara Falls
170	03	PA	Lindane Dump	Harrison Township
171	08	CO	Central City-Clear Creek	Idaho Springs
172	02	NJ	Ventron/Velsicol	Wood Ridge Borough
173	04	FL	Taylor Road Landfill	Seffner
174	01	RI	Western Sand & Gravel	Burrillville
175	02	NY	Rosen Brothers Scrap Yard/Dump	Cortland
176	04	SC	Koppers Co Inc (Florence Plant)	Florence
177	02	NJ	Maywood Chemical Co.	Maywood/Rochelle Pk
178	02	NJ	Nascolite Corp.	Millville
179	05	OH	Industrial Excess Landfill	Uniontown
180	06	OK	Hardage/Criner	Criner
181	05	MI	Rose Township Dump	Rose Township
182	05	MN	Waste Disposal Engineering	Andover
183	02	NY	Liberty Industrial Finishing	Farmingdale
184	02	NJ	Kin-Buc Landfill	Edison Township
185	05	IN	Waste, Inc., Landfill	Michigan City
186	05	OH	Bowers Landfill	Circleville
187	06	TX	Brio Refining, Inc.	Friendswood
188	02	NJ	Ciba-Geigy Corp.	Toms River
189	05	MI	Butterworth #2 Landfill	Grand Rapids
190	02	NJ	American Cyanamid Co.	Bound Brook
191	03	PA	Heleva Landfill	North Whitehall Twp
192	02	NJ	Ewan Property	Shamong Township
193	02	NY	Batavia Landfill	Batavia
194	05	IL	Woodstock Municipal Landfill	Woodstock
195	05	MN	Boise Cascade/Onan/Medtronics	Fridley
196	01	RI	Landfill & Resource Recovery	North Smithfield
197	05	MI	Hi-Mill Manufacturing Co.	Highland
198	03	PA	Butler Mine Tunnel	Pittston
199	04	FL	Northwest 58th Street Landfill	Hialeah
200	02	NJ	Delilah Road	Egg Harbor Township

National Priorities List (by Rank)
March 1990

NPL Rank	EPA Reg	St	Site Name	City/County
			Group 5 (HRS Scores 49.31 - 47.10)	
201	03	PA	Mill Creek Dump	Erie
202	02	NJ	Glen Ridge Radium Site	Glen Ridge
203	02	NJ	Montclair/West Orange Radium Site	Montclair/W Orange
204	01	CT	Precision Plating Corp.	Vernon
205	04	FL	Sixty-Second Street Dump	Tampa
206	05	MI	G&H Landfill	Utica
207	01	VT	Bennington Municipal Sanitary Lfl	Bennington
208	04	NC	Celanese(Shelby Fiber Operations)	Shelby
209	02	NJ	Metaltec/Aerosystems	Franklin Borough
210	05	WI	Schmalz Dump	Harrison
211	04	TN	Carrier Air Conditioning Co.	Collierville
212	05	MI	Motor Wheel, Inc.	Lansing
213	09	CA	Southern Calif Edison (Visalia)	Visalia
214	02	NJ	Lang Property	Pemberton Township
215	06	TX	Stewco, Inc.	Waskom
216	02	NJ	Sharkey Landfill	Parsippany/Troy Hls
217	09	CA	Selma Treating Co.	Selma
218	06	LA	Cleve Reber	Sorrento
219	05	IL	Velsicol Chemical (Illinois)	Marshall
220	07	MO	Wheeling Disposal Service Co. Lf	Amazonia
221	05	MI	Tar Lake	Mancelona Township
222	02	NY	Johnstown City Landfill	Town of Johnstown
223	04	NC	NC State U (Lot 86, Farm Unit #1)	Raleigh
224	08	CO	Lowry Landfill	Arapahoe County
225	05	MN	MacGillis & Gibbs/Bell Lumber	New Brighton
226	03	PA	Hunterstown Road	Straban Township
227	03	MD	Woodlawn County Landfill	Woodlawn
228	05	WI	Hechimovich Sanitary Landfill	Williamstown
229	07	IA	Mid-America Tanning Co.	Sergeant Bluff
230	07	NE	Lindsay Manufacturing Co.	Lindsay
231	02	NJ	Combe Fill North Landfill	Mount Olive Twp
232	01	MA	Re-Solve, Inc.	Dartmouth
233	02	NJ	Goose Farm	Plumstead Township
234	04	TN	Velsicol Chem (Hardeman County)	Toone
235	02	NY	York Oil Co.	Moira
236	04	FL	Sapp Battery Salvage	Cottondale
237	04	SC	Wamchem, Inc.	Burton
238	02	NJ	Chemical Leaman Tank Lines, Inc.	Bridgeport
239	05	WI	Master Disposal Service Landfill	Brookfield
240	07	KS	Doepke Disposal (Holliday)	Johnson County
241	02	NJ	Florence Land Recontouring Lndfll	Florence Township
242	01	RI	Davis Liquid Waste	Smithfield
243	01	MA	Charles-George Reclamation Lndfll	Tyngsborough
244	02	NJ	King of Prussia	Winslow Township
245	03	VA	Chisman Creek	York County
246	05	OH	Nease Chemical	Salem
247	08	CO	Eagle Mine	Minturn/Redcliff
248	02	NJ	Chemical Control	Elizabeth
249	04	NC	Charles Macon Lagoon & Drum Stor	Cordova
250	04	SC	Leonard Chemical Co., Inc.	Rock Hill

National Priorities List (by Rank)
March 1990

NPL Rank	EPA Reg	St	Site Name	City/County
			Group 6 (HRS Scores 47.05 - 45.22)	
251	05	OH	Allied Chemical & Ironton Coke	Ironton
252	05	MI	Verona Well Field	Battle Creek
253	07	MO	Lee Chemical	Liberty
254	01	CT	Beacon Heights Landfill	Beacon Falls
255	04	AL	Stauffer Chem (Cold Creek Plant)	Bucks
256	05	MN	Burlington Northern (Brainerd)	Brainerd/Baxter
257	05	MI	Torch Lake	Houghton County
258	01	RI	Central Landfill	Johnston
259	03	PA	Malvern TCE	Malvern
260	02	NY	Facet Enterprises, Inc.	Elmira
261	03	DE	Delaware Sand & Gravel Landfill	New Castle County
262	03	PA	Tonolli Corp.	Nesquehoning
263	04	NC	National Starch & Chemical Corp.	Salisbury
264	03	PA	MW Manufacturing	Valley Township
265	03	VA	C & R Battery Co., Inc.	Chesterfield County
266	04	TN	Murray-Ohio Dump	Lawrenceburg
267	05	IN	Envirochem Corp.	Zionsville
268	05	IN	MIDCO I	Gary
269	05	OH	Ormet Corp.	Hannibal
270	05	OH	South Point Plant	South Point
271	01	CT	Gallup's Quarry	Plainfield
272	03	PA	Whitmoyer Laboratories	Jackson Township
273	04	FL	Coleman-Evans Wood Preserving Co.	Whitehouse
274	02	NJ	Dayco Corp./L.E Carpenter Co.	Wharton Borough
275	03	PA	Shriver's Corner	Straban Township
276	03	PA	Dorney Road Landfill	Upper Macungie Twp
277	03	PA	Berks Landfill	Spring Township
278	05	IN	Northside Sanitary Landfill, Inc	Zionsville
279	05	IL	Interstate Pollution Control, Inc	Rockford
280	06	OK	Oklahoma Refining Co.	Cyril
281	09	CA	Pacific Coast Pipe Lines	Fillmore
282	02	NJ	Global Sanitary Landfill	Old Bridge Township
283	04	FL	Florida Steel Corp.	Indiantown
284	03	PA	Occidental Chem/Firestone Tire	Lower Pottsgrove Twp
285	03	VA	Culpeper Wood Preservers, Inc.	Culpeper
286	05	IL	Pagel's Pit	Rockford
287	05	MN	University Minn Rosemount Res Cen	Rosemount
288	05	MN	Freeway Sanitary Landfill	Burnsville
289	05	WI	Tomah Municipal Sanitary Landfill	Tomah
290	09	AZ	Litchfield Airport Area	Goodyear/Avondale
291	09	CA	Firestone Tire (Salinas Plant)	Salinas
292	02	NJ	Spence Farm	Plumstead Township
293	06	AR	Mid-South Wood Products	Mena
294	04	MS	Newsom Brothers/Old Reichhold	Columbia
295	09	CA	Atlas Asbestos Mine	Fresno County
296	09	CA	Coalinga Asbestos Mine	Coalinga
297	04	FL	Brown Wood Preserving	Live Oak
298	02	NY	Port Washington Landfill	Port Washington
299	05	IN	Columbus Old Municipal Lndfll #1	Columbus
300	02	NJ	Combe Fill South Landfill	Chester Township

National Priorities List (by Rank)
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NPL Rank	EPA Reg	St	Site Name	City/County
			Group 7 (HRS Scores 45.14 - 42.86)	
301	02	NJ	JIS Landfill	Jamesburg/S. Brnswck
302	02	NY	Tronic Plating Co., Inc.	Farmingdale
303	03	PA	Centre County Kepone	State College Boro
304	04	FL	Agrico Chemical Co.	Pensacola
305	05	OH	Fields Brook	Ashtabula
306	01	CT	Solvents Recovery Service New Eng	Southington
307	08	CO	Woodbury Chemical Co.	Commerce City
308	02	NJ	Waldick Aerospace Devices, Inc.	Wall Township
309	01	MA	Hocomonco Pond	Westborough
310	04	KY	Distler Brickyard	West Point
311	02	NY	Ramapo Landfill	Ramapo
312	09	CA	Coast Wood Preserving	Ukiah
313	09	CA	South Bay Asbestos Area	Alviso
314	02	NY	Mercury Refining, Inc.	Colonie
315	04	FL	Hollingsworth Solderless Terminal	Fort Lauderdale
316	02	NY	Olean Well Field	Olean
317	09	CA	Fairchild Semiconduct(S San Jose)	South San Jose
318	10	WA	Pasco Sanitary Landfill	Pasco
319	05	MN	Joslyn Manufacturing & Supply Co.	Brooklyn Center
320	03	PA	York County Solid Waste/Refuse Lf	Hopewell Township
321	05	WI	Spickler Landfill	Spencer
322	08	CO	Denver Radium Site	Denver
323	02	NY	Tri-Cities Barrel Co., Inc.	Port Crane
324	03	PA	Route 940 Drum Dump	Pocono Summit
325	04	FL	Tower Chemical Co.	Clermont
326	01	VT	Darling Hill Dump	Lyndon
327	03	PA	C & D Recycling	Foster Township
328	07	MO	Syntex Facility	Verona
329	08	MT	Milltown Reservoir Sediments	Milltown
330	05	MN	Arrowhead Refinery Co.	Hermantown
331	10	OR	Martin-Marietta Aluminum Co.	The Dalles
332	08	CO	Uravan Uranium (Union Carbide)	Uravan
333	02	NJ	Pijak Farm	Plumstead Township
334	02	NJ	Syncon Resins	South Kearny
335	05	MN	Oak Grove Sanitary Landfill	Oak Grove Township
336	09	CA	Liquid Gold Oil Corp.	Richmond
337	09	CA	Purity Oil Sales, Inc.	Malaga
338	01	NH	Tinkham Garage	Londonderry
339	04	FL	Alpha Chemical Corp.	Galloway
340	02	NJ	Bog Creek Farm	Howell Township
341	01	ME	Saco Tannery Waste Pits	Saco
342	03	PA	River Road Lf/Waste Mngmnt, Inc.	Hermitage
343	02	PR	Frontera Creek	Rio Abajo
344	04	FL	Pickettville Road Landfill	Jacksonville
345	05	OH	Alsco Anaconda	Gnadenhutten
346	01	MA	Iron Horse Park	Billerica
347	03	PA	Palmerton Zinc Pile	Palmerton
348	05	IN	Neal's Landfill (Bloomington)	Bloomington
349	05	WI	Kohler Co. Landfill	Kohler
350	04	AL	Interstate Lead Co. (ILCO)	Leeds

National Priorities List (by Rank)
March 1990

NPL Rank	EPA Reg	St	Site Name	City/County
			Group 8 (HRS Scores 42.79 - 42.24)	
351	04	FL	Standard Auto Bumper Corp.	Hialeah
352	07	KS	Hydro-Flex Inc.	Topeka
353	09	AZ	Hassayampa Landfill	Hassayampa
354	06	LA	Gulf Coast Vacuum Services	Abbeville
355	05	IL	Tri-County Lf/Waste Mgmt Illinois	South Elgin
356	01	MA	Silresim Chemical Corp.	Lowell
357	01	MA	Wells G&H	Woburn
358	01	CT	Nutmeg Valley Road	Wolcott
359	02	NJ	Chemsol, Inc.	Piscataway
360	05	WI	Lauer I Sanitary Landfill	Menomonee Falls
361	05	MI	Petoskey Municipal Well Field	Petoskey
362	05	MN	Union Scrap Iron & Metal Co.	Minneapolis
363	01	MA	Atlas Tack Corp.	Fairhaven
364	02	NJ	Radiation Technology, Inc.	Rockaway Township
365	02	NJ	Fair Lawn Well Field	Fair Lawn
366	05	IN	Main Street Well Field	Elkhart
367	05	MN	Lehillier/Mankato Site	Lehillier/Mankato
368	10	WA	Lakewood Site	Lakewood
369	03	PA	Industrial Lane	Williams Township
370	04	FL	Airco Plating Co.	Miami
371	05	IN	Fort Wayne Reduction Dump	Fort Wayne
372	05	WI	Onalaska Municipal Landfill	Onalaska
373	03	PA	A.I.W. Frank/Mid-County Mustang	Exton
374	05	WI	National Presto Industries, Inc.	Eau Claire
375	02	NJ	Monroe Township Landfill	Monroe Township
376	03	PA	Commodore Semiconductor Group	Lower Providence Twp
377	02	NJ	Rockaway Borough Well Field	Rockaway Township
378	05	IL	Lenz Oil Service, Inc.	Lemont
379	05	IN	Wayne Waste Oil	Columbia City
380	10	WA	Pacific Car & Foundry Co.	Renton
381	07	IA	John Deere (Ottumwa Works Lndfls)	Ottumwa
382	03	MD	Mid-Atlantic Wood Preservers, Inc	Harmans
383	03	PA	Novak Sanitary Landfill	South Whitehall Twp
384	05	IN	Himco Dump	Elkhart
385	10	ID	Pacific Hide & Fur Recycling Co.	Pocatello
386	07	IA	Des Moines TCE	Des Moines
387	02	NJ	Beachwood/Berkley Wells	Berkley Township
388	02	NJ	South Jersey Clothing Co.	Minotola
389	02	NY	Vestal Water Supply Well 4-2	Vestal
390	02	PR	Vega Alta Public Supply Wells	Vega Alta
391	03	PA	Avco Lycoming (Williamsport Div)	Williamsport
392	05	IL	Southeast Rockford Grnd Wtr Con	Rockford
393	05	IN	Galen Myers Dump/Drum Salvage	Osceola
394	05	MI	Sturgis Municipal Wells	Sturgis
395	05	MI	Barrels, Inc.	Lansing
396	05	MI	State Disposal Landfill, Inc.	Grand Rapids
397	05	MN	Washington County Landfill	Lake Elmo
398	06	TX	Odessa Chromium #1	Odessa
399	06	TX	Odessa Chromium #2 (Andrews Hgwy)	Odessa
400	07	IA	Electro-Coatings, Inc.	Cedar Rapids

National Priorities List (by Rank)
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Group 9 (HRS Scores 42.24 - 40.37)

NPL Rank	EPA Reg	St	Site Name	City/County
401	07	NE	Hastings Ground Water Contamin	Hastings
402	09	AZ	Indian Bend Wash Area	Scottsdale/Tmpe/Phnx
403	09	CA	San Gabriel Valley (Area 1)	El Monte
404	09	CA	San Gabriel Valley (Area 2)	Baldwin Park Area
405	09	CA	San Fernando Valley (Area 1)	Los Angeles
406	09	CA	San Fernando Valley (Area 2)	Los Angeles/Glendale
407	09	CA	San Fernando Valley (Area 3)	Glendale
408	09	CA	T.H. Agriculture & Nutrition Co.	Fresno
409	10	WA	Com Bay, Near Shore/Tide Flats	Pierce County
410	05	IL	LaSalle Electric Utilities	LaSalle
411	05	IL	Cross Brothers Pail (Pembroke)	Pembroke Township
412	04	GA	Cedartown Industries, Inc.	Cedartown
413	04	NC	Jadco-Hughes Facility	Belmont
414	05	IN	Southside Sanitary Landfill	Indianapolis
415	02	NJ	Monitor Devices/Intercircuits Inc	Wall Township
416	01	VT	BFI Sanitary Landfill(Rockingham)	Rockingham
417	02	PR	Upjohn Facility	Barceloneta
418	04	NC	Koppers Co Inc (Morrisville Plnt)	Morrisville
419	09	CA	McColl	Fullerton
420	03	PA	Henderson Road	Upper Merion Twp
421	02	NY	Hooker Chemical/Ruco Polymer Corp	Hicksville
422	10	WA	Colbert Landfill	Colbert
423	06	LA	Petro-Processors of Louisiana Inc	Scotlandville
424	02	NY	Applied Environmental Services	Glenwood Landing
425	02	PR	Barceloneta Landfill	Florida Afuera
426	01	NH	Tibbets Road	Barrington
427	03	MD	Sand, Gravel & Stone	Elkton
428	03	PA	Delta Quarries/Stotler Landfill	Antis/Logan Twps
429	01	CT	Revere Textile Prints Corp.	Sterling
430	05	MI	Spartan Chemical Co.	Wyoming
431	02	NJ	Roebling Steel Co.	Florence
432	03	PA	East Mount Zion	Springettsbury Twp
433	04	GA	T.H. Agricul & Nutri (Albany)	Albany
434	04	TN	Amnicola Dump	Chattanooga
435	02	NJ	Vineland State School	Vineland
436	09	AZ	Motorola, Inc.(52nd Street Plant)	Phoenix
437	01	MA	Groveland Wells	Groveland
438	02	NY	General Motors (Cent Foundry Div)	Massena
439	01	NH	Mottolo Pig Farm	Raymond
440	03	VA	Buckingham County Landfill	Buckingham
441	04	SC	SCRDI Dixiana	Cayce
442	05	MI	Roto-Finish Co., Inc.	Kalamazoo
443	05	MN	Olmsted County Sanitary Landfill	Oronoco
444	07	MO	Quality Plating	Sikeston
445	05	IN	Prestolite Battery Division	Vincennes
446	07	MO	Fulbright Landfill	Springfield
447	02	NJ	Williams Property	Swainton
448	02	NJ	Renora, Inc.	Edison Township
449	04	NC	FCX, Inc. (Washington Plant)	Washington
450	03	PA	Jacks Creek/Sitkin Smelting & Ref	Maitland

National Priorities List (by Rank)
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Group 10 (HRS Scores 40.37 - 38.64)

NPL Rank	EPA Reg	St	Site Name	City/County
451	06	NM	Cleveland Mill	Silver City
452	02	NJ	Denzer & Schafer X-Ray Co.	Bayville
453	02	NJ	Hercules, Inc. (Gibbstown Plant)	Gibbstown
454	05	IN	Ninth Avenue Dump	Gary
455	03	MD	Bush Valley Landfill	Abingdon
456	04	SC	Golden Strip Septic Tank Service	Simpsonville
457	04	SC	Rock Hill Chemical Co.	Rock Hill
458	06	TX	Texarkana Wood Preserving Co.	Texarkana
459	06	AR	Gurley Pit	Edmondson
460	04	FL	Petroleum Products Corp.	Pembroke Park
461	01	RI	Peterson/Puritan, Inc.	Lincoln/Cumberland
462	07	MO	Times Beach Site	Times Beach
463	05	MI	Wash King Laundry	Pleasant Plains Twp
464	05	MN	Whittaker Corp.	Minneapolis
465	05	WI	Algoma Municipal Landfill	Algoma
466	05	MN	NL Industries/Taracorp/Golden	St. Louis Park
467	09	CA	Westinghouse Elec (Sunnyvale Plt)	Sunnyvale
468	01	CT	Kellogg-Deering Well Field	Norwalk
469	03	PA	Boarhead Farms	Bridgeton Township
470	01	MA	Cannon Engineering Corp. (CEC)	Bridgewater
471	05	MI	H. Brown Co., Inc.	Grand Rapids
472	02	NY	Nepera Chemical Co., Inc.	Maybrook
473	02	NY	Niagara County Refuse	Wheatfield
474	04	FL	Sherwood Medical Industries	Deland
475	04	AL	Olin Corp. (McIntosh Plant)	McIntosh
476	05	MI	Southwest Ottawa County Landfill	Park Township
477	02	NY	Kentucky Avenue Well Field	Horseheads
478	02	NY	Pasley Solvents & Chemicals, Inc.	Hempstead
479	06	TX	Sol Lynn/Industrial Transformers	Houston
480	02	NJ	Asbestos Dump	Millington
481	04	KY	Lee's Lane Landfill	Louisville
482	06	AR	Frit Industries	Walnut Ridge
483	05	IL	Amoco Chemicals (Joliet Landfill)	Joliet
484	05	OH	Fultz Landfill	Jackson Township
485	04	NC	New Hanover Cnty Airport Burn Pit	Wilmington
486	10	OR	Allied Plating, Inc.	Portland
487	05	OH	Coshocton Landfill	Franklin Township
488	03	PA	AMP, Inc. (Glen Rock Facility)	Glen Rock
489	04	NC	JFD Electronics/Channel Master	Oxford
490	04	TN	Arlington Blending & Packaging	Arlington
491	06	LA	PAB Oil & Chemical Service, Inc.	Abbeville
492	04	FL	Sydney Mine Sludge Ponds	Brandon
493	06	NM	Cimarron Mining Corp.	Carrizozo
494	01	RI	Davis (GSR) Landfill	Glocester
495	03	PA	Lord-Shope Landfill	Girard Township
496	10	WA	FMC Corp. (Yakima Pit)	Yakima
497	05	WI	Northern Engraving Co.	Sparta
498	06	TX	South Cavalcade Street	Houston
499	01	MA	PSC Resources	Palmer
500	05	MI	Forest Waste Products	Otisville

National Priorities List (by Rank)
March 1990

NPL Rank	EPA Reg	St	Site Name	City/County
			Group 11 (HRS Scores 38.52 - 37.77)	
501	03	PA	Drake Chemical	Lock Haven
502	09	CA	United Heckathorn Co.	Richmond
503	01	NH	Kearsarge Metallurgical Corp.	Conway
504	04	SC	Palmetto Wood Preserving	Dixiana
505	05	IL	Petersen Sand & Gravel	Libertyville
506	05	MI	Clare Water Supply	Clare
507	03	PA	Havertown PCP	Haverford
508	03	DE	New Castle Spill	New Castle County
509	07	MO	St Louis Airport/HIS/Fut Coatings	St. Louis County
510	08	MT	Idaho Pole Co.	Bozeman
511	03	DE	NCR Corp. (Millsboro Plant)	Millsboro
512	05	IN	Lake Sandy Jo (M&M Landfill)	Gary
513	05	IL	Johns-Manville Corp.	Waukegan
514	05	MI	Chem Central	Wyoming Township
515	05	MI	Novaco Industries	Temperance
516	04	FL	Beulah Landfill	Pensacola
517	05	MN	Windom Dump	Windom
518	01	RI	Rose Hill Regional Landfill	South Kingstown
519	02	NJ	Jackson Township Landfill	Jackson Township
520	05	IL	NL Industries/Taracorp Lead Smelt	Granite City
521	04	KY	Red Penn Sanitation Co. Landfill	Peewee Valley
522	05	MI	K&L Avenue Landfill	Oshtemo Township
523	05	OH	TRW, Inc. (Minerva Plant)	Minerva
524	10	WA	Kaiser Aluminum Mead Works	Mead
525	06	OK	Mosley Road Sanitary Landfill	Oklahoma City
526	01	CT	Barkhamsted-New Hartford Landfill	Barkhamsted
527	05	MN	Perham Arsenic Site	Perham
528	05	MI	Charlevoix Municipal Well	Charlevoix
529	02	NJ	Montgomery Township Housing Devel	Montgomery Township
530	02	NJ	Rocky Hill Municipal Well	Rocky Hill Borough
531	02	NJ	Cinnaminson Ground Water Contamin	Cinnaminson Township
532	02	NY	Brewster Well Field	Putnam County
533	02	NY	Vestal Water Supply Well 1-1	Vestal
534	03	PA	Bally Ground Water Contamination	Bally Borough
535	04	FL	Chemform, Inc.	Pompano Beach
536	04	FL	Wilson Concepts of Florida, Inc.	Pompano Beach
537	04	NC	Bypass 601 Ground Water Contamin	Concord
538	04	NC	FCX, Inc. (Statesville Plant)	Statesville
539	04	SC	Lexington County Landfill Area	Cayce
540	05	MI	Michigan Disposal(Cork Street Lf)	Kalamazoo
541	07	MO	Solid State Circuits, Inc.	Republic
542	07	NE	Waverly Ground Water Contamin	Waverly
543	08	UT	Utah Power&Light/American Barrel	Salt Lake City
544	09	CA	Advanced Micro Devices, Inc.	Sunnyvale
545	10	WA	Hidden Valley Lndfl (Thun Field)	Pierce County
546	10	WA	Yakima Plating Co.	Yakima
547	05	MN	Nutting Truck & Caster Co.	Faribault
548	02	NJ	U.S. Radium Corp.	Orange
549	05	MI	Carter Industrials, Inc.	Detroit
550	06	TX	Highlands Acid Pit	Highlands

National Priorities List (by Rank)
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NPL Rank	EPA Reg	St	Site Name	City/County
			Group 12 (HRS Scores 37.69 - 35.94)	
551	03	PA	Resin Disposal	Jefferson Borough
552	08	MT	Libby Ground Water Contamination	Libby
553	04	KY	Newport Dump	Newport
554	04	SC	Sangamo/Twelve-Mile/Hartwell PCB	Pickens
555	03	PA	Moyers Landfill	Eagleville
556	01	NH	Savage Municipal Water Supply	Milford
557	05	MN	LaGrand Sanitary Landfill	LaGrand Township
558	05	IN	Poer Farm	Hancock County
559	03	PA	Brown's Battery Breaking	Shoemakersville
560	02	NY	SMS Instruments, Inc.	Deer Park
561	05	MI	Hedblum Industries	Oscoda
562	06	TX	United Creosoting Co.	Conroe
563	02	NY	Byron Barrel & Drum	Byron
564	05	MI	Bendix Corp./Allied Automotive	St. Joseph
565	08	WY	Baxter/Union Pacific Tie Treating	Laramie
566	02	NY	Anchor Chemicals	Hicksville
567	05	MI	Waste Management-Mich (Holland)	Holland
568	03	VA	Arrowhead Assoc/Scovill Corp.	Montross
569	03	VA	Atlantic Wood Industries, Inc.	Portsmouth
570	06	TX	North Cavalcade Street	Houston
571	02	NJ	Sayreville Landfill	Sayreville
572	01	NH	Dover Municipal Landfill	Dover
573	02	NY	Ludlow Sand & Gravel	Clayville
574	03	VA	Saunders Supply Co.	Chuckatuck
575	05	WI	City Disposal Corp. Landfill	Dunn
576	02	NJ	Tabernacle Drum Dump	Tabernacle Township
577	07	MO	Minker/Stout/Romaine Creek	Imperial
578	04	KY	Howe Valley Landfill	Howe Valley
579	01	CT	Yaworski Waste Lagoon	Canterbury
580	03	WV	Leetown Pesticide	Leetown
581	04	SC	Rochester Property	Travelers Rest
582	04	FL	Cabot/Koppers	Gainesville
583	02	NJ	Evor Phillips Leasing	Old Bridge Township
584	03	PA	William Dick Lagoons	West Caln Township
585	05	IN	Douglass Road/Uniroyal, Inc., Lf	Mishawaka
586	03	PA	Lackawanna Refuse	Old Forge Borough
587	06	OK	Compass Industries (Avery Drive)	Tulsa
588	02	NJ	Mannheim Avenue Dump	Galloway Township
589	05	IN	Neal's Dump (Spencer)	Spencer
590	02	NY	Fulton Terminals	Fulton
591	06	LA	Dutchtown Treatment Plant	Ascension Parish
592	03	PA	Westinghouse Elevator Co. Plant	Gettysburg
593	01	NH	Auburn Road Landfill	Londonderry
594	03	WV	Fike Chemical, Inc.	Nitro
595	05	MN	General Mills/Henkel Corp.	Minneapolis
596	04	TN	Wrigley Charcoal Plant	Wrigley
597	05	OH	Laskin/Poplar Oil Co.	Jefferson Township
598	05	OH	Old Mill	Rock Creek
599	04	SC	Townsend Saw Chain Co.	Pontiac
600	07	KS	Johns' Sludge Pond	Wichita

National Priorities List (by Rank)
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NPL Rank	EPA Reg	St	Site Name	City/County
			Group 13 (HRS Scores 35.79 - 35.35)	
601	05	WI	Stoughton City Landfill	Stoughton
602	09	CA	Del Norte Pesticide Storage	Crescent City
603	03	VA	Suffolk City Landfill	Suffolk
604	01	VT	Tansitor Electronics, Inc.	Bennington
605	02	NJ	De Rewal Chemical Co.	Kingwood Township
606	03	PA	Middletown Air Field	Middletown
607	02	NJ	Swope Oil & Chemical Co.	Pennsauken
608	04	GA	Monsanto Corp. (Augusta Plant)	Augusta
609	01	NH	South Municipal Water Supply Well	Peterborough
610	01	ME	Winthrop Landfill	Winthrop
611	03	WV	Ordnance Works Disposal Areas	Morgantown
612	05	OH	Zanesville Well Field	Zanesville
613	02	NY	Suffern Village Well Field	Village of Suffern
614	02	NY	Endicott Village Well Field	Village of Endicott
615	03	DE	Dover Gas Light Co.	Dover
616	03	PA	Aladdin Plating	Scott Township
617	03	PA	North Penn - Area 1	Souderton
618	03	PA	North Penn - Area 7	North Wales
619	03	PA	North Penn - Area 6	Lansdale
620	03	PA	North Penn - Area 2	Hatfield
621	03	PA	North Penn - Area 5	Montgomery Township
622	04	FL	Harris Corp. (Palm Bay Plant)	Palm Bay
623	05	IL	DuPage Cty Ldf/Blackwell Forest	Warrenville
624	05	MN	Kummer Sanitary Landfill	Bemidji
625	05	OH	Sanitary Landfill Co. (IWD)	Dayton
626	05	WI	Eau Claire Municipal Well Field	Eau Claire
627	06	NM	Pagano Salvage	Los Lunas
628	07	MO	Valley Park TCE	Valley Park
629	09	CA	San Fernando Valley (Area 4)	Los Angeles
630	09	CA	Monolithic Memories	Sunnyvale
631	09	CA	National Semiconductor Corp.	Santa Clara
632	09	CA	Fresno Municipal Sanitary Lndfll	Fresno
633	09	CA	Newmark Ground Water Contamin	San Bernardino
634	04	GA	Powersville Site	Peach County
635	05	MI	Grand Traverse Overall Supply Co.	Greilickville
636	05	MI	Metamora Landfill	Metamora
637	02	NY	Niagara Mohawk Power(Saratoga Sp)	Saratoga Springs
638	05	MI	Whitehall Municipal Wells	Whitehall
639	03	DE	Standard Chlorine of Delaware,Inc	Delaware City
640	05	MN	South Andover Site	Andover
641	02	NJ	Diamond Alkali Co.	Newark
642	05	IN	Carter Lee Lumber Co.	Indianapolis
643	01	NH	Fletcher's Paint Works & Storage	Milford
644	03	VA	Avtex Fibers, Inc.	Front Royal
645	05	MI	Kentwood Landfill	Kentwood
646	05	MI	Electrovoice	Buchanan
647	09	CA	Jasco Chemical Corp.	Mountain View
648	02	NY	Katonah Municipal Well	Town of Bedford
649	07	KS	29th & Mead Ground Water Contamin	Wichita
650	09	CA	Teledyne Semiconductor	Mountain View

National Priorities List (by Rank)
March 1990

NPL Rank	EPA Reg	St	Site Name	City/County
			Group 14 (HRS Scores 35.34 - 34.21)	
651	02	PR	Fibers Public Supply Wells	Jobos
652	03	VA	Dixie Caverns County Landfill	Salem
653	05	IN	Marion (Bragg) Dump	Marion
654	05	OH	Pristine, Inc.	Reading
655	05	WI	Mid-State Disposal, Inc. Landfill	Cleveland Township
656	04	TN	American Creosote (Jackson Plant)	Jackson
657	08	CO	Broderick Wood Products	Denver
658	02	NY	C & J Disposal Leasing Co. Dump	Hamilton
659	05	OH	Buckeye Reclamation	St. Clairsville
660	02	NY	Preferred Plating Corp.	Farmingdale
661	06	TX	Bio-Ecology Systems, Inc.	Grand Prairie
662	08	UT	Monticello Rad Contaminated Props	Monticello
663	02	NJ	Woodland Route 532 Dump	Woodland Township
664	05	IN	American Chemical Service, Inc.	Griffith
665	01	MA	Salem Acres	Salem
666	02	NY	Richardson Hill Road Lndfll/Pond	Sidney Center
667	01	VT	Old Springfield Landfill	Springfield
668	03	PA	Bell Landfill	Terry Township
669	02	NY	Solvent Savers	Lincklaen
670	03	VA	U.S. Titanium	Piney River
671	05	IL	Galesburg/Koppers Co.	Galesburg
672	09	CA	J.H. Baxter & Co.	Weed
673	02	NY	Hooker (Hyde Park)	Niagara Falls
674	05	MI	SCA Independent Landfill	Muskegon Heights
675	02	NY	Action Anodizing,Plating Polish	Copiague
676	09	CA	MGM Brakes	Cloverdale
677	06	LA	Bayou Sorrel Site	Bayou Sorrel
678	05	IL	M.O.D. Landfill	Antioch
679	05	MI	Duell & Gardner Landfill	Dalton Township
680	10	WA	Mica Landfill	Mica
681	02	NJ	Ellis Property	Evesham Township
682	04	KY	Distler Farm	Jefferson County
683	09	CA	Waste Disposal, Inc.	Santa Fe Springs
684	10	WA	Harbor Island (Lead)	Seattle
685	05	WI	Lemberger Transport & Recycling	Franklin Township
686	05	OH	E.H. Schilling Landfill	Hamilton Township
687	05	MI	Cliff/Dow Dump	Marquette
688	02	NY	Clothier Disposal	Town of Granby
689	03	PA	Ambler Asbestos Piles	Ambler
690	10	WA	Queen City Farms	Maple Valley
691	02	NJ	Curcio Scrap Metal, Inc.	Saddle Brook Twp
692	03	VA	L.A. Clarke & Son	Spotsylvania County
693	05	WI	Scrap Processing Co., Inc.	Medford
694	03	MD	Southern Maryland Wood Treating	Hollywood
695	05	IL	Ilada Energy Co.	East Cape Girardeau
696	05	MI	Kaydon Corp.	Muskegon
697	05	WI	Sauk County Landfill	Excelsior
698	06	NM	Homestake Mining Co.	Milan
699	06	TX	Dixie Oil Processors, Inc.	Friendswood
700	09	CA	Beckman Instruments (Porterville)	Porterville

National Priorities List (by Rank)
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NPL Rank	EPA Reg	St	Site Name	City/County
			Group 15 (HRS Scores 34.19 - 33.62)	
701	05	MI	Muskegon Chemical Co.	Whitehall
702	04	FL	Dubose Oil Products Co.	Cantonment
703	05	MI	Mason County Landfill	Pere Marquette Twp
704	05	MI	Cemetery Dump	Rose Center
705	07	IA	Red Oak City Landfill	Red Oak
706	05	IN	Lakeland Disposal Service, Inc.	Claypool
707	02	NJ	Hopkins Farm	Plumstead Township
708	04	NC	Cape Fear Wood Preserving	Fayetteville
709	01	RI	Stamina Mills, Inc.	North Smithfield
710	05	WI	Lemberger Landfill, Inc.	Whitelaw
711	05	IN	Reilly Tar (Indianapolis Plant)	Indianapolis
712	01	ME	Pinette's Salvage Yard	Washburn
713	01	CT	Durham Meadows	Durham
714	03	DE	Tyler Refrigeration Pit	Smyrna
715	05	MI	Kysor Industrial Corp.	Cadillac
716	09	CA	Lorentz Barrel & Drum Co.	San Jose
717	02	NJ	Wilson Farm	Plumstead Township
718	02	NY	Conklin Dumps	Conklin
719	03	PA	Old City of York Landfill	Seven Valleys
720	03	PA	Modern Sanitation Landfill	Lower Windsor Twp
721	05	IL	Byron Salvage Yard	Byron
722	05	MI	North Bronson Industrial Area	Bronson
723	03	PA	Stanley Kessler	King of Prussia
724	04	SC	Helena Chemical Co. Landfill	Fairfax
725	07	MO	Kem-Pest Laboratories	Cape Girardeau
726	02	NJ	Imperial Oil/Champion Chemicals	Morganville
727	02	NJ	Cosden Chemical Coatings Corp.	Beverly
728	05	MN	St. Augusta San Lndfll/Engen Dump	St. Augusta Township
729	02	NJ	Myers Property	Franklin Township
730	02	NJ	Pepe Field	Boonton
731	04	KY	Tri-City Disposal Co.	Shepherdsville
732	10	WA	Northwest Transformer	Everson
733	02	NY	Genzale Plating Co.	Franklin Square
734	05	MI	Albion-Sheridan Township Landfill	Albion
735	05	WI	Sheboygan Harbor & River	Sheboygan
736	05	MI	Ossineke Ground Water Contamin	Ossineke
737	03	WV	Follansbee Site	Follansbee
738	03	PA	Keystone Sanitation Landfill	Union Township
739	04	NC	Carolina Transformer Co.	Fayetteville
740	02	NY	Carroll & Dubies Sewage Disposal	Port Jervis
741	02	NY	North Sea Municipal Landfill	North Sea
742	03	PA	Bendix Flight Systems Division	Bridgewater Township
743	09	CA	Koppers Co Inc (Oroville Plant)	Oroville
744	09	CA	Louisiana-Pacific Corp.	Oroville
745	01	CT	Linemaster Switch Corp.	Woodstock
746	03	VA	H & H Inc., Burn Pit	Farrington
747	05	MI	South Macomb Disposal (Lf 9 & 9A)	Macomb Township
748	05	MI	U.S. Aviex	Howard Township
749	03	PA	Walsh Landfill	Honeybrook Township
750	02	NJ	Landfill & Development Co.	Mount Holly

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NPL Rank	EPA Reg	St	Site Name	City/County
			Group 16 (HRS Scores 33.62 - 32.34)	
751	02	NJ	Upper Deerfield Township San Lndf	Upper Deerfield Twp
752	02	NY	Hertel Landfill	Plattekill
753	02	NY	Haviland Complex	Town of Hyde Park
754	02	NY	Malta Rocket Fuel Area	Malta
755	02	NY	Jones Chemicals, Inc.	Caledonia
756	03	PA	Saegertown Industrial Area	Saegertown
757	04	GA	Cedartown Municipal Landfill	Cedartown
758	05	MI	Kent City Mobile Home Park	Kent City
759	05	MN	Adrian Municipal Well Field	Adrian
760	06	NM	AT & SF (Clovis)	Clovis
761	07	KS	Strother Field Industrial Park	Cowley County
762	07	KS	Obee Road	Hutchinson
763	09	CA	CTS Printex, Inc.	Mountain View
764	02	NJ	Fried Industries	East Brunswick Twp
765	02	NY	American Thermostat Co.	South Cairo
766	08	ND	Minot Landfill	Minot
767	04	TN	Lewisburg Dump	Lewisburg
768	05	MI	McGraw Edison Corp.	Albion
769	02	NY	Goldisc Recordings, Inc.	Holbrook
770	02	NY	Islip Municipal Sanitary Landfill	Islip
771	09	CA	Sola Optical USA, Inc.	Petaluma
772	04	KY	Airco	Calvert City
773	03	PA	Metal Banks	Philadelphia
774	05	IL	Yeoman Creek Landfill	Waukegan
775	02	NY	Sarney Farm	Amenia
776	05	MI	Folkertsma Refuse	Grand Rapids
777	01	MA	Rose Disposal Pit	Lanesboro
778	05	OH	Van Dale Junkyard	Marietta
779	08	MT	Montana Pole and Treating	Butte
780	04	NC	Geigy Chemical Corp(Aberdeen Plt)	Aberdeen
781	04	KY	B.F. Goodrich	Calvert City
782	04	KY	General Tire/Rubber(Mayfield Lnf)	Mayfield
783	05	MI	Organic Chemicals, Inc.	Grandville
784	02	NY	BioClinical Laboratories, Inc.	Bohemia
785	02	NY	Volney Municipal Landfill	Town of Volney
786	02	NY	FMC Corp. (Dublin Road Landfill)	Town of Shelby
787	05	WI	Tomah Fairgrounds	Tomah
788	01	MA	Sullivan's Ledge	New Bedford
789	04	KY	Smith's Farm	Brooks
790	05	WI	Madison Metro Sewer District Lag	Blooming Grove
791	10	OR	Joseph Forest Products	Joseph
792	02	PR	Juncos Landfill	Juncos
793	07	KS	Big River Sand Co.	Wichita
794	05	IN	Bennett Stone Quarry	Bloomington
795	10	WA	Wyckoff Co./Eagle Harbor	Bainbridge Island
796	04	SC	Beaunit Corp(Circular Knit & Dye)	Fountain Inn
797	02	NJ	Industrial Latex Corp.	Wallington Borough
798	04	FL	Munisport Landfill	North Miami
799	06	LA	D.L. Mud, Inc.	Abbeville
800	04	AL	Stauffer Chem (LeMoyne Plant)	Axis

National Priorities List (by Rank)
March 1990

NPL Rank	EPA Reg	St	Site Name	City/County
Group 17 (HRS Scores 32.27 - 31.58)				
801	02	NJ	M&T Delisa Landfill	Asbury Park
802	06	TX	Crystal City Airport	Crystal City
803	04	SC	Geiger (C & M Oil)	Rantoules
804	05	WI	Moss-American(Kerr-McGee Oil Co.)	Milwaukee
805	05	WI	Waste Research & Reclamation Co.	Eau Claire
806	10	OR	Gould, Inc.	Portland
807	01	ME	Union Chemical Co., Inc.	South Hope
808	02	NY	Cortese Landfill	Vil of Narrowsburg
809	09	CA	Montrose Chemical Corp.	Torrance
810	05	MN	St. Louis River Site	St. Louis County
811	05	MI	Auto Ion Chemicals, Inc.	Kalamazoo
812	03	PA	Recticon/Allied Steel Corp.	East Coventry Twp
813	05	WI	Hagen Farm	Stoughton
814	04	SC	Carolawn, Inc.	Fort Lawn
815	07	IA	Midwest Manufacturing/North Farm	Kellogg
816	03	PA	Berks Sand Pit	Longswamp Township
817	09	CA	Valley Wood Preserving, Inc.	Turlock
818	03	PA	Butz Landfill	Stroudsburg
819	04	FL	City Industries, Inc.	Orlando
820	05	MI	Sparta Landfill	Sparta Township
821	05	IL	Acme Solvent (Morristown Plant)	Morristown
822	01	NH	Holton Circle Ground Water Contam	Londonderry
823	02	NJ	Pomona Oaks Residential Wells	Galloway Township
824	02	NY	Rowe Industries Ground Water Cont	Noyack/Sag Harbor
825	03	PA	Hebelka Auto Salvage Yard	Weisenberg Township
826	04	FL	Hipps Road Landfill	Duval County
827	05	MN	Long Prairie Ground Water Contam	Long Prairie
828	05	MN	Waite Park Wells	Waite Park
829	09	CA	Applied Materials	Santa Clara
830	09	CA	Intel Magnetics	Santa Clara
831	09	CA	Intel Corp. (Santa Clara III)	Santa Clara
832	09	CA	TRW Microwave, Inc (Building 825)	Sunnyvale
833	09	CA	Synertek, Inc. (Building 1)	Santa Clara
834	04	FL	Pepper Steel & Alloys, Inc.	Medley
835	02	NY	Mattiace Petrochemical Co., Inc.	Glen Cove
836	01	ME	O'Connor Co.	Augusta
837	05	WI	Oconomowoc Electroplating Co. Inc	Ashippin
838	05	IN	Continental Steel Corp.	Kokomo
839	05	MI	Rasmussen's Dump	Green Oak Township
840	02	NY	Kenmark Textile Corp.	Farmingdale
841	04	FL	Wingate Road Munic Incinerat Dump	Fort Lauderdale
842	03	PA	Westline Site	Westline
843	04	KY	Maxey Flats Nuclear Disposal	Hillsboro
844	04	NC	Benfield Industries, Inc.	Hazelwood
845	08	MT	Mouat Industries	Columbus
846	05	MI	J & L Landfill	Rochester Hills
847	02	NY	Claremont Polychemical	Old Bethpage
848	05	OH	Powell Road Landfill	Dayton
849	03	PA	Croydon TCE	Croydon
850	04	SC	Medley Farm Drum Dump	Gaffney

National Priorities List (by Rank)
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NPL Rank	EPA Reg	St	Site Name	City/County
Group 18 (HRS Scores 31.45 - 30.54)				
851	04	SC	Elmore Waste Disposal	Greer
852	07	IA	Vogel Paint & Wax Co.	Orange City
853	05	MN	Kurt Manufacturing Co.	Fridley
854	05	MI	Parsons Chemical Works, Inc.	Grand Ledge
855	03	PA	Revere Chemical Co.	Nockamixon Township
856	05	MI	Ionia City Landfill	Ionia
857	06	TX	Koppers Co Inc (Texarkana Plant)	Texarkana
858	08	CO	Lincoln Park	Canon City
859	08	CO	Smuggler Mountain	Pitkin County
860	05	IN	Wedzeb Enterprises, Inc.	Lebanon
861	02	PR	GE Wiring Devices	Juana Diaz
862	07	MO	Missouri Electric Works	Cape Girardeau
863	05	MI	Avenue "E" Ground Water Contamin	Traverse City
864	05	OH	New Lyme Landfill	New Lyme
865	02	NJ	Woodland Route 72 Dump	Woodland Township
866	02	PR	RCA Del Caribe	Barceloneta
867	05	MN	Koch Refining Co./N-Ren Corp.	Pine Bend
868	04	FL	Piper Aircraft/Vero Beach Wtr&Swr	Vero Beach
869	03	PA	Brodhead Creek	Stroudsburg
870	05	WI	Fadrowski Drum Disposal	Franklin
871	10	OR	United Chrome Products, Inc.	Corvallis
872	04	FL	Anodyne, Inc.	North Miami Beach
873	03	PA	Eastern Diversified Metals	Hometown
874	05	MI	Anderson Development Co.	Adrian
875	05	WI	Hunts Disposal Landfill	Caledonia
876	05	MI	Shiawassee River	Howell
877	06	OK	Tenth Street Dump/Junkyard	Oklahoma City
878	10	AK	Alaska Battery Enterprises	Fairbanks N Star Bor
879	03	PA	Taylor Borough Dump	Taylor Borough
880	03	DE	Halby Chemical Co.	New Castle
881	04	AL	Redwing Carriers, Inc. (Saraland)	Saraland
882	06	OK	Double Eagle Refinery Co.	Oklahoma City
883	04	GA	Mathis Bros Lf (S Marble Top Rd)	Kensington
884	03	DE	Harvey & Knott Drum, Inc.	Kirkwood
885	04	TN	Gallaway Pits	Gallaway
886	05	OH	Big D Campground	Kingsville
887	06	AR	Midland Products	Ola/Birta
888	02	NY	Robintech, Inc./National Pipe Co.	Town of Vestal
889	02	NY	BEC Trucking	Town of Vestal
890	03	PA	Strasburg Landfill	Newlin Township
891	06	OK	Fourth Street Abandoned Refinery	Oklahoma City
892	02	NJ	Witco Chemical Corp.(Oakland Plt)	Oakland
893	05	WI	Tomah Armory	Tomah
894	03	DE	Wildcat Landfill	Dover
895	05	MI	Burrows Sanitation	Hartford
896	03	PA	Blosenski Landfill	West Caln Township
897	03	VA	Rhinehart Tire Fire Dump	Frederick County
898	10	WA	Northwest Transformer(S Harkness)	Everson
899	03	DE	Delaware City PVC Plant	Delaware City
900	03	MD	Limestone Road	Cumberland

National Priorities List (by Rank)
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Group 19 (HRS Scores 30.48 - 29.31)

NPL Rank	EPA Reg	St	Site Name	City/County
901	02	NY	Hooker (102nd Street)	Niagara Falls
902	02	NJ	Higgins Farm	Franklin Township
903	10	WA	American Crossarm & Conduit Co.	Chehalis
904	06	NM	United Nuclear Corp.	Church Rock
905	03	PA	Reeser's Landfill	Upper Macungie Twp
906	03	VA	Rentokil, Inc. (VA Wood Pres Div)	Richmond
907	06	AR	Industrial Waste Control	Fort Smith
908	09	CA	Celtor Chemical Works	Hoopa
909	01	MA	Haverhill Municipal Landfill	Haverhill
910	04	AL	Perdido Ground Water Contamin	Perdido
911	02	NY	Marathon Battery Corp.	Cold Springs
912	02	NY	Colesville Municipal Landfill	Town of Colesville
913	04	FL	Yellow Water Road Dump	Baldwin
914	04	GA	Marzone Inc./Chevron Chemical Co.	Tifton
915	05	OH	Skinner Landfill	West Chester
916	03	VA	First Piedmont Quarry (Route 719)	Pittsylvania County
917	04	NC	Chemtronics, Inc.	Swannanoa
918	05	IN	MIDCO II	Gary
919	06	TX	Sheridan Disposal Services	Hempstead
920	07	KS	Pester Refinery Co.	El Dorado
921	03	MD	Kane & Lombard Street Drums	Baltimore
922	07	MO	Shenandoah Stables	Moscow Mills
923	04	GA	Firestone Tire (Albany Plant)	Albany
924	07	IA	Shaw Avenue Dump	Charles City
925	03	PA	Berkley Products Co. Dump	Denver
926	10	WA	Silver Mountain Mine	Loomis
927	06	TX	Petro-Chemical (Turtle Bayou)	Liberty County
928	05	OH	Republic Steel Corp. Quarry	Elyria
929	07	MO	Conservation Chemical Co.	Kansas City
930	05	MN	Ritari Post & Pole	Sebeka
931	06	LA	Bayou Bonfouca	Slidell
932	09	CA	Intel Corp. (Mountain View Plant)	Mountain View
933	09	CA	Raytheon Corp.	Mountain View
934	09	CA	Hewlett-Packard(620-40 Page Mill)	Palo Alto
935	05	MN	Agate Lake Scrapyard	Fairview Township
936	05	MI	Adam's Plating	Lansing
937	06	AR	Jacksonville Municipal Landfill	Jacksonville
938	06	AR	Rogers Road Municipal Landfill	Jacksonville
939	03	VA	Saltville Waste Disposal Ponds	Saltville
940	01	ME	Saco Municipal Landfill	Saco
941	04	SC	Palmetto Recycling, Inc.	Columbia
942	01	MA	Shpack Landfill	Norton/Attleboro
943	03	PA	Kimberton Site	Kimberton Borough
944	04	TN	Mallory Capacitor Co.	Waynesboro
945	01	MA	Norwood PCBs	Norwood
946	02	NY	Warwick Landfill	Warwick
947	02	NY	Sidney Landfill	Sidney
948	10	WA	Old Inland Pit	Spokane
949	10	WA	Pesticide Lab (Yakima)	Yakima
950	05	IN	Lemon Lane Landfill	Bloomington

National Priorities List (by Rank)
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Group 20 (HRS Scores 29.28 - 28.50 , except for health-advisory sites)

NPL Rank	EPA Reg	St	Site Name	City/County
951	05	IN	Tri-State Plating	Columbus
952	10	ID	Arrcom (Drexler Enterprises)	Rathdrum
953	01	NH	Coakley Landfill	North Hampton
954	04	NC	Potter's Septic Tank Service Pits	Maco
955	04	NC	ABC One Hour Cleaners	Jacksonville
956	03	PA	Fischer & Porter Co.	Warminster
957	03	PA	Elizabethtown Landfill	Elizabethtown
958	06	AR	Arkwood, Inc.	Omaha
959	09	CA	Jibboom Junkyard	Sacramento
960	02	NJ	A. O. Polymer	Sparta Township
961	05	WI	Wausau Ground Water Contamination	Wausau
962	02	NJ	Dover Municipal Well 4	Dover Township
963	02	NJ	Rockaway Township Wells	Rockaway
964	02	NJ	Pohatcong Valley Ground Water Con	Warren County
965	02	NJ	Garden State Cleaners Co.	Minotola
966	03	DE	Sussex County Landfill No. 5	Laurel
967	03	PA	North Penn - Area 12	Worcester
968	05	WI	Delavan Municipal Well #4	Delavan
969	07	MO	North-U Drive Well Contamination	Springfield
970	09	CA	San Gabriel Valley (Area 3)	Alhambra
971	09	CA	San Gabriel Valley (Area 4)	La Puente
972	09	CA	Modesto Ground Water Contamin	Modesto
973	10	WA	American Lake Gardens	Tacoma
974	10	WA	Greenacres Landfill	Spokane County
975	10	WA	Northside Landfill	Spokane
976	06	OK	Sand Springs Petrochemical Cmplx	Sand Springs
977	06	TX	Pesses Chemical Co.	Fort Worth
978	05	MI	Metal Working Shop	Lake Ann
979	05	MN	East Bethel Demolition Landfill	East Bethel Township
980	06	TX	Triangle Chemical Co.	Bridge City
981	02	NJ	PJP Landfill	Jersey City
982	03	PA	Craig Farm Drum	Parker
983	05	IL	Belvidere Municipal Landfill	Belvidere
984	07	MO	Bee Cee Manufacturing Co.	Malden
985	03	PA	CryoChem, Inc.	Worman
986	02	NJ	Kauffman & Minteer, Inc.	Jobstown
987	03	PA	Lansdowne Radiation Site	Lansdowne
988	02	NY	Forest Glen Mobile Home Subdivis	Niagara Falls
989	02	NY	Radium Chemical Co., Inc.	New York City

Number of NPL Sites: 989

* = State top priority site

National Priorities List,
Federal Section (by Group)
March 1990

NPL Gr[1]	St	Site Name	City/County
1	WA	Hanford 200-Area (USDOE)	Benton County
1	WA	Hanford 300-Area (USDOE)	Benton County
1	CO	Rocky Flats Plant (USDOE)	Golden
1	CA	Riverbank Army Ammunition Plant	Riverbank
1	NM	Cal West Metals (USSBA)	Lemitar
1	MO	Weldon Spring (USDOE/Army)	St.Charles County
2	CO	Rocky Mountain Arsenal	Adams County
2	TN	Milan Army Ammunition Plant	Milan
2	PA	Naval Air Develop Center(8 Areas)	Warminster Township
2	CA	McClellan AFB (Ground Water Cont)	Sacramento
2	OH	Wright-Patterson Air Force Base	Dayton
2	OH	Feed Materials Prod Cent (USDOE)	Fernald
3	WA	Bonneville Power Adm Ross (USDOE)	Vancouver
3	MD	Aber Prov Ground-Edgewood Area	Edgewood
4	ID	Idaho National Engin Lab (USDOE)	Idaho Falls
4	AL	Anniston Army Depot (SE Ind Area)	Anniston
4	GA	Robins AFB (Lndfll #4/Sludge Lag)	Houston County
4	TN	Oak Ridge Reservation (USDOE)	Oak Ridge
4	NE	Cornhusker Army Ammunition Plant	Hall County
4	NJ	Naval Air Engineering Center	Lakehurst
4	UT	Hill Air Force Base	Ogden
5	CA	Treasure Island Nav Sta-Hun Pt An	San Francisco
5	AK	Eielson Air Force Base	Fairbanks N Star Bor
5	SC	Savannah River Site (USDOE)	Aiken
5	WA	Naval Air Sta, Whid Is (Ault)	Whidbey Island
5	NJ	W.R. Grace/Wayne Int Stor (USDOE)	Wayne Township
6	WA	Hanford 100-Area (USDOE)	Benton County
6	MA	Otis Air Nat Guard/Camp Edwards	Falmouth
7	UT	Ogden Defense Depot	Ogden
7	GA	Marine Corps Logistics Base	Albany
7	CA	Sacramento Army Depot	Sacramento
7	IL	Sangamo/Crab Orchard NWR (USDOI)	Carterville

* State top priority site

1: Sites are placed in groups (Gr) corresponding to groups of 50 on the final NPL

National Priorities List,
Federal Section (by Group)
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NPL Gr[1]	St	Site Name	City/County
7	ME	Brunswick Naval Air Station	Brunswick
7	CO	Air Force Plant PJKS	Waterton
7	NJ	Picatinny Arsenal	Rockaway Township
8	FL	Pensacola Naval Air Station	Pensacola
9	CA	Sharpe Army Depot	Lathrop
9	OK	Tinker AFB (Soldier Cr/Bldg 3001)	Oklahoma City
9	CA	Fort Ord	Marina
9	CA	Lawrence Livermore Lab (USDOE)	Livermore
9	MA	Fort Devens	Fort Devens
9	WA	McChord AFB (Wash Rack/Treatment)	Tacoma
9	IL	Savanna Army Depot Activity	Savanna
10	NY	Brookhaven National Lab (USDOE)	Upton
10	CA	Norton Air Force Base	San Bernardino
10	WA	Naval Air Sta, Whid Is (Seaplane)	Whidbey Island
10	NH	Pease Air Force Base	Portsmouth/Newington
10	WY	F.E. Warren Air Force Base	Cheyenne
11	CA	Barstow Marine Corps Logist Base	Barstow
11	AZ	Williams Air Force Base	Chandler
11	CA	Castle Air Force Base	Merced
12	PA	Letterkenny Army Depot (PDO Area)	Franklin County
12	CA	El Toro Marine Corps Air Station	El Toro
12	NJ	Fort Dix (Landfill Site)	Pemberton Township
12	AL	Alabama Army Ammunition Plant	Childersburg
12	WA	Hanford 1100-Area (USDOE)	Benton County
12	DE	Dover Air Force Base	Dover
12	UT	Monticello Mill Tailings (USDOE)	Monticello
13	MA	Fort Devens-Sudbury Training Ann	Middlesex County
13	WA	Fort Lewis Logistics Center	Tillicum
14	IL	Joliet Army Ammu Plant (LAP Area)	Joliet
14	OH	Mound Plant (USDOE)	Miamisburg
14	RI	Davisville Naval Constr Batt Cent	North Kingstown
14	ME	Loring Air Force Base	Limestone
14	PR	Naval Security Group Activity	Sabana Seca
14	PA	Letterkenny Army Depot (SE Area)	Chambersburg
14	NY	Griffiss Air Force Base	Rome

National Priorities List,
Federal Section (by Group)
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NPL Gr 1	St	Site Name	City/County
15	VA	Defense General Supply Center	Chesterfield County
15	WA	Fort Lewis (Landfill No. 5)	Tacoma
15	CA	Camp Pendleton Marine Corps Base	San Diego County
16	CA	George Air Force Base	Victorville
16	MN	Twin Cities Air Force(SAR Lndfll)	Minneapolis
16	MO	Lake City Army Plant (NW Lagoon)	Independence
16	WA	Naval Undersea Warf Sta (4 Areas)	Keyport
16	NC	Camp Lejeune Military Reservation	Onslow County
17	RI	Newport Naval Educat/Training Cen	Newport
17	AZ	Yuma Marine Corps Air Station	Yuma
17	IL	Joliet Army Ammu Plant (Mfg Area)	Joliet
17	FL	Jacksonville Naval Air Station	Jacksonville
17	FL	Cecil Field Naval Air Station	Jacksonville
17	WA	Fairchild Air Force Base(4 Areas)	Spokane County
17	CA	March Air Force Base	Riverside
17	TX	Lone Star Army Ammunition Plant	Texarkana
18	OR	Umatilla Army Depot (Lagoons)	Hermiston
18	MD	Aber Prov Ground-Michaelsville Lf	Aberdeen
18	MN	Naval Industrial Reserve Ordnance	Fridley
19	WA	Bangor Ordnance Disposal	Bremerton
19	NY	Plattsburgh Air Force Base	Plattsburgh
19	LA	Louisiana Army Ammunition Plant	Doyline
19	MO	Weldon Spring Form Army Ord Works	St. Charles County
19	CA	Moffett Naval Air Station	Sunnyvale
19	CA	Travis Air Force Base	Solano County
20	CA	Mather Air Force Base	Sacramento

Number of NPL Federal Facility Sites: 93

[FR Doc. 90-5902 Filed 3-13-90; 8:45 am]
BILLING CODE 6560-50-C

federal register

Wednesday
March 14, 1990

Part IX

The President

Executive Order 12707—Termination of Emergency With Respect to Nicaragua

Federal Register
Vol. 55, No. 50
Wednesday, March 14, 1990

Presidential Documents

Title 3—

The President

Executive Order 12707 of March 13, 1990

Termination of Emergency With Respect to Nicaragua

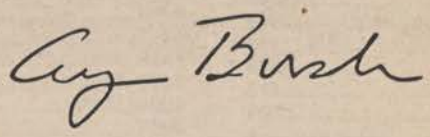
By the authority vested in me as President by the Constitution and laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), chapter 12 of title 50 of the United States Code (50 U.S.C. 191 *et seq.*), and section 301 of title 3 of the United States Code,

I, GEORGE BUSH, President of the United States of America, find that the February 25, 1990, democratic election in Nicaragua has ended the unusual and extraordinary threat to the national security and foreign policy of the United States previously posed by the policies and actions of the Sandinista government in that country, and the need to continue the national emergency declared in Executive Order No. 12513 of May 1, 1985, to deal with that threat.

I hereby revoke Executive Order No. 12513 and terminate the national emergency declared in that order with respect to Nicaragua.

Pursuant to section 202 of the National Emergencies Act (50 U.S.C. 1622), termination of the national emergency with respect to Nicaragua shall not affect any action taken or proceeding pending and not finally concluded or determined at the effective date of this order, or any action or proceeding based on any act committed prior to the effective date of this order, or any rights or duties that matured or penalties that were incurred prior to the effective date of this order.

This order shall take effect immediately.



THE WHITE HOUSE,
March 13, 1990.

[FR Doc. 90-6106
Filed 3-13-90; 12:59 pm]
Billing code 3195-01-M

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Vol. 55, No. 50

Wednesday, March 14, 1990

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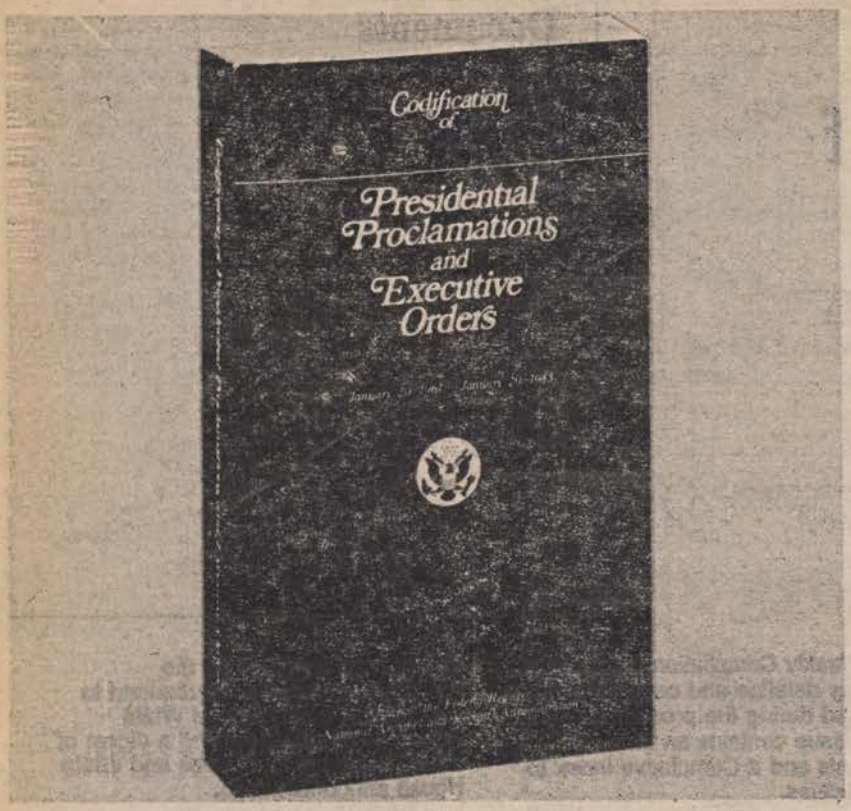

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