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Vol. 55

No. 187

# federal register

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Wednesday  
September 26, 1990

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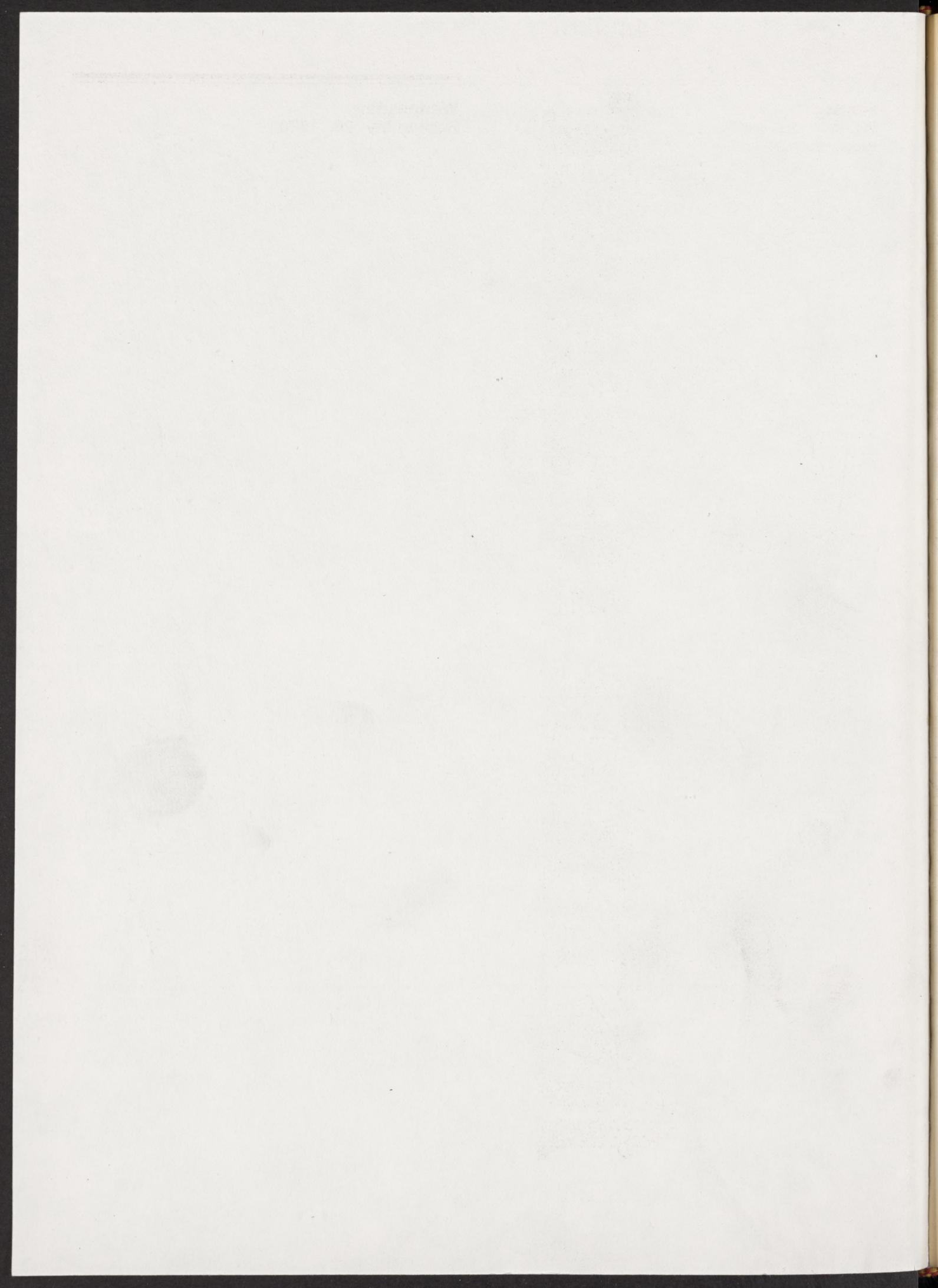
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## Presidential Documents

Title 3—

Proclamation 6185 of September 24, 1990

The President

National School Lunch Week, 1990

By the President of the United States of America

### A Proclamation

Established less than half a century ago, the National School Lunch Program has become the mainstay of the United States' Child Nutrition programs. The National School Lunch Act of 1946 underscored the depth of our concern for our youngest and most vulnerable citizens. It also declared it to be our policy "as a measure of national security, to safeguard the health and well-being of the Nation's children and to encourage the domestic consumption of nutritious agricultural commodities and other food."

When he signed the National School Lunch Act on June 4, 1946, President Truman observed that, "in the long view, no nation is any healthier than its children or more prosperous than its farmers." By promoting good nutrition among our Nation's schoolchildren, as well as the purchase and distribution of U.S. agricultural products, the National School Lunch Act has benefitted not only America's youth and farmers but also the entire country.

Since its enactment, the National School Lunch Program has been expanded to include the School Breakfast Program. Legislation has also been enacted to provide free meals to children from families with very low incomes. Today the National School Lunch Program serves appetizing and nutritious meals to more than 23 million children in over 91,000 schools. Recognizing the importance of a good breakfast to learning, nearly half of these institutions also participate in the School Breakfast Program and provide nutritious morning meals to nearly 4 million children each day. Over 80 percent of these children receive breakfast without charge because they are from families with low incomes.

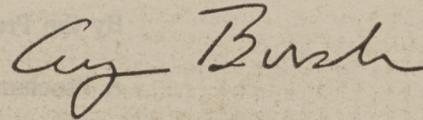
The School Breakfast and National School Lunch Programs not only encourage participating students to develop healthy eating habits, but also help to ensure that children come to class ready and able to learn. By providing the Nation's schoolchildren with nutritious meals, these valuable programs help to ensure that they have the energy, stamina, and good health needed to remain eager and attentive students. In so doing, these programs strengthen the educational process.

During National School Lunch Week, we pay due recognition to the many concerned Americans who devote their time and skill to providing children around the country with good nutrition at school. These individuals include Federal and State officials, food service professionals, school administrators, teachers, parents, local civic leaders, and many volunteers. Their generous cooperative efforts are a wonderful example of a successful partnership among Federal and State governments and local communities.

By joint resolution approved October 9, 1962 (Public Law 87-780), the Congress designated the week beginning on the second Sunday of October in each year as "National School Lunch Week" and requested the President to issue a proclamation in observance of that week.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the week beginning October 14, 1990, as National School Lunch Week. I call upon all Americans to recognize those dedicated and hardworking individuals who contribute to the success of the School Lunch Program.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fourth day of September, in the year of our Lord nineteen hundred and ninety, and of the Independence of the United States of America the two hundred and fiftieth.



[FR Doc. 90-22938

Filed 9-24-90; 4:23 pm]

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## Presidential Documents

Memorandum of September 6, 1990

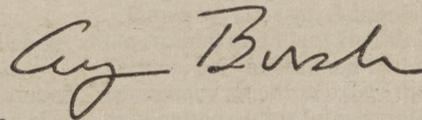
### Determination Under Section 405(a) of the Trade Act of 1974, as Amended—the Czech and Slovak Federal Republic

Memorandum for the Secretary of State

Pursuant to the authority vested in me under the Trade Act of 1974 (P.L. 93-618, January 3, 1975; 88 Stat. 1978), as amended (the "Trade Act"), I determine, pursuant to section 405(a) of the Trade Act, that the "Agreement on Trade Relations Between the Government of the United States of America and the Government of the Czechoslovak Federative Republic" will promote the purposes of the Trade Act and is in the national interest.

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

THE WHITE HOUSE,  
Washington, September 6, 1990.



PROVISIONAL GOVERNMENT

DECLARATION OF THE CZECH AND SLOVAK FEDERAL REPUBLIC

As the authority and directed to transfer power to the constituent representatives of the people of the Czech and Slovak Republics...

*Handwritten signature*

THE PRESIDENT

# Rules and Regulations

Federal Register

Vol. 55, No. 187

Wednesday, September 26, 1990

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

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

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 301

[Docket No. 90-182]

#### Mediterranean Fruit Fly; Removal From the Quarantined Areas

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Interim rule.

**SUMMARY:** We are amending the Mediterranean fruit fly regulations by removing from the list of quarantined areas in California a portion of Los Angeles County near Hancock Park, and the remaining quarantined area in San Bernardino County. We have determined that the Mediterranean fruit fly has been eradicated from these areas and that the restrictions are no longer necessary. This action relieves unnecessary restrictions on the interstate movement of regulated articles from these areas.

**DATES:** Interim rule effective September 21, 1990. Consideration will be given only to comments received on or before November 27, 1990.

**ADDRESSES:** To help ensure that your comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 90-182. Comments received may be inspected at USDA, room 1141, South Building, 14th and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m. Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:** Milton C. Holmes, Senior Operations Officer, Domestic and Emergency

Operations, PPQ, APHIS, USDA, room 642, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8247.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Mediterranean fruit fly, *Ceratitis capitata* (Wiedemann), is one of the world's most destructive pests of numerous fruits and vegetables, especially citrus fruits. The Mediterranean fruit fly can cause serious economic losses. Heavy infestations can cause complete loss of crops, and losses of 25 to 50 percent are not uncommon. The short life cycle of this pest permits the rapid development of serious outbreaks.

We established the Mediterranean fruit fly regulations and quarantined an area in Los Angeles County, California (7 CFR 301.78 *et seq.*; referred to below as the regulations), in a document effective August 23, 1989, and published in the *Federal Register* on August 29, 1989 (54 FR 35629-35635, Docket Number 89-146). We have published a series of interim rules amending these regulations by adding or removing certain portions of Los Angeles, Orange, San Bernardino, and Santa Clara Counties, California, from the list of quarantined areas. Amendment affecting California were made effective on September 14, October 11, November 17, and December 7, 1989; and on January 3, January 25, February 16, March 9, May 9, June 1, August 3, September 6, and September 14, 1990 (54 FR 38643-38645, Docket Number 89-169; 54 FR 42478-42480, Docket Number 89-182; 54 FR 48571-48572, Docket Number 89-202; 54 FR 51189-51191, Docket Number 89-206; 55 FR 712-715, Docket Number 89-212; 55 FR 3037-3039, Docket Number 89-227; 55 FR 6353-6355, Docket Number 90-014; 55 FR 9719-9721, Docket Number 90-031; 55 FR 19241-19243, Docket Number 90-050; 55 FR 22320-22323, Docket Number 90-081; 55 FR 32236-32238, Docket Number 90-151; 55 FR 37697-37699, Docket Number 90-175; and 55 FR 38529-38530, Docket Number 90-179).

Based on insect trapping surveys by inspectors of California State and county agencies and by inspectors of the Animal and Plant Health Inspection Service (APHIS), we have determined that the Mediterranean fruit fly has been eradicated from a portion of Los Angeles County near Hancock Part, and

the remaining portion of San Bernardino County near Alto Loma. The last finding of the Mediterranean fruit fly was made on April 5, 1990, near Hancock Park in Los Angeles County; and on April 18, 1990, near Alto Loma in San Bernardino County. Since then, no evidence of infestations has been found in these areas. We have determined that the Mediterranean fruit fly no longer exists in these areas, and we are therefore removing them from the list of areas in § 301.78.3(3) quarantined because of the Mediterranean fruit fly. No quarantined areas remain in San Bernardino County as a result of this action; the Mediterranean fruit fly has been eradicated from this county. A description of those areas that remain quarantined is set forth in full in the rule portion of this document.

##### Emergency Action

James W. Glosser, Administrator of the Animal and Plant Health Inspection Service, has determined that an emergency situation exists that warrants publication of this interim rule without prior opportunity public comment. The areas in California affected by this document were quarantined due to the possibility that the Mediterranean fruit fly could spread to noninfested areas of the United States. Since this situation no longer exists, and the continued quarantined status of these areas would impose unnecessary regulatory restrictions on the public, we have taken immediate action to remove restrictions from the noninfested areas.

Since prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest under these conditions, there is good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments received within 60 days of publication of this interim rule in the *Federal Register*. After the comment period closes, we will publish another document in the *Federal Register*, including a discussion of any comments we receive and any amendment we are making to the rule as a result of the comments.

##### Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information

compiled by the Department, we have determined that this rule will have an effect on the economy of less than \$100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect 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.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

This regulation affects the interstate movement of certain articles from portions of Los Angeles and San Bernardino Counties in California. Within these areas there are approximately 281 entities that could be affected, including 12 fruit/produce markets; 100 fruit vendors; 81 commercial growers; 79 nurseries; 6 farmers markets, and 3 flea markets.

The effect of this rule on these entities should be insignificant since most of these small entities handle regulated articles primarily for local intrastate movement, not interstate movement, and the distribution of these articles was not affected by the regulatory provisions we are removing.

Many of these entities also handle other items in addition to the previously regulated articles so that the effect, if any, on these entities is minimal. Further, the conditions in the Mediterranean fruit fly regulations and treatments in the Plant Protection and Quarantine Treatment Manual, incorporated by reference in the regulations, allowed interstate movement of most articles without significant added costs.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

**Paperwork Reduction Act**

The regulations in this subpart contain no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

**Executive Order 12372**

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with

State and local officials. (See 7 CFR 3015, subpart V).

**List of Subjects in 7 CFR Part 301**

Agricultural commodities, Incorporation by reference, Mediterranean fruit fly, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation.

Accordingly, 7 CFR part 301 is amended to read as follows:

**PART 301—DOMESTIC QUARANTINE NOTICES**

1. The authority citation for 7 CFR part 301 continues to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff; 161, 162, and 164-167; 7 CFR 2.17, 2.51, and 371.2(c).

2. Section 301.78-3, paragraph (c), is revised to read as follows:

**§ 301.78-3 Quarantined areas.**

\* \* \* \* \*

(c) \* \* \*

**California**

*Los Angeles and Orange Counties*

That portion of the counties in the San Gabriel Valley, Brea, Lakewood, and Los Angeles areas bounded by a line drawn as follows: Beginning at the intersection of Towne Avenue and State Highway 60; then westerly along this highway to its intersection with the Los Angeles-San Bernardino County line; then southerly and westerly along this county line to its intersection with the Los Angeles-Orange County line, then westerly along this line to its intersection with State Highway 57, then southerly along this highway to its intersection with Chapman Avenue, then westerly along this avenue to its intersection with Commonwealth Avenue, then southerly and westerly along this avenue to its intersection with Beach Boulevard, then southerly along this boulevard to its intersection with Lincoln Avenue, then westerly along this avenue to its intersection with Carson Street, then westerly along this street to its intersection with Lakewood Boulevard, then northerly along this boulevard to its intersection with Del Amo Boulevard, then westerly along this boulevard to its intersection with Downey Avenue, then northerly along this avenue to its intersection with Artesia Boulevard, then westerly along this boulevard to its intersection with Interstate Highway 710, then northerly along this highway to its intersection with State Highway 60, then westerly along this highway to its intersection with Soto Street, then northeasterly along this street to its intersection with

Whittier Boulevard, then westerly along this boulevard to its intersection with 6th Street, then northwesterly along this street to its intersection with Broadway, then southwesterly along Broadway to its intersection with Interstate Highway 10, then westerly along this highway to its intersection with La Brea Avenue, then northerly along this avenue to its intersection with Hollywood Boulevard, then easterly along this boulevard to its intersection with Highland Avenue, then northerly along this avenue to its intersection with U.S. Highway 101, then northwesterly along this highway to its intersection with State Highway 134, then easterly along this highway to its intersection with Interstate Highway 210, then easterly along this highway to its intersection with State Highway 39 (Azusa Avenue), then northerly along this highway to its intersection with the Azusa City limits, then easterly and southerly along the Azusa City limits to its intersection with the Glendora City limits, then northerly and easterly along the Glendora City limits to its intersection with the San Dimas City limits, then easterly and southerly along the San Dimas City limits to its intersection with the Angeles National Forest boundary, then easterly along this boundary to its intersection with the La Verne City limits, then northerly, easterly, and southerly along the La Verne City limits to its intersection with the Angeles National Forest boundary, then easterly along this boundary to its intersection with the Los Angeles/San Bernardino County line, then southwesterly along this line to its intersection with Philadelphia Street, then westerly along this street to its intersection with Towne Avenue, then southerly along this avenue to the point of beginning.

Done in Washington, DC, this 21st day of September 1990.

James W. Glosser,  
Administrator, Animal and Plant Health  
Inspection Service.

[FR Doc. 90-22780 Filed 9-25-90; 8:45 am]

BILLING CODE 3410-34-M

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 71**

[Airspace Docket No. 90-AEA-06]

**Alteration of Control Zone; Chantilly, VA**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This notice revises the Chantilly, VA, Control Zone by reducing the arrival extension to the north established for arriving aircraft at the Washington/Dulles International Airport, Washington, DC. This action reduces the controlled airspace to that amount which is actually required by the FAA to contain arriving aircraft at the airport. Additionally, the name of the airport and the actual geographic position are being updated.

**EFFECTIVE DATE:** 0901 u.t.c. December 13, 1990.

**FOR FURTHER INFORMATION CONTACT:** Mr. Curtis L. Brewington, Airspace Specialist, System Management Branch, AEA-530, Federal Aviation Administration, Fitzgerald Federal Building # 111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 917-0857.

**SUPPLEMENTARY INFORMATION:****History**

On June 15, 1990, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the Chantilly, VA, Control Zone by reducing the north arrival extension and updating the name of the Washington Dulles International Airport, as well as amending the actual geographic location of the airport (55 FR 28227). The proposed action would in effect return that amount of controlled airspace which is not needed by the FAA, back to the public.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No objections to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.171 of part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6F, January 2, 1990.

**The Rule**

This amendment to Part 71 of the Federal Aviation Regulations amends the Chantilly, VA, Control Zone by reducing the arrival extension to the north and updating the name of the Dulles International Airport to the Washington Dulles International Airport, as well as adjusting the geographic position of the airport to reflect the actual location.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is

not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Aviation safety, Control zones.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended as follows:

**PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS**

1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

**§ 71.171 [Amended]**

2. Section 71.171 is amended as follows:

**Chantilly, VA [Amended]**

Replace the first three occurrences of "Dulles International Airport" with "Washington Dulles International Airport";

Change "lat. 38°56'40" N., long. 77°27'24" W." to read "lat. 38°56'39" N., long. 77°27'26" W.";

Change "and within 3.5 miles each side of the Dulles International Airport Runway 19R ILS localizer course, extending from the 5.5-mile radius zone to 10 miles north of the OM.", to read "within 1 mile west of the Washington Dulles International Airport Runway 19R ILS localizer course to 1 mile east of the Washington Dulles International Airport Runway 19L localizer course, extending from the 5.5-mile radius zone to 0.5 miles north of the Runway 19R OM.".

Issued in Jamaica, New York, on August 23, 1990.

**Gary W. Tucker,**

*Manager, Air Traffic Division.*

[FR Doc. 90-22744 Filed 9-25-90; 8:45 am]

**BILLING CODE 4910-13-M**

**14 CFR Part 97**

[Docket No. 26342; Amdt. No. 1435]

**Standard Instrument Approach Procedures; Miscellaneous Amendments**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the **Federal Register** on December 31, 1980, and reapproved as of January 1, 1982.

**ADDRESSES:** Availability of matters incorporated by reference in the amendment is as follows:

**For Examination—**

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

**For Purchase—**

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

**By Subscription—**

Copies of all SIAPs mailed once every 2 weeks, are available from the U.S. Department of Transportation, Distribution Requirements Section, M-494.1, Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:**

Paul J. Best, Flight Procedures Standards Branch (AFS-420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-8277.

**SUPPLEMENTARY INFORMATION:** This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the *Federal Register* expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for

Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason. The FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 97**

Approaches, Standard instrument, Incorporation by reference.

Issued in Washington, DC on September 14, 1990.

Daniel C. Beaudette,

Director, Flight Standards Service.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.M.T. on the dates specified, as follows:

**PART 97—[AMENDED]**

1. The authority citation for part 97 continues to read as follows:

**Authority:** 49 U.S.C. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) [Revised Pub. L. 97-449, January 12, 1983]; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME,

MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

\* \* \* Effective December 13, 1990

Corona, CA—Corona Muni, VQR-A, Amdt 3  
Peachtree City, GA—Falcon Field, VOR/DME-B, Amdt. 1  
Peachtree City, GA—Falcon Field, RNAV RWY 31, Amdt. 2  
MC Pherson, KS—MC Pherson, VOR/DME RWY 36, Amdt. 5  
MC Pherson, KS—MC Pherson, NDB-A, Amdt. 4, CANCELLED  
MC Pherson, KS—MC Pherson, NDB RWY 18, Orig.  
EL Campo, TX—EL Campo Metro Airport, Inc., VOR/DME RWY 17, Amdt. 2  
EL Campo, TX—EL Campo Metro Airport, Inc., VOR/DME RWY 35, Amdt. 4  
EL Campo, TX—EL Campo Metro Airport, Inc., NDB RWY 35, Amdt. 3  
MC Gregor, TX—MC Gregor Muni, VOR/DME RWY 17, Amdt. 4

\* \* \* Effective November 15, 1990

San Luis Obispo, CA—San Luis Obispo County—McChesney Field, LOC RWY 11, Amdt. 3  
Lake Charles, LA—Lake Charles Regional, VOR-A, Amdt. 12  
Lake Charles, LA—Lake Charles Regional, VOR/DME-B, Amdt. 7  
Lake Charles, LA—Lake Charles Regional, LOC BC RWY 33, Amdt. 18  
Lake Charles, LA—Lake Charles Regional, NDB RWY 15, Amdt. 18  
Lake Charles, LA—Lake Charles Regional, ILS RWY 15, Amdt. 19  
Lake Charles, LA—Lake Charles Regional, RADAR-1, Amdt. 4  
Lake Charles, LA—Lake Charles Regional, RNAV RWY 5, Amdt. 3  
Lake Charles, LA—Lake Charles Regional, RNAV RWY 23, Amdt. 3

\* \* \* Effective October 18, 1990

Detroit, MI—Detroit Metropolitan Wayne County, NDB RWY 3C, Amdt. 11  
Detroit, MI—Detroit Metropolitan Wayne County, NDB RWY 3L, Amdt. 10  
Detroit, MI—Detroit Metropolitan Wayne County, ILS RWY 3L, Amdt. 12  
Staples, MN—Staples Muni, NDB RWY 14, Orig.  
Staples, MN—Staples Muni, NDB RWY 14, Amdt. 4, CANCELLED  
Nacogdoches, TX—A L Mangham Jr. Regional, VOR/DME RWY 36, Orig.  
Nacogdoches, TX—A L Mangham Jr. Regional, NDB RWY 15, Amdt. 3

\* \* \* Effective September 14, 1990

Elizabeth City, NC—Elizabeth City CG Air Station/Muni, VOR/DME RWY 1, Amdt. 11

\* \* \* Effective September 13, 1990

Farmington, NM—Four Corners Regional, VOR RWY 25, Amdt. 7  
Farmington, NM—Four Corners Regional, ILS RWY 25, Amdt. 5

\* \* \* Effective September 6, 1990

New Bedford, MA—New Bedford Muni, LOC (BC) RWY 23, Amdt. 9

\* \* \* Effective August 31, 1990

Lawrence, KS—Lawrence Muni, VOR/DME—A, Amdt. 8

Note at the end of § 97.27 the FAA published an Amendment in Docket No. 26323, Amdt. No. 1434 to part 97 of the Federal Aviation Regulations (VOL 55 FR No. 176 Page 37320; dated 11 Sep 90) under § 97.23 effective October 18, 1990, which is hereby amended as follows:

Pittsburgh, PA—Greater Pittsburgh Intl, ILS 1 RWY 28L, Amdt. 4 . . . should read  
Pittsburgh, PA—Greater Pittsburgh Intl, ILS RWY 28R, Amdt. 4.

[FR Doc. 90-22745 Filed 9-25-90; 8:45 am]

BILLING CODE 4910-13-M

## DEPARTMENT OF COMMERCE

### Bureau of Export Administration

#### 15 CFR Part 769

[Docket No. 900666-0166]

RIN 0694-A095

#### Restrictive Trade Practices or Boycotts; Interpretation

**AGENCY:** Bureau of Export Administration, Commerce.

**ACTION:** Final rule; interpretation.

**SUMMARY:** Section 769.2 of the Export Administration Regulations (EAR) prohibits U.S. persons from furnishing certain types of information with intent to comply with, further, or support an unsanctioned foreign boycott against a country friendly to the United States. The Department is adding a new Supplement No. 16 to part 769 to clarify whether the antiboycott provisions of § 769.2 apply to the transmission of prohibited information to others by a U.S. person who has not authored such information.

**EFFECTIVE DATE:** This rule is effective September 26, 1990.

**FOR FURTHER INFORMATION CONTACT:** Mary Martin, Compliance Policy Division, Office of Antiboycott Compliance, Bureau of Export Administration, Telephone: (202) 377-4550.

#### SUPPLEMENTARY INFORMATION:

##### Background

The antiboycott regulations prohibit, among other things, the furnishing by U.S. persons of certain types of information, including information about U.S. persons' race, religion, sex, or national origin (§ 769.2(c)), business relationships with boycotted countries or blacklisted persons (§ 769.2(d)), and U.S. persons' association with certain charitable and fraternal organizations

(§ 769.2(e)). To be prohibited, the information must be furnished with the intent to comply with, further, or support an unsanctioned foreign boycott against a country friendly to the United States.

The Department has been asked frequently whether the regulations distinguish between transmitting, as hereinafter defined, and furnishing prohibited information, such that the former is not within the furnishing information prohibitions. This final rule clarifies whether the antiboycott provisions of § 769.2 apply to the transmission of prohibited information to others by a U.S. person who has not authored such information.

#### Rulemaking Requirements

1. This rule complies with Executive Order 12291 and Executive Order 12661.

2. This rule does not contain a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

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

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. App. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Section 13(b) does not require that this rule be published in proposed form because this rule does not impose a new control. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Mary Martin, Compliance Policy Division, Office of Antiboycott Compliance, Bureau of Export

Administration, Department of Commerce, room 6094, Washington, DC 20230.

#### List of Subjects in 15 CFR Part 769

Boycotts, Foreign trade, Reporting and recordkeeping requirements.

Accordingly, part 769 of the Export Administration Regulations is amended as follows:

1. The authority citation for 15 CFR part 769 continues to read as follows:

**Authority:** Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97-145 of December 29, 1981, by Pub. L. 99-64 of July 12, 1985, and by Pub. L. 100-418 of August 23, 1988; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985).

#### PART 769—[AMENDED]

2. Part 769 is amended by adding a new Supplement No. 16 immediately following Supplement No. 15, as follows:

##### Supplement No. 16—Interpretation

Sections 769.2 (c), (d), and (e) of the Export Administration Regulations (EAR) prohibit United States persons from furnishing certain types of information with intent to comply with, further, or support an unsanctioned foreign boycott against a country friendly to the United States. The Department has been asked whether prohibited information may be transmitted—that is, passed to others by a United States person who has not directly or indirectly authored the information—without such transmission constituting a furnishing of information in violation of § 769.2 (c), (d), and (e). Throughout this interpretation, "transmission" is defined as the passing on by one person of information initially authored by another. The Department believes that there is no distinction in the EAR between transmitting (as defined above) and furnishing prohibited information under the EAR and that the transmission of prohibited information with the requisite boycott intent is a furnishing of information violative of the EAR. At the same time, however, the circumstances relating to the transmitting party's involvement will be carefully considered in determining whether that party intended to comply with, further, or support an unsanctioned foreign boycott.

The EAR does not deal specifically with the relationship between transmitting and furnishing. However, the restrictions in the EAR on responses to boycott-related conditions, both by direct and indirect actions and whether by primary parties or intermediaries, indicate that U.S. persons who simply

transmit prohibited information are to be treated the same under the EAR as those who both author and furnish prohibited information. This has been the Department's position in enforcement actions it has brought.

The few references in the EAR to the transmission of information by third parties are consistent with this position. Two examples, both relating to the prohibition against the furnishing of information about U.S. persons' race, religion, sex, or national origin (§ 769.2(c)), deal explicitly with transmitting information. These examples (§ 769.2(c), example (v), and § 769.3(e), example (vi)) show that, in certain cases, when furnishing certain information is permissible, either because it is not within a prohibition or is excepted from a prohibition, transmitting it is also permissible. These examples concern information that may be furnished by individuals about themselves or their families. The examples show that employers may transmit to a boycotting country visa applications or forms containing information about an employee's race, religion, sex, or national origin if that employee is the source of the information and authorizes its transmission. In other words, within the limits of ministerial action set forth in these examples, employers' actions in transmitting information are protected by the exception available to the employee. The distinction between permissible and prohibited behavior rests not on the definitional distinction between furnishing and transmitting, but on the excepted nature of the information furnished by the employee. The information originating from the employee does not lose its excepted character because it is transmitted by the employer.

The Department's position regarding the furnishing and transmission of certificates of one's own blacklist status rests on a similar basis and does not support the contention that third parties may transmit prohibited information authored by another. Such self-certifications do not violate any prohibitions in the EAR (see Supplement Nos. 1(I)(B), 2, and 5(A)(2); § 769.2(f), example (xiv)). It is the Department's position that it is not prohibited for U.S. persons to transmit such self-certifications completed by others. Once again, because furnishing the self-certification is not prohibited, third parties who transmit the self-certifications offend no prohibition. On the other hand, if a third party authored information about another's blacklist

status, the act of transmitting that information would be prohibited.

A third example in the EAR (§ 769.6, example (xiv)), which also concerns a permissible transmission of boycott-related information, does not support the theory that one may transmit prohibited information authored by another. This example deals with the reporting requirements in § 769.6 of the EAR—not the prohibitions—and merely illustrates that a person who receives and transmits a self-certification has not received a reportable request.

It is also the Department's position that a U.S. person violates the prohibitions against furnishing information by transmitting prohibited information even if that person has received no reportable request in the transaction. For example, where documents accompanying a letter of credit contain prohibited information, a negotiating bank that transmits the documents, with the requisite boycott intent, to an issuing bank has not received a reportable request, but has furnished prohibited information.

While the Department does not regard the suggested distinction between transmitting and furnishing information as meaningful, the facts relating to the third party's involvement may be important in determining whether that party furnished information with the required intent to comply with, further, or support an unsanctioned foreign boycott. For example, if it is a standard business practice for one participant in a transaction to obtain and pass on, without examination, documents prepared by another party, it might be difficult to maintain that the first participant intended to comply with a boycott by passing on information contained in the unexamined documents. Resolution of such intent questions, however, depends upon an analysis of the individual facts and circumstances of the transaction and the Department will continue to engage in such analysis on a case-by-case basis.

This interpretation, like all others issued by the Department discussing applications of the antiboycott provisions of the EAR, should be read narrowly. Circumstances that differ in any material way from those discussed in this interpretation will be considered under the applicable provisions of the regulations.

Dated: September 21, 1990.

William V. Skidmore,  
Director, Office of Antiboycott Compliance.  
[FR Doc. 90-22789 Filed 9-25-90; 8:45 am]

BILLING CODE 3510-DT-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Part 2

[Docket No. 90P-0269/CP]

#### General Administrative Rulings and Decisions; Chlorofluorocarbon Propellants in Self-Pressurized Containers; Amendment of Essential Use

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is adding to the list of products containing a chlorofluorocarbon for an essential use metered-dose atropine sulfate aerosol administered by oral inhalation. The agency is taking this action in response to a citizen petition submitted by the Office of The Surgeon General, Department of the Army, requesting that its product be added to the list of uses considered essential. FDA concludes that this product provides a unique health benefit to military personnel that would be unavailable without the use of a chlorofluorocarbon.

**DATES:** Effective September 26, 1990. Comments by November 27, 1990.

**ADDRESSES:** Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Adele S. Seifried, Center for Drug Evaluation and Research (HFD-362), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8046.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Under § 2.125 (21 CFR 2.125), any food, drug, device, or cosmetic in a self-pressurized container that contains a chlorofluorocarbon propellant for a nonessential use is adulterated or misbranded, or both, under the Federal Food, Drug, and Cosmetic Act (the Act). This prohibition is based on scientific research indicating that chlorofluorocarbons may reduce the amount of ozone in the stratosphere and thereby increase the amount of ultraviolet radiation reaching the earth. An increase in ultraviolet radiation may increase the incidence of skin cancer, change the climate, and produce other

adverse effects of unknown magnitude on humans, animals, and plants.

\* Section 2.125(d) exempts from the adulteration and misbranding provisions of § 2.125(c) certain products containing chlorofluorocarbon propellants that FDA determines provide a unique health benefit that would not be available without the use of a chlorofluorocarbon. These products are referred to in the regulation as essential uses of chlorofluorocarbon and are listed in § 2.125(e).

Under § 2.125(f), a person may petition the agency to request additions to the list of uses considered essential. To demonstrate that the use of a chlorofluorocarbon is essential, the petition must be supported by an adequate showing that: (1) There are no technically feasible alternatives to the use of chlorofluorocarbon in the product; (2) the product provides a substantial health, environmental, or other public benefit unobtainable without the use of the chlorofluorocarbon; and (3) the use does not involve a significant release of chlorofluorocarbons into the atmosphere or, if it does, the release is warranted by the benefit conveyed.

#### II. Petition Received by FDA

The Office of The Surgeon General, Department of the Army, submitted a petition (dated August 3, 1990) under § 2.125(f) and part 10 (21 CFR part 10) requesting an addition to the list of chlorofluorocarbon uses considered essential. The petition is on file under the docket number appearing in the heading of this document and may be seen in the Dockets Management Branch (address above). It requests that § 2.125(e) be amended to include metered-dose atropine sulfate inhalation aerosol human drugs administered by oral inhalation as an antidote for organophosphorus poisoning as an essential use of chlorofluorocarbons. The petition contains a discussion supporting the position that there are no technically feasible alternatives to the use of chlorofluorocarbon in the product. It includes information showing that no alternative delivery systems or other substitute propellants can dispense the drug for effective inhalation therapy as safely and uniformly as chlorofluorocarbon propellants. Also, the petition states that the product provides a substantial health benefit for military personnel in the treatment of nerve gas poisoning that would not be obtainable without the use of chlorofluorocarbon, and states that the environmental hazards upon use are very small. In this regard, the petition contains information to support the use of this product. The petition asserts that

metered-dose atropine sulfate would not result in a significant release of chlorofluorocarbon propellants into the atmosphere because the total amount released for this product is estimated to be less than 930 kilograms every 3 years.

#### III. FDA's Review of the Petition

The agency agrees that the use of metered-dose atropine sulfate provides a special benefit for military personnel that would be unavailable without the use of chlorofluorocarbons. FDA also agrees that the use of a metered-dose delivery system for this product does not involve a significant release of chlorofluorocarbons into the atmosphere. Therefore, FDA is amending § 2.125(e) to include metered-dose atropine sulfate administered by oral inhalation as an essential use chlorofluorocarbon propellants.

#### IV. Effective Date

FDA has determined that because of the urgent need to provide adequate medical support for current Department of Defense military operations involving the potential threat of nerve gas warfare, any delay in adoption of this rule would be contrary to the public interest. Specifically, because of the unexpected and emergency nature of this situation, and the need for immediate action to meet the requirements of national defense, FDA finds that, in accordance with section 553(b) of the Administrative Procedure Act (5 U.S.C. 553(b)), it would be impracticable and contrary to the public interest to provide for notice and public comment. For these reasons, FDA also finds that, in accordance with section 553(d) of the Administrative Procedure Act (5 U.S.C. 553(d)), it has good cause to make this rule effective immediately. Therefore, this rule becomes effective on September 26, 1990. However, FDA is allowing 60 days for public comment on the rule in accordance with its procedural regulations (21 CFR 10.40(e)).

Interested persons may, on or before November 27, 1990, submit to the Dockets Management Branch (address above), written comments regarding this rule. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

#### V. Impact

The agency has carefully considered the potential environmental effects of this action under 21 CFR part 25 and has concluded that the action will not have

a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

FDA has carefully analyzed the economic impact of the rule in accordance with Executive Order 12291 and the Regulatory Flexibility Act (Pub. L. 96-354). The rule adds one drug product to the list of products containing a chlorofluorocarbon as essential uses, thereby permitting the manufacturing and marketing of this drug product, provided the drug is subject to an approved new drug application. Therefore, the agency has determined that the rule is not a major rule as defined in Executive Order 12291. Further, the agency certifies that the rule will not have a significant impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act.

#### List of Subjects in 21 CFR Part 2

Administrative practice and procedure, Cosmetics, Drugs, Foods.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 2 is amended as follows:

#### PART 2—GENERAL ADMINISTRATIVE RULINGS AND DECISIONS

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

Authority: Secs. 201, 301, 305, 402, 408, 409, 501, 502, 505, 507, 512, 601, 701, 702, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 335, 342, 346a, 348, 351, 352, 355, 357, 360b, 361, 371, 372, 374); 15 U.S.C. 402, 409.

2. Section 2.125 is amended by adding new paragraph (e)(12) to read as follows:

#### § 2.125 Use of chlorofluorocarbon propellants in self-pressurized containers.

\* \* \* \* \*

(e) \* \* \*

(12) Metered-dose atropine sulfate aerosol human drugs administered by oral inhalation.

\* \* \* \* \*

Dated: September 18, 1990.

Ronald G. Chesemore,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 90-22869 Filed 9-24-90; 12:05 pm]

BILLING CODE 4160-01-M

## DEPARTMENT OF JUSTICE

## Parole Commission

## 28 CFR Part 2

**Paroling, Recommitting and Supervising Federal Prisoners; Modification of Procedures for Inmates Transferred Pursuant to Treaty**

**AGENCY:** United States Parole Commission, Justice.

**ACTION:** Final rule.

**SUMMARY:** The Parole Commission solicited public comment on proposed amendments to its current procedures for conducting special transferee hearings for inmates transferred pursuant to treaty who committed their offenses on or after November 1, 1987. See 55 FR 12524 (April 4, 1990). After reviewing the comments, the Commission voted to adopt the two proposed amendments. One amendment requires a transferee to submit his objections to the postsentence report directly to the Commission rather than to the probation office as the prior rule required. Additionally, the Commission is amending the rule requiring the Commission to conduct a special transferee hearing within 60 days of entry into the United States, because experience has shown that it is impossible to conduct a special transferee hearing within 60 days. The amendment requires that the hearing normally take place within 120 days of entry into the United States.

Along with the final rule changes discussed above, the Commission is making two other changes to the treaty procedures, one procedural, the other interpretive. First, the Commission voted to modify 28 CFR 2.62(c) to include specific instructions that material sent by the transferring country be appended to the postsentence report. Second, the Commission clarified its interpretive regulation at 28 CFR 2.62(g) which outlines decisionmaking criteria. The modified rule includes a more detailed list of factors to be considered by the Commission when arriving at a determination as to what the comparable U.S. Code offense should be.

**EFFECTIVE DATE:** September 26, 1990.

**FOR FURTHER INFORMATION CONTACT:** Richard Preston, Office of General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Md. 20815. Telephone: (301) 492-5959.

**SUPPLEMENTARY INFORMATION:** Under 18 U.S.C. 4106 and 4106A, the Parole Commission has jurisdiction over

prisoners and parolees who are transferred from foreign countries pursuant to treaty. With regard to transferees who committed their offenses on or after November 1, 1987, the Commission has recently established special procedures for conducting special transferee hearings wherein the Commission determines a release date and a period and conditions of supervised release. The new procedures for this class of transferees have been in effect for approximately a year and a half.

After applying the new procedures to a number of cases, certain problems arose. A meeting was held in El Paso, Texas, with representatives from the U.S. Probation Office, the Federal Public Defender's Office for the Western District of Texas, the Bureau of Prisons and the U.S. Parole Commission, to discuss the problems. There was general agreement that the current rule requiring transferees to submit their objections to information contained in the postsentence report to the probation office was an unnecessary step that caused significant delays. All in attendance at the meeting agreed that the procedures could be streamlined if the objections were sent directly to the Commission. If there were any objections with which the probation office could assist in resolving, the Commission would forward those objections to the probation office with a request for additional information. It has been the experience of those involved with the transferee hearings that the vast majority of the objections can not be resolved by the probation officer and involved issues that could best be addressed at the special transferee hearing. It was agreed that this modification would help speed up the process by which special transferees were given release dates.

The Commission received three comments regarding the proposed change: one from the Chief Probation Officer for the Western District of Texas, one from a supervising probation officer for the Southern District of Texas, and one from the First Assistant Federal Public Defender for the Western District of Texas. The Chief Probation Officer for the Western District of Texas indicated that this change would be of "great assistance to our staff" since the Commission must ultimately rule on any controverted issue and having the transferee submit the objections directly to the Commission rather than to the probation officer "not only makes good sense, but in the long-run, will save a considerable amount of time". The First Assistant Federal Public Defender agreed and concluded that such a

change is a "good idea". In light of the general agreement that the change should be made, the Commission approved the changes to § 2.62(d).

Also discussed at the meeting in El Paso were the difficulties for the Commission in conducting special transferee hearings within 60 days of the transferee's entry into the United States. This requirement was viewed by many to be unrealistic in light of the fact that it took approximately 60 days for the probation office to complete the postsentence investigation report. The preparation of this is similar to preparation of presentence investigation reports, for which the probation officer must contact several agencies and individuals to determine a transferee's prior record, as well as the transferee's educational, employment and personal background. In addition to the investigation, the probation officer must summarize the circumstances surrounding the transferee's foreign arrest and conviction and make a recommendation with regard to the application of the sentencing guidelines. In addition to the time needed to prepare a postsentence investigation report, the transferee is given 30 days after the disclosure of the completed report to transmit his or her objections. Therefore, assuming the probation officer was able to conduct the initial interview with the transferee on the date of the transferee's entry into the United States, a minimum delay of 90 days exists for the preparation of the postsentence report alone. Additional factors also cause delays. After the postsentence report has been prepared and the objections have been submitted, the Commission must determine if further investigation on the part of the probation officer is required. Appointment of counsel for indigent transferees must also be arranged. The Commission must also schedule a hearing at the convenience of all parties on the next available hearing docket at the institution following the completion of the presentence report and submission of objections. Since the practice of the Commission is to conduct hearing dockets every other month at federal institutions, there is a possibility that an additional 60 days may pass before the next hearing docket.

Based on the above factors, the Commission is amending its rule to provide that transferee hearings normally be conducted within 120 days after entry.

The Federal Public Defender's Office objected to the proposed change indicating that the delays experienced with the initial transfer treaty hearings

were the result of "glitches" that have been worked out as the process has been streamlined. The Defender's Office noted that the probation officers are required to complete the postsentence reports within 30-45 days and that there was no need to give defense counsel 30 days to transmit objections to the report. The Defender's Office noted that the real reason why none of the transferees have been able to receive a hearing within 60 days is because of the Commission's docketing procedures wherein hearings are scheduled every month at the institutions. The Defender's Office recognized that 60 days was not enough time, but suggested that the rule be amended by increasing the time to 90 days, rather than 120 days as proposed.

The Chief Probation Officer for the Western District of Texas disagreed with the Federal Public Defender's Office noting that increasing the time from 60 to 120 days would benefit the entire process. He stated that exceptions to the scheduling of institutional hearings for those transferees who are already within the applicable guideline range can continue to be expedited on a case-by-case basis. The supervising U.S. probation officer in the Southern District of Texas noted that the proposed changes, including the increased time period, would be "most welcome" in his district. Recognizing that the 60 day time limit was unrealistic in practice and that it is possible to expedite the preparation of a postsentence report when necessary, the Commission approved the modification to 28 CFR 2.62(e) requiring hearings within 120 days.

In addition to the published proposed rule changes discussed above, the Commission is adopting a procedural rule change requiring that documents forwarded by the transferring country be submitted to the Commission along with the postsentence report. 28 CFR 2.62(c). That regulatory provision implements 18 U.S.C. 4106A(b)(1)(B) which requires that the Parole Commission consider any recommendation by the U.S. Probation Service including recommendations as to the applicable guideline range. The statute also requires the Commission to consider "any documents provided by the transferring country; relating to that offender".

The original regulation did not provide a procedure to insure that the documents from the transferring country be submitted to the Commission prior to the special transferee hearing and those documents have not always been considered. After discussing the problem with the Probation Service and the Bureau of Prisons, it was agreed that

copies of all documents provided by the transferring country would be made available to the probation officers preparing the postsentence reports, who would then attach those documents to the postsentence report when submitting the report to the Commission. Modification to 28 CFR 2.62(c) did not require public comment as it is a procedural regulation implementing the obligation imposed by 28 U.S.C. 4106A(b)(2)(B)(ii).

Finally, the Commission adopted an interpretive regulation clarifying its authority to determine what is the "similar" U.S. Code offense for a transferee who is serving a sentence imposed for an offense committed abroad. Currently our regulation at 28 CFR 2.62(g) states that the Commission must apply the guidelines "as though the transferee were convicted in a United States District Court of a statutory offense most nearly similar to the offense of which the transferee was convicted in the foreign court." The reference to a foreign court "conviction" (as opposed to the underlying foreign offense) may lead to an unwarranted interpretation of the statutory provision that would severely limit the Commission's authority to compare the actual foreign offense behavior to similar U.S. Code offenses. It is the Commission's view that the statute requires the Commission to examine the underlying offense for which the transferee received a foreign sentence, as well as the foreign statutory offense, and determine what type of sentence would be imposed if the transferee were convicted in the United States. The statute does not limit the Commission to comparing the statutory language of the crime for which the individual was convicted in the foreign country with the statutory language of crimes described in the U.S. Code. The difficulties in making straight comparisons between widely different criminal codes was evident in at least one prior case. See *Hansen v. U.S. Parole Commission*, 904 F.2d 306 (5th Cir. 1990). Since the prior regulation was vulnerable to an erroneous interpretation, the Commission adopted a more detailed explanation of what factors Commission can consider in the often difficult task of comparing foreign offense behavior to domestic criminal statutes.

This rule will not have a significant economic impact on a substantial number of small entities within the meaning of Regulatory Flexibility Act.

#### List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Parole, Prisoners, and Probation.

#### PART 2—[AMENDED]

28 CFR part 2 is amended as follows:

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

**Authority:** 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. By revising § 2.62 (c), (d), (e) and (g) to read as follows:

#### § 2.62 Prisoners transferred pursuant to treaty.

\* \* \* \* \*

(c) *Postsentence report.* A postsentence investigation report, which shall include an estimated sentencing classification and sentencing guideline range, shall be prepared by the probation office in the district of entry (or the transferee's home district). Disclosure of the postsentence report shall be made as soon as the report is completed, by delivery of a copy of the report to the transferee and his or her counsel (if any). Confidential material contained in the postsentence investigation report may be withheld pursuant to the procedures of 18 U.S.C. 4208(c). Copies of all documents provided by the transferring country relating to the transferee shall be appended to the postsentence report when disclosed to the transferee and when transmitted to the Commission.

(d) *Opportunity to object.* The transferee (or counsel) shall have thirty calendar days after disclosure of the postsentence report to transmit any objections to the report he or she may have, in writing, to the Commission with a copy to the probation officer. The Commission shall review the objections and may request that additional information be submitted by the probation officer in the form of an addendum to the postsentence report. Any disputes of fact or disputes concerning application of the sentencing guidelines shall be resolved at the special transferee hearing.

(e) *Special transferee hearing.* A special transferee hearing shall be conducted within 120 days from the transferee's entry into the United States, or as soon as practicable, following completion of the postsentence investigation report along with any corrections or addendum to the report and appointment of counsel for an indigent transferee.

\* \* \* \* \*

(g) *The decisionmaking criteria.* The Commission shall apply the guidelines promulgated by the United States Sentencing Commission, as though the transferee were convicted in a United States District Court of a statutory offense most nearly similar to the

offense of which the transferee was convicted in the foreign court. The Commission shall take into account the offense definition under foreign law, the length of the sentence permitted by that law, and the underlying circumstances of the offense behavior, to establish a guideline range that fairly reflects the seriousness of the offense behavior committed in the foreign country.

Dated: September 12, 1990.

Benjamin F. Baer,

Chairman, U.S. Parole Commission.

[FR Doc. 90-22279 Filed 9-25-90; 8:45 am]

BILLING CODE 4410-01-M

**DEPARTMENT OF TRANSPORTATION**

**Coast Guard**

**33 CFR Parts 154, 155, 156; 46 CFR Parts 32, 35, 39**

[CGD 88-102]

RIN 2115-AC65

**Marine Vapor Control Systems**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule, correction.

**SUMMARY:** The Coast Guard is correcting errors in the Marine Vapor Control Systems rules which appeared in the Federal Register on Thursday, June 21, 1990 (55 FR 25396).

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Commander Robert H. Fitch, Office of Marine Safety, Security, and Environmental Protection (C-MTH-1), (202) 267-1217, between 7 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:** The Coast Guard published regulations for Marine Vapor Control Systems in the Federal Register on Thursday, June 21, 1990 (55 FR 25396). Several editorial errors are corrected by this notice.

*Correction*

In rule document 90-13456, beginning on page 25396 in the issue of Thursday, June 21, 1990, make the following corrections:

1. On page 25397, in the second sentence in the second paragraph in the third column, remove the "=" sign between "24" and "month".

2. On page 25404, the ninth sentence in the first paragraph under the discussion for 33 CFR 154.804 should read as follows:

"Reliable failure data on vapor control systems is not available, which reduces the confidence in a close comparison by a quantitative hazards analysis."

3. On page 25413, the second paragraph in the first column should read as follows:

"Two comments stated that explosion suppression systems should be tested, that design criteria should then be developed, and that provisions for such systems in lieu of inerting, enriching, or diluting systems should be added in the regulations. The Coast Guard agrees. After the successful testing and development of design criteria for such systems, the Coast Guard can initiate a rulemaking to allow the general use of these systems."

4. On page 25416, in the second sentence of the second paragraph under the discussion section for 33 CFR 154.826, the word "characteristics" should be singular and read "characteristic".

5. On page 25418, in the first sentence of the fourth paragraph under the discussion section for 33 CFR 154.850, the word "ussd" should be "used".

6. On page 25427, in the table for the Paperwork Reduction Act, the second section under 46 CFR which reads "35.35.30" should read "35.35-30".

**Title 33—[Amended]**

**PART 154—[AMENDED]**

**§ 154.822 [Amended]**

7. Paragraph (c) of § 154.822 is corrected to read as follows:

\* \* \* \* \*

(c) Each flame screen required by this part must be either a single screen of corrosion resistant wire of at least 30 by 30 mesh, or two screens, both of corrosion resistant wire, of at least 20 by 20 mesh, spaced not less than 12.7 millimeters (1 1/2 in.) or more than 38.1 millimeters (1 1/2 in.) apart.

**§ 154.824 [Amended]**

8. Paragraph (a) of § 154.824 is corrected to read as follows:

**§ 154.824 Inerting, enriching, and diluting systems.**

(a) A vapor control system which uses inerting, enriching, or diluting gas must be capable of inerting, enriching, or diluting the vapor collection line prior to receiving cargo vapor.

\* \* \* \* \*

9. On page 25438, in the second column, the first sentence of paragraph 14.3.2 of appendix A to part 154 is corrected to read as follows:

\* \* \* \* \*

14.3.2 Flame speeds shall be measured by optical devices capable of providing accuracy of +/- 5%. \* \* \*

\* \* \* \* \*

**Title 46—[Amended]**

**PART 39—[AMENDED]**

**§ 39.10-11 [Corrected]**

10. On page 25447, the heading for § 39.10-11 is corrected to read as follows:

**§ 39.10-11 Personnel training—TB/ALL.**

11. On page 25448, in column one, in the second line of paragraph (b) of 39.10-11, "subpart" should read "section".

**§ 39.10-13 [Corrected]**

12. On page 25448, in column one, the heading for § 39.10-13 is corrected to read as follows:

**§ 39.10-13 Submission of vapor control system designs—TB/ALL.**

**§ 39.30-1 [Corrected]**

13. On page 25450, in column one, the heading for § 39.30-1 is corrected to read as follows:

**§ 39.30-1 Operational requirements—TB/ALL.**

14. On page 25450, in column one, in the last line of paragraph (d)(2) of § 39.30-1, the citation "§ 39.20.11(a)" should read "§ 39.20-11(a)".

**§ 39.40-1 [Corrected]**

15. On page 25450, in column three, in the second line of paragraph (e) of § 39.40-1, "topping. off" should read "topping-off".

**§ 39.40-5 [Corrected]**

16. On page 25451, in column three, the next to last line of paragraph (c) of § 39.40-5, which reads "collection system on the vessel receiving" should read "collection system on the vessel discharging".

Dated: September 20, 1990.

D. H. Whitten,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 90-22793 Filed 9-25-90; 8:45 am]

BILLING CODE 4910-14-M

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[FRL-3834-4]

**Approval and Promulgation of Implementation Plans; Ohio**

**AGENCY:** United States Environmental Protection Agency (USEPA).

**ACTION:** Final rulemaking.

**SUMMARY:** In a November 16, 1988, (53 FR 46094) notice of proposed rulemaking, USEPA proposed to disapprove a site-specific revision to the Ohio State Implementation Plan (SIP) for ozone. This SIP revision would allow the ATEC Industries, Incorporated (ATEC) architectural aluminum extrusion coating line (K001) in Mahoning County, Ohio to meet the volatile organic compounds (VOC) limitation of 3.5 pounds of VOC per gallon of coating, minus water (3.5 lbs of VOC/gal), as required by Ohio Administrative Code (OAC) 3745-21-09 (U)(1)(a)(iii), on a monthly volume-weighted average basis. USEPA's action is based upon one revision request and several amendments that were submitted by the State.

In today's Final Rulemaking, USEPA is taking action to disapprove this revision because the State did not demonstrate that it is infeasible to use add on controls to comply with the reasonable available control technology (RACT) emission limit on a daily basis and that an averaging period shorter than 1 month is not practicable.

**EFFECTIVE DATE:** This final rulemaking becomes effective October 26, 1990.

**ADDRESSES:** Copies of the SIP revision are available at the following addresses for review: (It is recommended that you telephone Uylaine E. McMahan, at (312) 886-6031, before visiting the Region V office.)

U.S. Environmental Protection Agency,  
Region V, Air and Radiation Branch  
(5AR-26), 230 South Dearborn Street,  
Chicago, Illinois 60604

U.S. Environmental Protection Agency,  
Public Information Reference Unit, 401  
M Street, SW., Washington, DC 20460  
Ohio Environmental Protection Agency,  
Office of Air Pollution Control, 1800  
WaterMark Drive, Columbus, Ohio  
43266-0149.

**FOR FURTHER INFORMATION CONTACT:**  
Uylaine E. McMahan, Air and Radiation  
Branch (5AR-26), U.S. Environmental  
Protection Agency, Region V, Chicago,  
Illinois 60604, (312) 886-6031.

**SUPPLEMENTARY INFORMATION:** On June 17, 1985, July 30, 1985, and October 25, 1985, the Ohio Environmental Protection Agency (OEPA) submitted a revision request, with several amendments, to its ozone SIP for ATEC. This revision consists of (1) A monthly volume-weighted limitation (3.5 lbs. of VOC/gal), and (2) a never-to-be exceeded (5.5 lbs of VOC/gal for any coating used) limit for an architectural aluminum extrusion coating line (K001) located at ATEC in Mahoning County, Ohio, which is part of an urban nonattainment area

for the national ambient air quality standard (NAAQS) for ozone.<sup>1</sup>

Under the existing federally approved SIP, each architectural aluminum extrusion coating line is subject to the VOC limitation contained in OAC Rule 3745-21-09 (U)(1)(a)(iii) (3.5 lbs. of VOC/gal) and is subject to the daily volume-weighted average compliance requirements contained in OAC Rule 3745-21-09 (B). USEPA approved these rules as meeting the RACT<sup>2</sup> requirements of the Clean Air Act on October 13, 1980 (45 FR 72122), and June 29, 1982 (47 FR 28097).

In lieu of the daily volume-weighted average limitation required by the SIP, the State is proposing that the coatings used in the line (K001), which applies a wide variety of coatings to various types of architectural aluminum extrusions, shall not exceed 3.5 lbs of VOC/gal on a monthly volume-weighted average, and an instantaneous 5.5 lbs of VOC/gal for any coating used.

#### Criteria for Review in Relationship to ATEC

USEPA's January 20, 1984, policy memorandum entitled "Averaging Times for Compliance with VOC Emission Limits" contains the criteria for evaluating VOC requests for extended averaging times, which are as follows:

##### Criterion 1

Extended averaging can be permitted where the source operations are such that daily VOC emissions cannot be determined, or where the application of RACT for each emission point is not economically or technically feasible on a daily basis.

##### Criterion 2

The area must be covered by an approved ozone SIP and there must not be any measured violations of the ozone standard in the area.

##### Criterion 3

A demonstration must be made that the use of monthly averaging (greater than 24-hour averaging) will not jeopardize attainment of either ambient standards or the reasonable further

progress (RFP) plan for the area. This must be accomplished by showing that the maximum daily increase in emissions associated with monthly averaging is consistent with the approved ozone SIP for the area.

##### Criterion 4

Averaging times must be demonstrated to be as short as practicable and in no case longer than 30 days.

#### Proposed SIP Revision

In a November 16, 1988 (53 FR 46094), notice of proposed rulemaking, USEPA proposed to disapprove Ohio's revision request concerning the ATEC architectural aluminum extrusion coating line (K001) in Mahoning County, Ohio. Comments were received from ATEC during the public comment period. These comments from ATEC addressed the feasibility of add-on control equipment, the availability of complying coatings, and the feasibility of averaging over a shorter period. USEPA evaluation of these comments is provided below.

#### Feasibility of Add-On Control

ATEC provided additional information concerning the costs of add-on control equipment. However, ATEC still has not adequately demonstrated that it is economically infeasible to meet the SIP limit through the use of control equipment. In particular, ATEC's evaluation has the following deficiencies:

1. ATEC has provided no documentation of capital and operating costs. Without such documentation it is impossible to determine whether the cost estimates are realistic.
2. One of the reasons given for high costs is the relatively low concentration of VOCs in the exhaust stream. ATEC should have addressed the feasibility of using recirculation of the exhaust to increase the VOC concentration and reduce costs, but failed to do so.
3. The cost estimates were based on the use of incineration only for noncomplying coatings.
4. ATEC should have evaluated the feasibility of controlling only the oven exhaust. This should have included an explanation of how the booth/flash off/oven split was determined. Although this approach might not reduce emissions to the SIP-allowable level, it could be a way to significantly reduce emissions from this source.

It should also be noted that the Appendix A to the November 9, 1988 (53 FR 45285), Notice of Proposed Rulemaking for Easco states that the State should examine reasonably available information such as whether other similar sources in the State were

<sup>1</sup> OEPA submitted a redesignation request for Mahoning County from nonattainment to attainment for the ozone NAAQS. In a February 14, 1989, (54 FR 6733) Federal Register notice, USEPA proposed to disapprove the OEPA redesignation request for Mahoning County, Ohio.

<sup>2</sup> A definition of RACT is contained in a December 9, 1976, memorandum from Roger Strelow, former Assistant Administrator for Air and Waste Management. RACT is defined as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility.

able to comply with the limit. Ohio has not provided such a survey of sources. In fact, there is at least one source in Ohio which is under a consent order to comply with the SIP limit using add-on control.

#### Availability of Complying Coating

As suggested by the Easco Appendix A, ATEC provided copies of and responses to an advertisement published in three trade journals. The responses indicate that none of the suppliers responding to the advertisement were able to provide a coating meeting the specified requirements. However, EPA does not consider this to be an adequate showing that complying coatings are unavailable. The advertisement placed by ATEC is unnecessarily restrictive in that it specifies an interest only in a high-solids flex paint. This eliminates the possibility of water-based or powder coatings. In addition, ATEC did not respond to at least one supplier that indicated a willingness to work with ATEC to develop an acceptable substitute for some coatings.

The Easco Appendix A contains examples of other approaches to demonstrate that complying coatings are unavailable; neither the State nor ATEC have addressed any of these approaches. These include a survey by the State of similar sources (as discussed above) and contact with trade associations that may have relevant information. In light of the above circumstances, EPA concludes that the State and ATEC have not made reasonable efforts to determine that complying coatings are unavailable.

#### Use of a Shorter Averaging Period

ATEC provided the following comment on the use of a shorter averaging period:

The 30 days averaging period originally proposed by the State is, in fact, the lowest practical averaging time with which ATEC can comply. A 15 month history of recent paint usage shows a VOC content averaging 3.22 lbs of VOC per gallon of paint during that period. This is already close to the 3.5 lb VOC of per gallon limit. Any shortening of the proposed 30 day averaging period will cause severe production restrictions at ATEC in order to be able to remain at or below 3.5 lbs of VOC per gallon limit.

ATEC has not provided any specific information concerning variations in emissions on a daily, weekly or monthly basis. Therefore, it has not adequately demonstrated whether or not 30 days is the shortest practical averaging time.

#### Final Action

USEPA is disapproving the ATEC revision because it has not been demonstrated that it is infeasible for ATEC to meet the SIP limit on a daily basis and that 30 days is the shortest practical averaging period.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 27, 1990. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

Under Executive Order 12291, today's action is not "Major." It has been submitted to the Office of Management and Budget (OMB) for review. Comments relating to OMB and this action are available for public inspection at the USEPA Region V office listed above.

#### List of Subjects in 40 CFR Part 52

Environmental Protection, Air pollution control, Ozone, Hydrocarbon, Intergovernmental offices.

Authority: 42 U.S.C. 7401-7642.

Dated: September 18, 1990.

William K. Reilly,  
Administrator.

#### PART 52—(AMENDED)

##### Subpart KK—Ohio

Title 40 of the Code of the Federal Regulations, chapter 1, part 52, is amended as follows:

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

Authority: 42 U.S.C. 7401-7642.

2. Section 52.1885 is amended by adding paragraph (n) to read as follows:

#### § 52.1885 Control strategy: Ozone

\* \* \* \* \*

(n) Disapproval—On June 17, 1985, July 30, 1985, and October 25, 1985, the Ohio Environmental Protection Agency submitted a revision request, with several amendments, to its ozone State Implementation Plan for ATEC Industries. This revision consisted of

(1) A monthly volume-weighted limitation of 3.5 pounds of volatile organic compounds (VOC) per gallon; and

(2) A never-to-be exceeded limit of 5.5 pounds of VOC per gallon for coatings used at an architectural aluminum extrusion coating line (K001), located at ATEC Industries in Mahoning County, Ohio.

[FR Doc. 90-22716 Filed 9-25-90; 8:45 am]

BILLING CODE 6560-50-00

#### 40 CFR Part 180

[PP 6F3337/R1090; FRL-3796-2]

#### Pesticide Tolerance for Metalaxyl

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes tolerances for the fungicide metalaxyl and its metabolites in or on strawberries at 10.0 parts per million (ppm). This regulation was requested in a petition submitted by the Ciba-Geigy Corp.

DATES: This regulation becomes effective September 26, 1990.

ADDRESSES: Written objections, identified by the document control number, [PP 6F3337/R1090], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Susan T. Lewis, Product Manager (PM) 21, (H7505C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 227, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-1900.

SUPPLEMENTARY INFORMATION: In the Federal Register of July 12, 1990 (55 FR 28657), EPA issued a proposed rule that gave notice that the Ciba-Geigy Corp., P.O. Box 18300, Greensboro, NC 27419, had submitted a tolerance petition (PP) 6F3337 to EPA requesting the Administrator, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act, propose to establish tolerances for the fungicide metalaxyl [N-(2,6-dimethylphenyl)-N-(methoxyacetyl) alanine methyl ester] and its metabolites containing the 2,6-dimethylaniline moiety, and N-(2-hydroxymethyl-6-methylphenyl)-N-(methoxyacetyl) alanine methyl ester in or on strawberries at 10.0 ppm.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerances will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections with the Hearing Clerk, at the address

given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

**List of Subjects in 40 CFR Part 180**

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

Dated: September 11, 1990.

Douglas D. Camp, 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 180.408(a) is amended in the table therein by adding and alphabetically inserting the following raw agricultural commodity, to read as follows:

**§ 180.408 Metalaxyl; tolerance for residues.**

(a) \* \* \*

Commodities	Parts per million
Strawberries.....	10.0

\* \* \* \* \*

**40 CFR Part 180**

[PP 6E3416/R1088; FRL-3793-6]

**Pesticide Tolerances for Linuron**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This document establishes a tolerance of 0.25 part per million (ppm) for residues of the herbicide linuron in or on the raw agricultural commodity parsley. This regulation to establish a maximum permissible level for residues of the herbicide in or on the commodity was requested by the Interregional Research Project No. 4.

**DATES:** This regulation becomes effective September 26, 1990.

**ADDRESSES:** Written objections, identified by the document control number, [PP 6E3416/R1088], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** By mail: Hoyt L. Jamerson, Emergency Response and Minor Use Section, Registration Division (H-7505C), 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)-557-2310.

**SUPPLEMENTARY INFORMATION:** In the Federal Register of June 29, 1990 (55 FR 26705), EPA issued a proposed rule that gave notice that the Interregional Research Project No. 4 (IR-4), New Brunswick, NJ 08903, had submitted pesticide petition (PP) 6E3416 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR-4 Project, and the Agricultural Experiment Stations of Florida, Ohio, and New Jersey.

This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for residues of the herbicide linuron [3-(3,4-dichlorophenyl)-1-methoxy-1-methylurea] in or on the raw agricultural commodity parsley at 0.25 part per million (ppm). The petitioner proposed that this use of linuron be limited to States east of the Mississippi River based on the geographical representation of the residue data submitted. Additional residue data will be required to expand the area of usage. Persons seeking geographically broader registration should contact the Agency's Registration Division at the address provided above.

There were no comments or requests for referral to an advisory committee

received in response to the proposed rule.

The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections and a request for a hearing with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

**List of Subjects in 40 CFR Part 180**

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

Dated: August 28, 1990.

Douglas D. Camp, 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 180.184 is amended by designating the current paragraph and list of tolerances as paragraph (a) and by adding new paragraph (b), to read as follows:

**§ 180.184 Linuron; tolerances for residues.**

(b) Tolerances with regional registration, as defined in § 180.1(n), are

established for residues of the herbicide linuron [3-(3,4-dichlorophenyl)-1-methoxy-1-methylurea] in or on the following raw agricultural commodity:

Commodity	Parts per million
Parsley.....	0.25

[FR Doc. 90-22773 Filed 9-25-90; 8:45 am]  
BILLING CODE 6560-50-F

**40 CFR Part 271**

[FRL-3834-9]

**Hazardous Waste Management Program: Revisions to the Authorized State of Oklahoma Program**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Immediate final rule.

**SUMMARY:** The State of Oklahoma has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed the Oklahoma application and has made a decision, subject to public review and comment, that the Oklahoma hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve the Oklahoma hazardous waste program revisions. The Oklahoma application for program revision is available for public review and comment.

**DATES:** Final authorization for Oklahoma shall be effective November 27, 1990, unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule. All comments on the Oklahoma program revision application must be received by the close of business October 26, 1990.

**ADDRESSES:** Copies of the Oklahoma program revision application are available from 8:30 a.m. to 4 p.m., Monday through Friday at the following addresses for inspection and copying: Oklahoma State Department of Health, 1000 N.E. Tenth, Oklahoma City, Oklahoma 73152; U.S. EPA Region 6, Library, 12th Floor, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 75202; and U.S. EPA Headquarters, Library, PM 211A, 401 M Street SW., Washington, DC 20460. Written comments referring to Docket Number OK-90-2 should be sent to the Regional Authorization Coordinator, Attention: Mr. Brett Jucha,

Grants and Authorization Section, RCRA Programs Branch, U.S. EPA Region 6, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 75202, phone (214) 655-6760.

**FOR FURTHER INFORMATION CONTACT:**

Mr. Brett Jucha, Grants and Authorization Section, RCRA Programs Branch, U.S. EPA Region 6, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 75202, phone (214) 655-6760.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

States with final authorization under section 3006(b) of RCRA, 42 U.S.C. 6929(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Public Law 98-616, November 8, 1984, hereinafter "HSWA") allows States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive "interim authorization" for the HSWA requirements under section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later apply for final authorization for the HSWA requirements.

Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 260-266 and 124 and 270.

**B. Oklahoma**

On December 27, 1984, EPA published a **Federal Register** (FR) notice announcing its decision to grant final authorization, initially, to Oklahoma (See 49 FR 50362). Revisions to the State program were approved on June 18, 1990. On December 28, 1988, Oklahoma submitted the program revision application discussed herewithin in accordance with § 271.21(b)(3).

EPA has reviewed the Oklahoma application, and has made an immediate final decision that the Oklahoma hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization.

Consequently, EPA intends to grant final authorization for the additional program modifications to Oklahoma. The public may submit written

comments on EPA's immediate final decision up until October 26, 1990. Copies of the Oklahoma application for program revision are available for inspection and copying at the locations indicated in the "Addresses" section of this notice.

Approval of the Oklahoma program revision shall become effective in 60 days unless an adverse comment pertaining to the State's revision discussed in this notice is received by the end of the comment period. If an adverse comment is received, EPA will publish either (1) A withdrawal of the immediate final decision or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

The Oklahoma program revision application is based on changes to State regulations which were intended to make them equivalent to the analogous Federal regulations. Although the State's regulation changes included some changes based on provisions of the Hazardous and Solid Waste Amendments of 1984 (HSWA), the State is not seeking HSWA authorization with this application. EPA is not, therefore, authorizing the State's HSWA-type provisions with this notice. Consequently, EPA intends to grant final authorization to Oklahoma for only the program modifications which are described below.

The following chart lists the State rules (Rules and Regulations for Industrial Waste Management as amended April 28, 1988 (effective June 1, 1988) and the referenced State laws) that have been changed and that are being recognized as equivalent to the analogous Federal rules.

Federal citation	State analog
1. Radioactive mixed waste requirements—changes to 40 CFR parts 261 and 271—as published in the FR on July 3, 1986	1. Chapter 2, Sections 200 and 210 and 63 O.S. Supp. 1987, Sections 1-2002 and 1-2005.
2. Liability coverage—corporate guarantee—changes to 40 CFR parts 264, subpart H and 265, subpart H—as published in the FR on July 11, 1986	2. Chapter 2, Sections 210, 520-522.
3. Correction to the tank standards—changes to 40 CFR parts 260, 261, 262, 264, 265, and 270—as published in the FR on July 14, 1986	3. Chapter 2, Section 210.
4. Corrections to the listing of commercial chemical products and Appendix VIII constituents—changes to 40 CFR part 261, subpart D—as published in the FR on August 6, 1986	4. Chapter 2, Section 210.

Federal citation	State analog
5. Correction to the hazardous waste tank system requirements—as published in the FR on August 15, 1986	5. Chapter 2, Section 210.
6. Listing of spent pickle liquor correction—as published in the FR on September 22, 1986	6. Chapter 2, Section 210.
7. Revisions to Manual SW-846; amended incorporation by reference—changes to 40 CFR parts 260 and 270—as published in the FR on March 16, 1987	7. Chapter 2, Section 210
8. Closure, post-closure care for interim status surface impoundments—changes to 40 CFR part 265, subpart K—as published in the FR on March 19, 1987	8. Chapter 2, Section 210.
9. Definition of solid waste—technical correction—changes to 40 CFR parts 261, subpart D and 266, subpart C—as published in the FR on June 5, 1987	9. Chapter 2, Section 210.
10. Amendments to Part B information requirements for disposal facilities—changes to 40 CFR part 270, subpart B—as published in the FR on June 22, 1987	10. Chapter 2, Section 210.
11. Technical correction; identification and listing of hazardous waste—as published in the FR on April 22, 1988	11. Chapter 2, Section 210.

The Oklahoma provisions incorporating the Federal HSWA provisions concerning research, development, and demonstration (R, D, and D) permits have not been evaluated and are not a part of the authorized revisions, since Oklahoma is not applying for them at this time. Therefore, that portion of chapter 2, rule 210 that incorporates 40 CFR 270.10(a) providing for Research, Development, and Demonstration permits, is not being considered for authorization at this time. In addition, the State rule regarding fees (chapter 7, rules 740-743) was determined to be broader in scope than the Federal requirements, and therefore, is not part of the Oklahoma authorized program.

The following State rules regarding additional wastes were added to the State's hazardous waste regulations by adoption of the HSWA provisions. Because the State is not applying for authorization of these provisions at this time, these Federal requirements will not become part of the Oklahoma authorized program until the State applies for and receives authorization for them.

*Additional Wastes*

Oklahoma Rules and Regulations for Controlled Industrial Management, chapter 2, rules 210 (portion), April 28, 1988; Dioxin wastes (See FR 1978, January 14, 1985); TDI,

DNT, and TDA wastes (See 50 FR 42936, October 23, 1985); Spent solvents (See 50 FR 53315, December 31, 1985); EDB wastes (See 51 FR 5330, February 13, 1986); and additional spent solvents (See 51 FR 6541, February 25, 1986).

The State also submitted revisions to the Program Description, Attorney General's Statement and the Memorandum of Agreement between the State of Oklahoma and EPA, Region 6.

No State hazardous waste permits will need to be modified to reflect this additional authority.

The State of Oklahoma is not authorized to operate on Indian lands.

**C. Decision**

I conclude that the Oklahoma application for program revision meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Oklahoma is granted final authorization to operate its hazardous waste program as revised. Oklahoma now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA program, subject to the limitation of its revised program application and previously approved authorities. Oklahoma also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under sections 3008, 3013, and 7003 of RCRA.

**D. Codification in Part 272**

EPA uses part 272 for codification of the decision to authorize the Oklahoma program and for incorporation by reference of those provisions of the Oklahoma statutes and regulations that EPA will enforce under sections 3008, 3013 and 7003 of RCRA. Subsequently, EPA will be amending part 272, subpart LL, under a separate notice.

**Compliance With Executive Order 12291**

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

**Certification Under the Regulatory Flexibility Act**

Pursuant to the provisions of 4 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

**List of Subjects in 40 CFR Part 271**

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

**Authority:** This notice is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, and 6974(b).

Dated: September 10, 1990.

Joe D. Winkle,

*Acting Regional Administrator.*

[FR Doc. 90-22776 Filed 9-25-90; 8:45 am]

**BILLING CODE 6560-50-M**

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Chapter 1**

[MM Docket No. 87-268; FCC 90-295]

**Advanced Television Systems and Their Impact on the Existing Television Broadcast Service, et. seq.**

**AGENCY:** Federal Communications Commission.

**ACTION:** Policy decision.

**SUMMARY:** This Report and Order sets forth several policy decisions that will affect the Commission's further study of technical matters concerning the introduction of Advanced Television (ATV) Service. The Commission has decided that it intends to select a "simulcast" high definition (HDTV) system, that is, a system that employs design principles independent of the existing NTSC technology, for ATV service. It also decided not to give further consideration to systems that require additional spectrum to augment the existing 6 MHz channel used for broadcast television. Finally, the Commission left open the possibility that it might entertain consideration of an enhanced definition television (EDTV), but stated that it does not envision that it would adopt an EDTV standard prior to teaching a decision on an HDTV standard. These decisions will enable the Commission to move forward promptly toward the goal of bringing the benefits of HDTV service to the public.

**EFFECTIVE DATE:** September 26, 1990.

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

**FOR FURTHER INFORMATION CONTACT:** Alan Stillwell, Office of Engineering and Technology, (202) 653-8162.

**SUPPLEMENTARY INFORMATION:** This is a summary to the Commission's *Report and Order* in MM Docket No. 87-268, FCC 90-295, adopted August 24, 1990, and released September 21, 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 be purchased from the Commission's copy contractor, International Transcription Services, (202) 857-3800, 2100 M Street, NW., Washington, DC 20037

#### Summary of Action

1. The Commission finds that during the three years since the FCC and NTIA first began to consider ATV service, substantial progress has been made toward the selection of advanced television systems. The Commission stated that the efforts of its Advisory Committee on Advanced Television Service (Advisory Committee) and other industry parties have significantly advanced its ability to assess the merits of the various ATV technical concepts. It further observed that systems designers have made substantial progress in developing new technical schemes for delivering HDYV service using a 6 MHz channel. Based on this progress, the Commission made several policy decisions that will further narrow the focus of the ATV proceeding and enable it to move forward expeditiously towards a decision on ATV technical standards.

2. Consistent with its goal of ensuring excellence in ATV service, the Commission stated that it intends to select a simulcast high definition television system that is compatible with the current 6 MHz television channel plan. It also stated that it did not have sufficient information on the attributes of the individual candidate HDTV systems now to make even preliminary comparisons among them. The Commission therefore did not take a position on the desirability of any particular system as the standard to choose. The Commission concluded that it would not be useful to give further consideration to systems that use additional spectrum to "augment" an existing 6 MHz television channel. While it recognized that an augmentation system could provide quality HDTV service, it found that such a system would be less desirable than an independent, 6 MHz design.

3. The Commission stated that while it believes the simulcast option is the most appropriate for ATV service, it also believes it is desirable to keep open the

possibility of adopting an EDTV system. Thus, it indicated that it will continue to examine all aspects of 6 MHz EDTV technologies. However, the Commission emphasized that its objective at this time is to select an HDTV system and to that end it would not select an EDTV standard, if at all, before reaching a final decision on a simulcast standard.

4. In conjunction with the above policy decisions and its goal to select a system as promptly as possible, the Commission stated that it is undertaking to expedite the completion of its program for testing and evaluation of the candidate ATV systems. To this end, it directed its staff to work closely with the testing laboratories, including actively participating in the testing process.

5. Finally, the Commission stated that it intends to maintain a flexible position with respect to new ATV developments that offer important new benefits and which are in a sufficiently concrete state of development to be considered with an existing systems. Thus, the Commission indicated that, with the assistance of the Advisory Committee, it intends to review carefully, but quickly, any such new developments early in 1992. It stated that if it finds any new systems that are sufficiently developed to be tested, it will supplement the testing schedule to accommodate them on a timely basis.

6. The action taken herein has been analyzed with respect to the Paperwork Reduction Act of 1980, and found to impose no new or modified information collection requirement on the public.

7. Accordingly, *It is ordered* that pursuant to 47 U.S.C. 151, 154 (i), (j), 301, 303 (g), (r), (s), and 403, the Advisory Committee on Advanced Television Service is to take the appropriate actions necessary to implement the decisions set forth herein.

**Donna R. Searcy,**

*Secretary, Federal Communications Commission.*

[FR Doc. 90-22796 Filed 9-25-90; 8:45 am]

BILLING CODE 6712-01-M

#### 47 CFR Part 0

#### Editorial Amendment of List of Office of Management and Budget Approved Information Collection Requirements

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This action amends the Commission's list of Office of Management and Budget approved

information collection requirements contained in the Commission's Rules.

This action is necessary to comply with the Paperwork Reduction Act, which requires that agencies display a current control number assigned by the Director of the Office of Management and Budget for each agency information collection requirement.

This action will provide the public with a current list of information collection requirements in the Commission's Rules which have OMB approval.

**EFFECTIVE DATE:** September 26, 1990.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Jerry Cowden, Office of Managing Director, (202) 634-1535.

#### SUPPLEMENTARY INFORMATION:

##### Order

*Adopted:* September 14, 1990.

*Released:* September 21, 1990.

1. Section 3507(f) of the Paperwork Reduction Act of 1980, as amended, 44 U.S.C. 3507(f), requires agencies to display a current control number assigned by the Director of the Office of Management and Budget ("OMB") for each agency information collection requirement.

2. Section 0.408 of the Commission's Rules displays the OMB control numbers assigned to the Commission's information collection requirements. OMB control numbers assigned to Commission forms are not listed in this section since those numbers appear on the forms.

3. This Order amends § 0.408 to remove listings of information collections which the Commission has eliminated or to add listings of new information collections which OMB has approved.

4. Authority for this action is contained in section 4(i) of the Communications Act of 1934 (47 U.S.C. 154(i)), as amended, and § 0.231(d) of the Commission's Rules. Since this amendment is editorial in nature, the public notice, procedure, and effective date provisions of 5 U.S.C. 553 do not apply.

5. Accordingly, *It is ordered*, That § 0.408 of the rules is *Amended*, effective on the date of publication in the *Federal Register*.

6. Persons having questions on this matter should contact Jerry Cowden at (202) 634-1535.

#### List of Subjects in 47 CFR Part 0

Reporting and Recordkeeping requirements.

Federal Communications Commission.

Andrew S. Fishel,  
Managing Director.

Part 0 of title 47 of the Code of Federal Regulations is amended as follows:

**PART 0—COMMISSION ORGANIZATION**

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

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted.

2. In 47 CFR 0.408, paragraph (b) is amended by removing the following rule sections and their corresponding OMB control numbers:

§ 0.408 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

(b) \* \* \*

47 CFR part or section where identified and described	Current OMB control No.
15.69(b)	3060-0329
15.623	3060-0372
15.814(b)	3060-0329
15.834(b)-(c)	3060-0329
18.203(b)	3060-0329
21.204	3060-0206
21.207	3060-0206
21.208	3060-0206
21.300	3060-0206
22.201	3060-0150
25.391(a)-(e)	3060-0343
25.392	3060-0359
63.01-63.63	3060-0149
63.65	3060-0149
63.66	3060-0149
63.71-63.601	3060-0149
76.58	3060-0376
80.110	3060-0276
90.135(c) (2)-(3)	3060-0226
97.36(c)	3060-0323
97.71	3060-0347
97.82	3060-0302
97.83	3060-0303
97.88	3060-0222
97.90	3060-0203
97.521	3060-0368

3. In 47 CFR 0.408, paragraph (b) is further amended by adding the following rule sections and their corresponding OMB control numbers to read as follows:

§ 0.408 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

(b) \* \* \*

47 CFR part or section where identified and described	Current OMB control No.
1.65(c)	3060-0449
1.1206	3060-0430
15.644	3060-0372
22.609(e)	3060-0431
22.1101	3060-0451
25.391	3060-0343
63.01-63.601	3060-0149
68.5	3060-0422
74.913	3060-0425
90.19(f)(7)	3060-0434
90.135 (d) and (e)	3060-0226
97.5	3060-0303
97.9	3060-0302
97.213	3060-0222
97.311	3060-0347
97.523	3060-0368

[FR Doc. 90-22800 Filed 9-25-90; 8:45 am]

BILLING CODE 6712-01-M

**47 CFR Part 21**

**Domestic Public Fixed Radio Services**

AGENCY: Federal Communications Commission.

ACTION: Final rule; technical amendment.

SUMMARY: These technical amendments are being made to correct the authority citation for part 21, Domestic Public Fixed Radio Services, that have been identified by the Agency in the Code of Federal Regulations.

EFFECTIVE: September 26, 1990.

FOR FURTHER INFORMATION CONTACT: Terrence E. Reideler, Common Carrier Bureau at (202) 634-1773.

Part 21 of title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 21 is revised to read as follows:

Authority: Secs. 1, 2, 4, 201-205, 208, 215, 218, 303, 307, 313, 314, 403, 404, 410, 602; 48 Stat. as amended, 1064, 1066, 1070-1073, 1076, 1077, 1080, 1082, 1083, 1087, 1094, 1098, 1102; 47 U.S.C. 151, 154, 201-205, 208, 215, 218, 303, 307, 313, 314, 403, 404, 602; 47 U.S.C. 552.

2. All authority citations at subpart and section levels are removed.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 90-22797 Filed 9-25-90; 8:45 am]

BILLING CODE 6712-01-M

**47 CFR Part 34**

**Uniform System of Accounts for Radiotelegraph Carriers**

AGENCY: Federal Communications Commission.

ACTION: Final rule; technical amendment.

SUMMARY: These technical amendments are being made to correct errors that have been identified by the Agency in the Code of Federal Regulations.

EFFECTIVE: September 26, 1990.

FOR FURTHER INFORMATION CONTACT:

Virginia Brockington, Accounting Systems Branch, Accounting and Audits Division, Common Carrier Bureau (202) 634-1861.

Part 34 of title 47 of the Code of Federal Regulations is amended as follows:

**PART 34—[AMENDED]**

1. The authority citation for part 34 is revised to read as follows:

Authority: Secs. 4, 303, 307, 48 Stat., as amended, 1066, 1082, 1083; 47 U.S.C. 154, 303, 307. Interpret or apply secs. 219, 220, 48 Stat. 1077, as amended, 1078, 47 U.S.C. 219, 220.

2. Authority citations at sectional levels are removed.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 90-22798 Filed 9-25-90; 8:45 am]

BILLING CODE 6712-01-M

**47 CFR Part 35**

**Uniform System of Accounts for Wire-Telegraph and Ocean-Cable Carriers**

AGENCY: Federal Communications Commission.

ACTION: Final rule; technical amendment.

SUMMARY: These technical amendments are being made to correct errors that have been identified by the Agency in the Code of Federal Regulations.

EFFECTIVE DATE: September 26, 1990.

FOR FURTHER INFORMATION CONTACT:

Virginia Brockington, Accounting Systems Branch, Accounting and Audits Division, Common Carrier Bureau (202) 634-1861.

Part 3 of title 47 of the Code of Federal Regulations is amended as follows:

**PART 3—[AMENDED]**

1. The authority citation for part 3 is revised to read as follows:

Authority: Secs. 4, 303, 307, 48 Stat., as amended, 1066, 1082, 1083; 47 U.S.C. 154, 303, 307. Interpret or apply secs. 219, 220, 48 Stat. 1077, as amended, 1078; 47 U.S.C. 219, 220.

2. Authority citations at sectional levels are removed.

Federal Communications Commission.  
Donna R. Searcy,  
Secretary.

[FR Doc. 90-22799 Filed 9-25-90; 8:45 am]  
BILLING CODE 6712-01-M

**47 CFR Part 90**

[PR Docket No. 88-373; DA 90-1244]

**Private Land Mobile Radio Services; Permit Business Radio Use of Certain Channels in the 150 MHz Band**

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

**SUMMARY:** This document corrects editorial errors in the final rules adopted in the Memorandum Opinion and Order on Reconsideration PR Docket No. 88-373, released July 30, 1990, and published in the Federal Register on August 3, 1990 (55 FR 31598).

**FOR FURTHER INFORMATION CONTACT:** Eugene Thomson, Rules Branch, Private Radio Bureau, (202) 634-2443.

**SUPPLEMENTARY INFORMATION:** In FCC 90-253, PR Docket No. 88-373, appearing in 55 FR 31598-31599 (August 3, 1990), FR Doc. 90-18032 the following corrections are made:

1. On page 31598, paragraph 2, column 3, the Business Radio Service Frequency Table in § 90.75(b) is corrected by adding the frequencies 157.580 and 157.620, and by changing the Class of station(s) for the frequencies 157.575, 157.605, 157.635 and 157.665 as follows:

**§ 90.75 Business Radio Service.**

\* \* \* \* \*  
(b) \* \* \*

**BUSINESS RADIO SERVICE FREQUENCY TABLE**

Frequency or band	Class of station(s)	Limitations
157.560.....	Base or mobile.....	9
157.575.....	Mobile.....	1,9
157.605.....	Mobile.....	1,9
157.620.....	Base or mobile.....	9
157.635.....	Mobile.....	1,9
157.665.....	Mobile.....	1,9

2. On page 31599, paragraph 4, column 2, the Combined frequency listing in § 90.555(b) is corrected by adding IB to

the Services entry for frequency 157.580 MHz as follows:

**§ 90.555 Combined frequency listing.**

\* \* \* \* \*  
(b) \* \* \*

Frequency	Services	Special limitations
157.580.....	IB, LX	LX within SMAs over 50,000 pop.

Federal Communications Commission.  
Donna R. Searcy,  
Secretary.

[FR Doc. 90-22795 Filed 9-25-90; 8:45 am]  
BILLING CODE 6712-01-M

**GENERAL SERVICES ADMINISTRATION**

**48 CFR Parts 516, 517 and 552**

[APD 2800.12A, CHGE 12]

**General Services Administration Acquisition Regulation; Economic Price Adjustment Clause for Federal Supply Service**

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Final rule.

**SUMMARY:** The General Services Administration Acquisition Regulation (GSAR), chapter 5, (APD 2800.12A), is amended by revising section 516.203-4 to add paragraph titles for paragraphs (a) and (b) and to add paragraph (c) to prescribe Economic Price Adjustment clauses based on the Producer Price Indexes (PPI) or other indicators of price change for stock and special order program contracts, and by making an editorial change in section 516.301-3; by adding section 517.208 to prescribe an Evaluation of Options provision for stock and special order program contracts that include options to extend the term of the contract and provide for economic price adjustments based on the PPI or other common standard; by adding section 552.216-72 to provide the text of the Economic Price Adjustment—Stock and Special Order Program Contracts clause and alternates; by adding section 552.217-70 to provide the text of the Evaluation of Options provision; and by revising the matrix referenced at section 552.301 to add a reference to the Evaluation of Options provision and the Economic Price Adjustment—Stock and Special Order Program Contracts clause. The matrixes are not published in this document and do not appear in the Code of Federal

Regulations. Copies may be obtained from the Director of the Office of GSA Acquisition Policy (VP), 18th and F Streets NW., Washington, DC 20405.

EFFECTIVE DATE: September 26, 1990.

**FOR FURTHER INFORMATION CONTACT:** Paul Linfield, Office of GSA Acquisition Policy, (202) 501-1224.

**SUPPLEMENTARY INFORMATION:**

**A. Public Comments**

A notice of proposed rulemaking was published in the Federal Register on July 10, 1990 (GSAR Notice 5-285, 55 FR 28248). No public comments were received. Comments received from various GSA offices have been considered and where appropriate incorporated in the final rule.

**B. Background**

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. This exemption applies to this rule.

The rule is not expected to have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), since it merely extends a pricing adjustment mechanism used in multiyear contracts to contracts with options to extend the period of contract performance. Small businesses, comprising a majority of the contractors in the stock and special order programs, have not objected to the current mechanism in multiyear contracts. Therefore, a Regulatory Flexibility Analysis has not been prepared. This rule does not contain information collection requirements that require the approval of OMB under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501).

**List of Subjects in 48 CFR Parts 516, 517, and 552**

Government procurement.

1. The authority citation for 48 CFR parts 516, 517 and 552 continues to read as follows:

Authority: 40 U.S.C. 486(c).

**PART 516—[AMENDED]**

2. Section 516.203-4 is revised to read as follows:

**516.203-4 Contract clauses.**

(a) *General.* When the contracting officer decides to use a clause providing for adjustments based on cost indexes of labor or material under FAR 16.203-4, a clause must be prepared with the

assistance of counsel and approved by the contracting director.

(b) *FSS Multiple Award Schedules.* In Federal Supply Service (FSS) multiple award schedule (MAS) procurements, the contracting director will determine whether to use an Economic Price Adjustment (EPA) clause under FAR 16.203-2.

(c) *Stock or Special Order Program Contracts.* (1) The contracting officer shall insert the clause at 552.216-72, Economic Price Adjustment—Stock and Special Order Program Contracts, or a clause prepared as authorized in subparagraph (c)(2) of this section, in solicitations and contracts when the contracting officer has made the determination required by FAR 16.203-2 and the contract is a multiyear contract. If the contract includes one or more options to extend the term of the contract, the contracting officer shall use the clause with its Alternate I. If a multiyear contract with additional option periods is contemplated, the contracting officer may use a clause substantially the same as the clause at 552.216-72 with its Alternate I suitably modified. If the contract requires a minimum adjustment before the price adjustment mechanism is effectuated, the contracting officer shall use the basic clause or the Alternate I clause along with Alternate II.

(2) If the contracting officer decides that an economic price adjustment clause is needed but finds the Producer Price Index is not an appropriate indicator for price adjustment, the contracting officer may modify the clause to use an alternate indicator for adjusting prices. Similarly, if the contracting officer finds other aspects of the clause at 552.216-72 are not appropriate, the contracting officer may develop a clause in accordance with 516.203-4(a) for use instead of the clause at 552.216-72.

3. Section 516.301-3 is revised to read as follows:

**516.301-3 Limitations.**

The required determination and findings (D&F) must be prepared in the format prescribed by 501.704-70(a)(1) and be signed by the appropriate official (see 501.707).

**PART 517—[AMENDED]**

4. Section 517.208 is added to read as follows:

**517.208 Solicitation provisions and contract clauses.**

The Contracting Officer shall insert a provision substantially the same as the provision at 552.217-70, Evaluation of Options, in solicitations for procurements under the Federal Supply Service (FSS) stock or special order program when (a) The solicitation contains an option to extend the term of the contract and (b) A firm-fixed price contract with economic price adjustment based on the Producer Price Index or alternative indicator of market price changes is contemplated.

**PART 552—[AMENDED]**

5. Section 552.216-72 is added to read as follows:

**552.216-72 Economic Price Adjustment—Stock and Special Order Program Contracts.**

As prescribed in 516.203-4(c)(2), insert the following clause:

Economic Price Adjustment—Stock and Special Order Program Contracts (AUG 1990)

(a) "Producer Price Index" (PPI), as used in this clause, means the originally released index, not seasonally adjusted, published by the Bureau of Labor Statistics, U.S. Department of Labor (Labor) for product code \_\_\_\_\_ found under Table \_\_\_\_\_.

(b) During the term of the contract, the award price may be adjusted once upward or downward a maximum of \* percent. Any price adjustment for the product code shall be based upon the percentage change in the PPI released in the month prior to the initial month of the contract period specified in the solicitation for sealed bidding or the month prior to award in negotiation (the base index) and the PPI released 12 months later (the updated index). The formula for determining the Adjusted Contract Price (ACP) applicable to shipments for the balance of the contract period is—

$$ACP = \frac{\text{Updated index}}{\text{Base index}} \times \text{Awarded price}$$

(c) If the PPI is not available for the month of the base index or the updated index, the month with the most recently published PPI prior to the month determining the base index or updated index shall be used.

(d) If a product code is discontinued, the Government and the Contractor will mutually agree to substitute a similar product code. If Labor designates an index with a new title and/or code number as continuous with the product code specified above, the new index shall be used.

(e) Unless the Contractor's written request for a price adjustment resulting from the application of the formula in (b) above is received by the Contracting Officer within 30 calendar days of the release of the updated index, the Contractor shall have waived its right to an upward price adjustment for the balance of the contract. Alternatively, the Contracting Officer will unilaterally adjust the award price downward when appropriate using the updated index defined in (b) above.

(f) Price adjustments shall be effective upon execution of a contract modification by the Government or on the 31st day following the release of the updated index, whichever is later, shall indicate the updated index and percent of change as well as the ACP, and shall not apply to delivery orders issued before the effective date.

(End of Clause)

*Alternate I (AUG 1990).* As prescribed in 516.203-4(c)(2), substitute the following paragraphs (b), (e) and (f) for paragraphs (b), (e) and (f) of the basic clause:

(b) In any option period, the contract price may be adjusted upward or downward a maximum of \* percent.

(1) For the first option period, any price adjustment for the product code shall be based upon the percentage change in the PPI released in the month prior to the initial month of the contract period specified in the solicitation for sealed bidding or the month prior to award in negotiation (the base index) and the PPI released in the third month before completion of the initial contract period stated in the solicitation (the updated index). This initial contract period may be less than 12 months. The formula for determining the Adjusted Contract Price (ACP) applicable to shipments during the first option period is—

$$ACP = \frac{\text{Updated index}}{\text{Base index}} \times \text{Award price}$$

(2) For any subsequent option period, the price adjustment shall be the percentage change between the previously updated index (the new base index) and the PPI released 12 months later (the most recent updated index). This percentage shall be applied to the Current Contract Price (CCP). The formula for determining the ACP applicable to shipments for the subsequent option period(s) is—

$$\text{ACP} = \frac{\text{Most recent updated index}}{\text{New base index}} \times \text{CCP}$$

(e) Unless the Contractor's written request for a price adjustment resulting from the application of the formulas in (b) (1) or (2) above is received by the Contracting Officer within 30 calendar days of the date of the Government's preliminary written notice of its intent to exercise the option, the Contractor shall have waived its right to an upward price adjustment for that option period. Alternatively, the Contracting Officer in its written notice shall exercise the option at the CCP or at a reduced price when appropriate using the formulas in (b) (1) or (2) above.

(f) Price adjustments shall be effected by execution of a contract modification by the Government indicating the most recent updated index and percent of change and shall apply to delivery orders placed on or after the first day of the option period.

*Alternate II (AUG 1990).* As prescribed in 516.203-4(c)(2), add the following paragraph (g) to the basic clause.

(g) No price adjustment will be made unless the percentage change in the PPI is at least\*\* percent.

\*The appropriate percentage should be determined based upon the historical trend in the PPI for the product code. A ceiling of more than 10 percent must be approved by the Contracting Director.

\*\*The Contracting Officer should insert a lower percent than the maximum percentage stated in paragraph (b) of the clause.

6. Section 552.217-70 is added to read as follows:

#### 552.217-70 Evaluation of Options.

As prescribed in 517.203, insert the following provision:

##### Evaluation of Options (Aug. 1990)

(a) The Government will evaluate offers for award purposes by determining the lowest base period price. When option year pricing is based on a formula (e.g., changes in the Producer Price Index or other common standard); option year pricing is automatically considered when evaluating the base year price, as any change in price will be uniformly related to changes in market conditions. All options are therefore considered to be evaluated. Evaluation of options will not obligate the Government to exercise the option(s).

(b) The Government will reject the offer if exceptions are taken to the price provisions of the Economic Price Adjustment clause, unless the exception results in a lower maximum option year price. Such offers will be evaluated without regard to the lower option year(s) maximum. However, if the

offeror offering a lower maximum is awarded a contract, the award will reflect the lower maximum.

(End of Provision)

Dated: September 7, 1990.

Richard H. Hopf, III,

Associate Administrator for Acquisition Policy.

[FR Doc. 90-22093 Filed 9-25-90; 8:45 am]

BILLING CODE 6820-61-M

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

#### 49 CFR Part 571

[Docket No. 74-14; Notice 66]

RIN 2127-AC13

#### Crash Tests With Unrestrained Test Dummies

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This rule amends Standard No. 208, Occupant Crash Protection, by extending the period during which a Hybrid II test dummy will be the only dummy used in compliance tests of vehicles that employ means other than safety belts or air bags to meet the standard. The standard had formerly provided that a Hybrid III test dummy could be used to test such a vehicle manufactured on or after September 1, 1990. This rule delays the use of the Hybrid III test dummy for compliance testing of such vehicles until September 1, 1993. This additional time is needed to allow the agency to complete and evaluate the many research projects that are now underway examining the Hybrid III test dummy. Once this has been done, the agency will be able to establish requirements for the use of Hybrid III test dummies that will ensure both that vehicles that do not use safety belts or air bags will provide adequate protection for drivers and passengers in actual crashes and that the Hybrid III test dummy is equivalent to the Hybrid II test dummy in these situations. This

rule does not affect the requirement that vehicle manufacturers have the option of specifying the use of either the Hybrid II or the Hybrid III test dummy in compliance testing of vehicles that use either air bags or safety belts to meet the standard.

**DATES:** *Effective date:* This rule takes effect on September 26, 1990.

*Comment closing date:* Comments on this rule must be received by NHTSA no later than November 13, 1990.

**ADDRESSES:** Comments should refer to the docket and notice number shown above, and be submitted to: NHTSA Docket Section, room 5109, 400 Seventh Street, SW., Washington, DC 20590. Docket hours are 9:30 a.m. to 4 p.m. Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:**

Mr. Stanley H. Backaitis, Crashworthiness Division, NRM-12, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Mr. Backaitis can be contacted by telephone at (202) 366-4912.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Hybrid II test dummy has been incorporated in subpart B of 49 CFR part 572 since August 1, 1973. This test dummy is used to assess the occupant protection afforded vehicle occupants in frontal crashes. To serve this purpose, instruments in the dummy measure the acceleration at the center of gravity of the dummy's head, the acceleration at the center of gravity of the dummy's upper thorax (chest), and the compressive force transmitted axially through each upper leg. These forces cannot exceed the maximum levels set forth in Standard No. 208, Occupant Crash Protection. NHTSA had concluded that the Hybrid II test dummy was a reasonable simulation of a human. The maximum force levels set forth in Standard No. 208 were set at levels that would minimize the likelihood of serious injury or death for vehicle occupants in frontal crashes.

For more than a decade, the Hybrid II test dummy was the only test dummy specified in NHTSA's regulations for use in Standard No. 208 compliance testing.

However, on July 25, 1986 (51 FR 26688), NHTSA published a rule establishing a second test dummy for use in Standard No. 208 compliance testing. This test dummy was the Hybrid III test dummy, and the specifications for it appear at subpart E of 49 CFR part 572. The agency concluded that this test dummy would allow the assessment of more types of potential injuries to vehicle occupants and that this test dummy appeared to be an even more accurate simulation of a human than the older Hybrid II test dummy. The rule establishing the Hybrid III test dummy for use in compliance testing required that the same force levels that are measured and recorded for the Hybrid II test dummy would be measured and recorded for the Hybrid III test dummy, and that the same maximum injury criteria levels would apply to both types of test dummies.

When either of two types of test dummies may be used for compliance testing for a safety standard, it is important that the two types be "equivalent," i.e., that they display only minimal differences in test results when they are exposed to equivalent crash environments. The importance of equivalence is that vehicles, which will pass or fail a safety standard using one type of dummy, will achieve essentially the same result using the other type of dummy. This ensures that compliance or noncompliance with a safety standard is entirely dependent upon vehicle attributes instead of differing attributes of the types of test dummies.

When the Hybrid III test dummy was incorporated into part 572, NHTSA concluded that the Hybrid II and III test dummies were equivalent when the dummies were restrained by safety belts or air bags. However, the agency concluded that the two types of test dummies were not equivalent when they were unrestrained. The chest acceleration measurements for unrestrained Hybrid III dummies were consistently lower than the chest acceleration measurements for unrestrained Hybrid II dummies. If the two test dummies were to be equivalent when they were unrestrained, some measurement of injury producing forces to the chest of the Hybrid III test dummy, in addition to the existing measurement of chest acceleration, would have to be made to compensate for the lower chest acceleration measurements for unrestrained Hybrid III test dummies. Chest injuries generally are caused by excessive loading on the chest, when the chest contacts the restraint system and possibly the steering system, if the

occupant is restrained, or the steering system and/or other passenger compartment components, if the occupant is unrestrained. The agency concluded that a measurement of the amount the chest was deflected, or compressed, as measured approximately at the sternum, for the Hybrid III test dummy would appropriately compensate for that dummy's lower chest acceleration measurements when it was unrestrained. Hence, a limit was established on the amount of chest deflection permitted when the Hybrid III test dummy was used in compliance testing.

Both the notice of proposed rulemaking and the final rule adopting the Hybrid III test dummy divided all occupant protection systems into two groups. One chest deflection limit (3.0 inches) was established for air bags ("restraint systems that are gas inflated and provide distributed loading to the torso during a crash") and another chest deflection limit (2.0 inches) was established for all other occupant protection systems. The effect of this latter chest deflection limit was to treat as a single category vehicles in which occupants were restrained by safety belts and vehicles in which occupants were unrestrained. Subsequently, the agency determined that the limited data that were available called into question the wisdom of treating safety-belt restrained and unrestrained occupants as a single group for the purposes of the chest deflection limit.

#### Response to Petitions for Reconsideration of the Rule Establishing the Hybrid III Test Dummy

In response to the petitions for reconsideration of the final rule establishing the Hybrid III test dummy, NHTSA reexamined its previous decision to establish a single chest deflection limit for all occupant protection systems other than air bags. The available accident data suggested that, when the crash forces that produce as much as 2.9 inches of chest deflection in the Hybrid III test dummy are imposed on the human chest by 2-point safety belts, those forces appear not to expose vehicle occupants to a significant risk of serious chest injury. Since the agency had treated occupants restrained by safety belts in the same category as those that were unrestrained for the purposes of the chest deflection limit, one would infer that the same level of chest deflection that appeared not to expose safety belt-restrained occupants to significant risks of serious chest injury would likewise not expose unrestrained occupants to significant risks of serious chest injury. However,

the accident data and the limited biomechanical data that were available for unrestrained occupants raised concerns about such an inference.

Further, as explained above, NHTSA was concerned that the Hybrid II and Hybrid III test dummies be equivalent. None of the limited data that were available suggested that a 3 inch chest deflection limit for unrestrained test dummies would make the Hybrid III equivalent to the Hybrid II test dummies in those situations.

Because of these concerns, the agency concluded that it should not permit the Hybrid III test dummy to be used for compliance testing with the automatic crash protection requirements of vehicles manufactured before September 1, 1990, which used means other than air bags or automatic safety belts to provide the automatic protection. To the best of the agency's knowledge, no manufacturer had any plans to certify a vehicle design as complying with the automatic crash protection requirements without using automatic safety belts or air bags. Hence, this temporary delay in the use of the Hybrid III test dummy for such vehicles was more significant in theory than in practice. NHTSA stated in the 1988 response to the petitions for reconsideration of the Hybrid III rulemaking that delaying until September 1, 1990 would be sufficient to allow the agency to investigate this subject further, to ensure that the chest deflection limit that would be established for unrestrained Hybrid III test dummies would both meet the need for safety and ensure equivalence of the Hybrid II and Hybrid III test dummies in unrestrained conditions.

#### Activities After the Response to Petitions for Reconsideration

At the time of the March 1988 response to petitions for reconsideration, the agency anticipated that the research needed to determine the appropriate chest deflection limit for unrestrained occupants would be completed early enough to allow the agency to make that determination by September 1, 1990. This anticipation reflected NHTSA's belief that the primary tasks of the research activities would be to develop more sophisticated and suitable instrumentation systems for measuring chest deflection and reviewing the existing biomechanical research to determine what chest deflection limit should be established. NHTSA promptly undertook research to address these tasks.

The research undertaken by the agency and test data received from

sources outside the agency, including General Motors, Mercedes-Benz, Toyota, INRETS (a French government research and development group), and the Motor Industry Research Association (a British group), have shown that chest deflection dynamics within the Hybrid III test dummy are far more complex than the agency originally believed and that more sophisticated and suitable instrumentation systems would need to be developed to provide measurements of kinematic distortions of the dummy ribcage. In spite of these unexpected complexities, the agency believes it has developed instrumentation that could be of immediate use. However, the research and test data also raised more basic questions about biomechanical shortcomings of the existing thoracic structure of the Hybrid III test dummy. These biomechanical questions cannot yet be answered, as explained below.

Copies of the testing and research reports describing the testing and research of which the agency is aware and that have become available since March 1988 has been placed in the public docket for this rulemaking. Interested persons are advised to examine those documents for more details on the agency's testing and the results of testing by other entities.

The review of existing biomechanical research and the additional information that has become available since March 1988 raised questions about the suitability of evaluating the potential for thorax injury to vehicle occupants by means of a single point measurement of chest deflection. Test data now indicate that the Hybrid III dummy's centrally located chest deflection sensor measures actual chest deflection only when the load is symmetrically distributed around the chest deflection sensor in the plane of the sternum and when the dummy's chest moves primarily along a single axis, such as a forward-rearward direction, as is generally the case when the dummy is restrained by either a safety belt or an air bag. Agency tests and the test conducted by INRETS show that the existing deflection sensor does not appear to measure true thorax penetration when the thorax is subjected to loading that is concentrated in a small area, when the loading is not symmetrical, or when the impact with the thorax is off-center. The Toyota testing indicated that shifting the positioning of the shoulder belt relative to the Hybrid III dummy's chest deflection sensor affects the measured deflection value and may not indicate

the true magnitude of the deflection that occurs.

In response to these questions, NHTSA initiated research to try to develop either supplementary or alternative technologies for measuring chest deflection in the Hybrid III test dummy. This research allowed the agency to develop two alternative technologies for measuring chest deflection. The first approach measures chest deflection by using string potentiometers at eight points mounted internally around the test dummy's thorax. The second approach consisted of developing an instrumented chestband called an External Peripheral Instrument for Deformation Measurement (EPIDM). NHTSA developed the EPIDM because of the extreme difficulties in measuring chest deflection levels of the cadaver thorax during impacts in vehicle crash environments. In addition to these agency research efforts, NHTSA has learned that Mercedes-Benz is exploring methods of determining chest deflections by measuring the strain imposed on the ribs during the impact.

Further, the Society of Automotive Engineers Committee on Human Biomechanics Simulation formed a task force on September 1, 1988. The mandate of this task force is to evaluate, compare, and recommend for practical application appropriate chest deflection measuring technologies. That task force is currently reviewing several existing methods to measure chest deflection in the Hybrid III test dummy. At this time, the agency understands that this task force expects to reach conclusions and make its recommendations by early 1991.

If the agency had been correct in its March 1988 belief that all that was needed to make the Hybrid III test dummy acceptable for use in testing unrestrained occupants was to develop more sophisticated and suitable instrumentation systems for measuring chest deflection, no additional postponement of the use of Hybrid III for testing unrestrained occupants would be needed. The eight-point chest deflection measurement could be proposed for use now, and the EPIDM and Mercedes' approach might enhance the measurement capabilities in the future. However, test data, particularly the INRETS and Toyota studies referenced earlier, that have become available since March 1988, have suggested shortcomings in the biofidelity of the Hybrid III thorax as it interacts with typical restraint systems.

In response to these data, NHTSA and other parties have undertaken

biomechanical research to verify or disprove these studies and to determine if modifications to the Hybrid III thorax could address the problems suggested by the INRETS and Toyota data. The agency has placed in the docket for this rulemaking action a document listing those research activities relevant to the appropriate chest deflection limit for unrestrained Hybrid III test dummies that have been completed since March 1988 and those that are planned in the near future, both by this agency and by outside parties. The biomechanical research that is now necessary is far more complex and time-consuming than the research the agency anticipated was needed in March 1988. Additionally, biomechanical research is paced by the scarcity of cadavers for use in the testing. Accordingly, it was not possible for NHTSA to satisfactorily resolve the issue of the Hybrid III test dummy in unrestrained situations by September 1, 1990.

#### Requirements of and Need for This Interim Final Rule

The testing NHTSA now has planned or in progress should be completed and the agency's preliminary assessment of the test data available by the end of 1992. As this research progresses, it may be determined that the current Hybrid III thorax design will be shown to be adequate, if it includes new chest deflection measurement instrumentation with an appropriate chest deflection limit for unrestrained occupants. Alternatively, the Hybrid III thorax structure may be shown to need further refinements for use in certain types of crash loading situations, such as unrestrained. In that case, if alternative thorax designs are available and the alternative designs appear to overcome the problems of the current Hybrid III thorax in those crash loading situations, the agency would propose to incorporate those alternative designs into the Hybrid III test dummy. If the research program is unable to uncover solutions to any identified shortcomings, the agency would have to determine the most appropriate course of action.

Regardless of which of these scenarios eventually comes to pass, the results of the research program will enable the agency to determine the most appropriate course of action. That research program will be completed by December 1992. Hence, NHTSA believes that it will be able to determine the most appropriate course of action and complete the necessary rulemaking actions by September 1, 1993. The agency has also concluded that the public interest would be best served by

prohibiting the use of the Hybrid III test dummy in crash situations where it would be unrestrained, until NHTSA has determined the appropriate chest deflection limits and measurement techniques for the Hybrid III test dummy in those crash situations. Accordingly, this rule specifies that any vehicles manufactured before September 1, 1993 that comply with the automatic restraint requirement without using any type of safety belt or inflatable restraint must use only the Hybrid II test dummy in testing for compliance with the automatic restraint requirement.

The agency finds for good cause that notice and opportunity for comment on this rule before it becomes effective would be impracticable and contrary to the public interest, as explained below. First, the circumstances that have forced this postponement were beyond the agency's control. In this instance, the agency did not anticipate that its research program would raise substantial biomechanical issues with respect to the Hybrid III thorax, nor was there an available body of data indicating that these results were likely. Since neither the need for, nor the appropriate direction of, the additional research were known to NHTSA or any other party, NHTSA had no influence or control over those circumstances.

Second, the agency acted diligently to initiate the supplemental biomechanical testing and to try to devise modifications to the Hybrid III thorax that would have allowed this test dummy to be used for compliance testing in unrestrained situations. However, the magnitude of the biomechanical issues that have become apparent was too great to allow the agency to propose an effective solution at this time.

Third, the agency announced in its 1988 final rule that Hybrid III test dummies could be used in unrestrained testing of vehicles manufactured on or after September 1, 1990. NHTSA fully intended to permit the Hybrid III to be used for unrestrained testing, even though the agency thought it might act at a later date to lower the chest deflection limit for the Hybrid III test dummy when unrestrained. This intention reflected the agency's belief that the basic approach of using chest deflection measurements on the Hybrid III dummy would insure acceptable protection against thoracic injury for unrestrained vehicle occupants in real world situations, even if the permissible amount of chest deflection were subsequently lowered for unrestrained occupants. However, the available research now suggests that chest

deflection measurements on the Hybrid III dummy may not be an acceptable approach to ensuring safety protection for unrestrained vehicle occupants. Since ensuring occupant safety is NHTSA's mission, this recently available research has forced the agency to alter its previously announced intent on this subject.

Fourth, the postponement of the use of the Hybrid III test dummy in unrestrained situations is for a relatively short time, until September 1, 1993. Vehicle manufacturers have already begun the preliminary work on their 1993 models that will be produced before September 1, 1993. NHTSA is not aware of any manufacturer that plans to produce a 1993 model that does not rely on either safety belts or air bags to provide occupant protection. Thus, no manufacturer will have to change its plans in response to this postponement. On the other hand, this issue will be resolved quickly enough to allow manufacturers that wish to pursue development of occupant protection systems that do not use safety belts or air bags to proceed expeditiously.

Fifth, NHTSA will consider all comments that are received on this subject and promptly publish a permanent final rule reflecting NHTSA's evaluation of those comments. To the extent that this interim final rule imposes any unforeseen burdens or otherwise affects some party, the permanent final rule will promptly resolve that problem.

After considering all these factors together, NHTSA has concluded that good cause exists to dispense with notice and comment before this interim final rule takes effect. This same good cause justifies making this final rule effective upon publication in the *Federal Register*, instead of 30 days after publication.

NHTSA has analyzed the impacts of this action and determined that it is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. The postponement in the use of the Hybrid III test dummy in unrestrained seating positions should not adversely affect any person. No manufacturer currently produces a vehicle certified as complying with the occupant protection standard without using safety belts or air bags, nor is the agency aware of any plans to produce such a vehicle design before September 1, 1993. Hence, while there may be some theoretical impacts associated with this rule, there are no actual impacts. For

this reason, a full regulatory evaluation has not been prepared.

NHTSA has also considered the effects of this regulatory action under the Regulatory Flexibility Act. I hereby certify that this interim final rule will not have a significant economic impact on a substantial number of small entities. This postponement will primarily affect motor vehicle manufacturers, few of which are small entities. As described above, no adverse impacts will be associated with this action. Further, since no price increases will result from this action, small organizations and small governmental entities will not be affected by this postponement when they purchase new vehicles.

The agency has analyzed this rule for the purposes of the National Environmental Policy Act and determined that this rule will not have a significant impact on the quality of the human environment.

This rule has also been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and NHTSA has determined that the proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Interested persons are invited to submit comments on this interim final rule. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for this interim rule will be considered, and will be available for examination in the

docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the permanent final rule will be considered as suggestions for further rulemaking action. Comments on the interim final rule will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

**List of Subjects in 49 CFR Part 571**

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, 49 CFR part 571 is amended as follows:

**PART 571—[AMENDED]**

1. The authority citation for part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

**§ 571.208 [Amended]**

2. S5 of Standard No. 208 is amended by revising the introductory text of S5.1 and the introductory text of S5.2.1, to read as follows:

\* \* \* \* \*

S5. *Occupant crash protection requirements.*

S5.1 Vehicles subject to S5.1 shall comply with either S5.1(a) or S5.1(b), or any combination thereof, at the manufacturer's option; except that

vehicles manufactured before September 1, 1993 that comply with the requirements of S4.1.2.1(a) by means not including any type of seat belt or inflatable restraint shall comply with S5.1(a).

\* \* \* \* \*

S5.2 *Lateral moving barrier crash test.*

S5.2.1 Vehicles subject to S5.2 shall comply with either S5.2.1(a) or S5.2.1(b), or any combination thereof, at the manufacturer's option; except that vehicles manufactured before September 1, 1993 that comply with the requirements of S4.1.2.1(c) by means not including any type of seat belt or inflatable restraint shall comply with S5.2.1(a).

\* \* \* \* \*

Issued on September 20, 1990.

**Jerry Ralph Curry,**  
*Administrator.*

[FR Doc. 90-22751 Filed 9-25-90; 8:45 am]

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# Proposed Rules

Federal Register

Vol. 55, No. 187

Wednesday, September 26, 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.

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 16

RIN 3150-AD44

#### Salary Offset Procedures for Collecting Debts Owed by Federal Employees to the Federal Government

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is proposing to establish procedures to collect certain debts owned by Federal employees to the NRC and other Federal agencies by deduction(s) from their pay. This proposed rule established 10 CFR part 16 and is necessary to conform NRC regulations to the Debt Collection Act of 1982 which requires each agency to establish a salary offset program for the collection of these debts.

**DATES:** Submit comments by October 26, 1990. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

**ADDRESSES:** Send comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

Hand deliver comments to: 11555 Rockville Pike, One White Flint North, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m., Federal workdays.

Examine comments received at: The NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC 20555.

**FOR FURTHER INFORMATION CONTACT:** Diane B. Dandois, Chief, License Fee and Debt Collection Branch, Division of Accounting and Finance, Office of the Controller, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-7225.

**SUPPLEMENTARY INFORMATION:** The Debt Collection Act of 1982 (Pub. L. 97-365) requires each agency to establish a salary offset program for the collection of debts owed by Federal employees to the Federal Government. Debt collection efforts under these programs resulted in the collection of \$52 million in FY 1988.

The Office of Personnel Management (OPM) regulations governing the salary offset program establish certain minimum standards and procedures that must be incorporated into each agency's salary offset regulations (5 CFR 550.1104) and require each agency to submit proposed regulations to OPM for review and approval prior to their becoming final rules (5 CFR 550.1105). The NRC has forwarded a copy of this proposed rule to OPM in order to comply with 5 CFR 550.1105.

The NRC is proposing to establish a new part in 10 CFR chapter I (part 16) that would contain the provisions necessary to meet this obligation. The proposed 10 CFR part 16 provides procedures for the NRC to collect debts owed to the Federal Government by administrative offset from a Federal employee's salary without his or her consent. This rule applies to all Federal employees who owe debts to the NRC and to current employees of the NRC who owe debts to other Federal agencies.

Concurrently with publication of 10 CFR part 16 as a final rule, the NRC intends to amend 10 CFR part 15, Debt Collection Procedures, to specify that the salary offset provisions of 10 CFR part 16 apply to the collection of certain debts owed Federal employees to the NRC and other agencies.

#### Finding of No Significant Environmental Impact

The Commission has determined, under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR part 51, that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and therefore an environmental statement is not required. Amending the procedures to be used by the Commission to collect debts which are owed to it and other Federal agencies by Federal employees through salary offset will have no radiological environmental impact offsite and no impact on occupational

radiation exposure onsite. The proposed rule does not affect nonradiological plant effluents and has no other environmental impact.

The environmental assessment and finding of no significant impact, on which this determination is based, are available for inspection at the NRC Public Document Room, 2120 L Street, (Lower Level), NW., Washington, DC.

#### Paperwork Reduction Act Statement

This proposed rule contains no information collection requirements and therefore is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

#### Regulatory Analysis

This proposed rule will bring NRC procedures for collecting debts owed it and other Federal agencies by Federal employees into conformance with current statutory and regulatory guidance and requirements and, as such, does not have a significant impact on state and local governments and geographical regions, health, safety, and the environment; nor does it represent substantial costs to licensees, the NRC, or other Federal agencies. This constitutes the regulatory analysis for this proposed rule.

#### Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Commission certifies that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities since it does not cover debts owed the NRC by small entities. As a result, a regulatory flexibility analysis has not been prepared.

#### Backfit Analysis

The Commission has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule and, therefore, that a backfit analysis is not required for this proposed rule because it does not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

#### List of Subjects in 10 CFR Part 16

Claims, Debt collection, Government employees, Wages.

For the reasons set out in the preamble and under authority of the Atomic Energy Act of 1954, as amended;

the Energy Reorganization Act of 1974, as amended; the Debt Collection Act of 1982, as amended; the Federal Claims Collection Act of 1966, as amended; 5 CFR 550.1101-1103, subpart K; and 5 U.S.C. 552 and 553, the NRC is proposing to adopt 10 CFR part 16.

1. A new part 16 is added to 10 CFR chapter I.

**PART 16—SALARY OFFSET PROCEDURES FOR COLLECTING DEBTS OWED BY FEDERAL EMPLOYEES TO THE FEDERAL GOVERNMENT**

Sec.

- 16.1 Purpose and scope.
- 16.3 Definitions.
- 16.5 Application.
- 16.7 Notice requirements.
- 16.9 Hearing.
- 16.11 Written decision.
- 16.13 Coordinating offset with another Federal agency.
- 16.15 Procedures for salary offset.
- 16.17 Refunds.
- 16.19 Statute of limitations.
- 16.21 Non-waiver of rights.
- 16.23 Interest, penalties, and administrative costs.

**Authority:** Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 3, Pub. L. 89-508, 80 Stat. 308, as amended (31 U.S.C. 3711, 3717, 3718); sec. 5, Pub. L. 89-508, 80 Stat. 308, as amended (31 U.S.C. 3716); Debt Collection Act of 1982, Pub. L. 97-365, 96 Stat. 1749-1758; Federal Claims Collection Standards, 4 CFR Parts 101-105; 5 U.S.C. 5514, as amended; 5 CFR 550.1101-550.1108.

**§ 16.1 Purpose and scope.**

(a) This part provides procedures for the collection by administrative offset of a Federal employee's salary without his/her consent to satisfy certain debts owed to the Federal Government. This part applies to all Federal employees who owe debts to the Nuclear Regulatory Commission (NRC) and to current employees of the NRC who owe debts to other Federal agencies. This part does not apply when the employee consents to recovery from his/her current pay account.

(b) These procedures do not apply to debts or claims arising under:

- (1) The Internal Revenue Code of 1954, as amended, 26 U.S.C. 1 et seq.;
- (2) The Social Security Act, 42 U.S.C. 301 et seq.;
- (3) The tariff laws of the United States; or
- (4) Any case where a collection of a debt by salary offset is explicitly provided for or prohibited by another statute.

(c) These procedures do not apply to any adjustment to pay arising out of an employee's selection of coverage or a change in coverage under a Federal

benefits program requiring periodic deductions from pay if the amount to be recovered was accumulated over four pay periods or less.

(d) These procedures do not preclude the compromise, suspension, or termination of collection action where appropriate under the standards implementing the Federal Claims Collection Act, 31 U.S.C. 3711 et seq., 4 CFR parts 101 through 105.

(e) This part does not preclude an employee from requesting waiver of an overpayment under 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 716 or in any way questioning the amount or validity of the debt by submitting a subsequent claim to the General Accounting Office. This part does not preclude an employee from requesting a waiver pursuant to other statutory provisions applicable to the particular debt being collected.

**§ 16.3 Definitions.**

For the purposes of this part, the following definitions apply:

*Administrative charges* are those amounts assessed by NRC to cover the costs of processing and handling delinquent debts due the Government.

*Administrative offset* means withholding money payable by the United States Government to, or held by the Government for, a person to satisfy a debt the person owes the United States Government.

*Agency* means an executive agency as is defined at 5 U.S.C. 105 including the U.S. Postal Service, the U.S. Postal Rate Commission, a military department as defined at 5 U.S.C. 102, an agency or court in the judicial branch, an agency of the legislative branch including the U.S. Senate and House of Representatives and other independent establishments that are entities of the Federal Government.

*Creditor agency* means the agency to which a debt is owed.

*Debt* means an amount which has been determined by an appropriate NRC official or an appropriate official of another agency to be owed to the United States from sources which include loans insured or guaranteed by the United States and all other amounts due the United States from fees, leases, rents, royalties, services, sales of real or personal property, overpayments, penalties, damages, interests, fines, forfeitures (except those arising under the Uniform Code of Military Justice), and all other similar sources.

*Disposable pay* means the amount that remains from an employee's current basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of an employee not entitled to basic pay, other authorized pay after required

deductions for social security; Federal, state or local income tax; health insurance premiums; retirement contributions; life insurance premiums; Federal employment taxes; and any other deductions that are required to be withheld by law. Deductions described in 5 CFR 581.105 (b) through (f) are excluded when determining disposable pay subject to salary offset.

*Employee* means a current employee of an agency, including a current member of the Armed Forces or a Reserve of the Armed Forces (Reserves).

*FCCS* means the Federal Claims Collection Standards jointly published by the Justice Department and the General Accounting Office at 4 CFR parts 101-105.

*Hearing official* means an individual responsible for conducting any hearing with respect to the existence or amount of a debt claimed or the repayment schedule if not established by written agreement between the employee and the NRC, and who renders a decision on the basis of such hearing.

*Paying agency* means the agency that employs the individual who owes the debt and authorizes the payment of his/her current pay.

*Salary offset* means an administrative offset to collect a debt under 5 U.S.C. 5514 by deduction(s) at one or more officially established pay intervals from the current pay account of an employee without his or her consent.

*Waiver* means the cancellation, remission, forgiveness, or non-recovery of a debt allegedly owed by an employee to an agency as permitted or required by 5 U.S.C. 5584, 10 U.S.C. 2774, 32 U.S.C. 716, 5 U.S.C. 8346(b), or any other law.

**§ 16.5 Application.**

The regulations in this part are to be followed when:

- (a) The NRC is owed a debt by an individual currently employed by another Federal agency;
- (b) The NRC is owed a debt by an individual who is a current employee of the NRC; or
- (c) The NRC employs an individual who owes a debt to another Federal agency.

**§ 16.7 Notice requirements.**

(a) If the NRC is the creditor agency, deductions will not be made unless the NRC provides the employee with a signed written notice of the debt at least 30 days before salary offset commences. The notice will be delivered in person or by certified or registered mail, return receipt requested, with receipt returned as proof of delivery.

(b) The written notice must contain:

(1) A statement that the debt is owed and an explanation of its origin, nature, and amount;

(2) The NRC's intention to collect the debt by deducting from the employee's current disposable pay account;

(3) The amount, frequency, proposed beginning date, and duration of the intended deduction(s);

(4) An explanation of interest, penalties, and administrative charges, including a statement that these charges will be assessed unless excused in accordance with the Federal Claims Collection Standards at 4 CFR part 101-105;

(5) The employee's right to inspect and copy government records pertaining to the debt or, if the employee or his or her representative cannot personally inspect the records, to request and receive a copy of these records;

(6) If not previously provided, the opportunity (under terms agreeable to the NRC) to establish a schedule for the voluntary repayment of the debt or to enter into a written agreement to establish a schedule for repayment of the debt in lieu of offset (4 CFR 102.2(e)). The agreement must be in writing, signed by both the employee and the NRC, and documented in the NRC's files;

(7) The employee's right to a hearing conducted by an official arranged for by the NRC (an administrative law judge, or alternatively, a hearing official not under the control of the head of the agency) if a petition is filed as prescribed in § 16.9;

(8) The methods and time period for petitioning for hearings;

(9) A statement that the timely filing of a petition for a hearing will stay the commencement of collection proceedings;

(10) A statement that a final decision on the hearing will be issued not later than 60 days after the filing of the petition requesting the hearing unless the employee requests and the hearing official grants a delay in the proceedings;

(11) A statement that knowingly false or frivolous statements, representatives, or evidence may subject the employee to appropriate disciplinary procedures under chapter 75 of title 5, United States Code and 5 CFR part 752, penalties under the False Claims Act, sections 3729-3731 of title 31, United States Code or other applicable statutory authority, or criminal penalties under sections 286, 287, 1001 and 1002 of title 18, United States Code or any other applicable statutory authority;

(12) A statement of other rights and remedies available to the employee

under statutes or regulations governing the program for which the collection is being made; and

(13) Unless there are contractual or statutory provisions to the contrary, a statement that amounts paid on or deducted for the debt which are later waived or found not owed to the United States will be promptly refunded to the employee.

#### § 16.9 Hearing.

(a) *Request for hearing.* (1) An employee shall file a petition for a hearing in accordance with the instruction outlined in the creditor agency's notice of offset.

(2) If the NRC is the creditor agency, a hearing may be requested by filing a written petition addressed to the Controller stating why the employee disputes the existence or amount of the debt or the repayment schedule if it was established by written agreement between the employee and the NRC. The employee shall sign the petition and fully identify and explain with reasonable specificity all the facts, evidence, and witnesses, if any, which the employee believes support his or her position. The petition for a hearing must be received by the Controller no later than fifteen (15) calendar days after receipt of the notice of offset unless the employee can show that the delay in meeting the deadline date was because of circumstances beyond his or her control or because of failure to receive notice of the time limit (unless otherwise aware of it).

(b) *Hearing procedures.* (1) The hearing will be presided over by a hearing official arranged by NRC (an administrative law judge or, alternatively, a hearing official not under the supervision or control of the head of the agency.)

(2) The hearing must conform to procedures contained in the Federal Claims Collection Standards 4 CFR 102.3(c). The burden is on the employee to demonstrate either that the existence or the amount of the debt is in error or that the terms of the repayment schedule would result in undue financial hardship or would be against equity and good conscience.

(3) An employee is entitled to representation of his or her choice at any stage of the proceeding. NRC attorneys may not be provided as representatives for the debtor. The NRC will not compensate the debtor for representation expenses, including hourly fees for attorneys, travel expenses, and costs for reproducing documents.

#### § 16.11 Written decision.

(a) The hearing official will issue a written opinion no later than 60 days after the hearing.

(b) The written opinion must include:

(1) A statement of the facts presented to demonstrate the nature and origin of the alleged debt;

(2) The hearing official's analysis, findings, and conclusions;

(3) The amount and validity of the debt; and

(4) The repayment schedule, where appropriate.

#### § 16.13 Coordinating offset with another Federal agency.

(a) *The NRC as the creditor agency.* When the NRC determines that an employee of a Federal agency owes a delinquent debt to the NRC, the NRC will, as appropriate:

(1) Arrange for a hearing upon the proper petitioning by the employee;

(2) Certify in writing that the employee owes the debt, the amount and basis of the debt, the date on which payment is due, the date the Government's right to collect the debt accrued, and that NRC procedures for salary offset implementing 5 U.S.C. 5514 have been approved by the Office of Personnel Management;

(3) If collection must be made in installments, the NRC must advise the paying agency of the amount or percentage of disposable pay to be collected in each installment;

(4) Advise the paying agency of the actions taken under 5 U.S.C. 5514(a) and provide the dates on which action was taken unless the employee has consented to salary offset in writing or signed a statement acknowledging receipt of procedures required by law. The written consent or acknowledgment must be sent to the paying agency;

(5) Except as otherwise provided in this paragraph (a), the NRC must submit a debt claim containing the information specified in paragraphs (a) (2) through (4) of this section and an installment agreement (or other instruction on the payment schedule), if applicable, to the employee's paying agency;

(6) Upon receipt of notification that the employee has transferred to another agency before the debt is collected in full, the NRC will submit a properly certified claim to the new paying agency so that collection can be resumed;

(7) If the employee is in the process of separating, the NRC will submit its debt claim to the paying agency as provided in paragraphs (a) (2) through (5) of this section. The paying agency will certify any amounts already collected, notify the employee, and send a copy of the

certification and notice of the employee's separation to the NRC. If the paying agency is aware that the employee is entitled to Civil Service Retirement and Disability Fund or similar payments, it will certify to the agency responsible for making the payments that the employee owes a debt (including the amount) and that the provisions of this part have been followed. The NRC will submit a properly certified claim to the agency responsible for making such payments so collection can be made;

(8) If the employee has already separated and all payments due from the paying agency have been paid, the NRC may request, unless otherwise prohibited, that money payable to the employee from the Civil Service Retirement and Disability Fund or other similar funds be collected by administrative offset.

(b) *The NRC as the paying agency.* (1) Upon receipt of a properly certified debt claim from another agency, the NRC will schedule deductions to begin at the next established pay interval. The employee must receive written notice indicating that the NRC has received a certified debt claim from the creditor agency, the amount of the debt, the date salary offset will begin, and the amount of the deduction(s). The NRC may not review the merits of the creditor agency's determination of the validity or the amount of the certified claim.

(2) Upon receipt of an incomplete debt claim from a creditor agency, the NRC will return the debt claim to the creditor agency with a notice that procedures under 5 U.S.C. 5514 and 5 CFR part 550, subpart K, must be followed and a properly certified debt claim received before action will be taken to collect from the employee's current pay account.

(3) If the employee transfers to another agency after the creditor agency has submitted its debt claim to the NRC and before the debt is collected completely, the NRC will certify the total amount collected. The NRC will furnish one copy of the certification to the employee. The NRC will furnish a copy to the creditor agency with notice of the employee's transfer.

#### § 16.15 Procedures for salary offset.

(a) Deductions to liquidate an employee's debt will be by the method and in the amount stated in the NRC's notice of intention to offset as provided in § 16.7. Debts will be collected in one lump sum where possible. If the employee is financially unable to pay in one lump sum, collection must be made in installments.

(b) Debts will be collected by deduction at officially established pay intervals from an employee's current pay account unless alternative arrangements for repayment are made.

(c) Installment deductions will be made over a period not greater than the anticipated period of employment. The size of installment deductions must bear a reasonable relationship to the size of the debt and the employee's ability to pay. The deduction for the pay intervals for any period may not exceed 15% of disposable pay unless the employee has agreed in writing to a deduction of a greater amount.

(d) Offset against any subsequent payment due an employee who retires or resigns or whose employment or period of active duty ends before collection of the debt is completed is provided for in accordance with 31 U.S.C. 3716. These payments include but are not limited to final salary payment or lump-sum leave due the employee from the paying agency as of the date of separation to the extent necessary to liquidate the debt.

#### § 16.17 Refunds.

(a) The NRC will refund promptly any amounts deducted to satisfy debts owed to the NRC when the debt is waived, found not owed to the NRC, or when directed by an administrative or judicial order.

(b) The creditor agency will promptly return any amounts deducted by NRC to satisfy debts owed to the creditor agency when the debt is waived, found not owed, or when directed by an administrative or judicial order.

(c) Unless required or permitted by law or contract, refunds under this section may not bear interest.

#### § 16.19 Statute of limitations.

If a debt has been outstanding for more than 10 years after the agency's right to collect the debt first accrued, the agency may not collect by salary offset unless facts material to the Government's right to collect were not known and could not reasonably have been known by the NRC official or officials who were charged with the responsibility for discovery and collection of the debts.

#### § 16.21 Non-waiver of rights.

An employee's involuntary payment of all or any part of a debt collected under these regulations will not be construed as a waiver of any rights that the employee may have under 5 U.S.C. 5514 or any other provision of contract or law, unless there are statutes or contract(s) to the contrary.

#### § 16.23 Interest, penalties, and administrative charges.

Charges may be assessed for interest, penalties, and administrative charges in accordance with the Federal Claims Collection Standards, 4 CFR 102.13.

Dated at Rockville, Maryland, this 14th day of September 1990.

For the Nuclear Regulatory Commission.

James M. Taylor,

*Executive Director for Operations.*

[FR Doc. 90-22770 Filed 9-25-90; 8:45 am]

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## FEDERAL DEPOSIT INSURANCE CORPORATION

### 12 CFR Part 325

RIN 3064-AA82

#### Capital Maintenance

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

**ACTION:** Notice of proposed rule.

**SUMMARY:** In 1985, the FDIC adopted minimum supervisory leverage capital ratios of primary and total capital to total assets in assessing the capital adequacy of state-chartered banks that are not members of the Federal Reserve System ("state nonmember banks"). In 1989, the FDIC adopted minimum supervisory risk-based capital ratios of core and total capital to risk-weighted assets.

The FDIC risk-based capital policy statement also indicated that the risk-based capital framework did not replace or eliminate the existing part 325 leverage ratios but that, once the risk-based framework was implemented, the FDIC would consider whether the part 325 definitions of capital for leverage purposes and the minimum leverage ratios should be amended. In this regard, the FDIC now is proposing to amend part 325 to:

(1) Replace the primary and total capital definitions with a Tier 1 (core) capital definition;

(2) Eliminate the minimum 5.5 percent primary and 6 percent total capital ratio requirements for state nonmember banks and replace them with a minimum 3 percent Tier 1 leverage capital ratio requirement for the most highly-rated banks (i.e., those that would be assigned a composite CAMEL rating of (1) that are not anticipating or experiencing any significant growth; all other state nonmember banks would need to meet a minimum leverage ratio that is at least 100 to 200 basis points above this minimum, (i.e., an absolute minimum

leverage ratio of not less than 4 percent for those banks that are not highly-rated or that are anticipating or experiencing significant growth);

(3) Provide that state nonmember banks with capital below the minimum leverage capital requirement would be deemed to be engaging in an unsafe or unsound practice unless they have submitted, and are in compliance with, a capital plan approved by the FDIC;

(4) Replace the existing 3 percent leverage test, which is based on total capital, for determining when a depository institution is in an unsafe or unsound condition pursuant to section 8(a) of the Federal Deposit Insurance Act with a new 2 percent test based solely on Tier 1 capital;

(5) Add to part 325 a number of references concerning certain supervisory responsibilities imposed on the FDIC by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), for determining the safety and soundness and capital adequacy of savings associations; and

(6) Reformat certain portions of part 325 and make conforming adjustments to the FDIC's 1989 Statement of Policy on Risk-Based Capital and to the FDIC's 1985 Statement of Policy on Capital to appropriately reflect the proposed changes; both of these policy statements also would be included as appendices to part 325.

**DATES:** Comments on this proposal must be received by November 13, 1990.

**ADDRESSES:** All comments should be addressed to Hoyle L. Robinson, Executive Secretary, Attention: Room F-400, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429 or delivered to Room F-400, 1776 F Street NW., between the hours of 9 a.m. and 5 p.m. on business days. Comments will be available for inspection and photocopying during normal business hours at the 1776 F Street address.

**FOR FURTHER INFORMATION CONTACT:** Robert F. Mialovich, Assistant Director, Division of Supervision (202/898-6918), Stephen G. Pfeiffer, Examination Specialist, Accounting Section (202/898-8904), or Claude A. Rollin, Senior Attorney, Legal Division (202/898-3985).

**SUPPLEMENTARY INFORMATION:**

**Paperwork Reduction Act**

The collection of information contained in this rule has been submitted to the Office of Management and Budget for review pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Comments on the collection of information should be directed to the

Office of Management and Budget, Paperwork Reduction Project (3064-0075), Washington, DC 20503, with copies of such comments to be sent to Steven F. Hanft, Office of the Executive Secretary, room F-451, 550 17th Street NW., Washington, DC 20429. The collection of information in this regulation consists of capital plans that are required to be filed by state nonmember banks pursuant to § 325.3(c)(3) when these institutions fail to comply with the minimum leverage capital requirement set forth in § 325.3(b). Most state nonmember banks with less than the minimum leverage capital requirement have been identified as institutions that have more than normal levels of risk and already are subject to formal or informal proceedings which establish their minimum capital requirements and set forth capital plans for achieving the minimum requirements. However, it is anticipated that a relatively small number of state nonmember banks may fail the minimum leverage capital requirement set forth in § 325.3(b) but not yet be subject to formal or informal enforcement proceedings for achieving the required capital level. It is these institutions for which an additional reporting burden could arise pursuant to § 325.3(c)(3). The estimated annual reporting burden for these institutions is as follows:

*Number of respondents:* 5.

*Number of responses per respondent:*

1.

*Total annual responses:* 5.

*Hours per response:* 60.

*Total annual burden hours:* 300.

**Background**

The FDIC adopted in 1985 (50 FR 11138, March 19, 1985) minimum supervisory leverage ratios of capital to total assets in assessing the capital adequacy of state-chartered banks that are not members of the Federal Reserve System ("state nonmember banks"). These minimums are contained in Part 325 of the FDIC's regulations (12 CFR part 325) and set forth a minimum primary capital ratio of 5.5 percent and a minimum total capital ratio (primary plus secondary) of 6 percent. The definition of primary capital includes common stockholders' equity (i.e., copy stock, surplus, and undivided profits), as well as perpetual preferred stock, minority interests in consolidated subsidiaries, the allowance for loan and lease losses, and limited amounts of mandatory convertible debt. Secondary capital consists of subordinated notes and debentures and limited-life preferred stock.

The FDIC adopted in 1989 (54 FR 11509, March 21, 1989) minimum supervisory risk-based capital ratios of capital to risk-weighted assets. These minimum risk-based ratios are defined in the policy statement included as Appendix A to part 325. The policy statement sets forth a minimum total capital ratio (core plus supplementary) of 8 percent that banks are generally expected to meet when the risk-based framework is fully phased in at year-end 1992, as well as an interim 7.25 percent ratio that banks are expected to meet by year-end 1990. When fully phased-in, at least one-half of the minimum total capital requirement (i.e., 4 percent) must be comprised of Tier 1 (core) capital elements. Core capital is comprised essentially of common stockholders' equity, noncumulative perpetual preferred stock and minority interests in consolidated subsidiaries. Supplementary capital includes the allowance for loan losses, cumulative perpetual and long-term preferred stock, hybrid capital instruments such as mandatory convertible debt, and limited amounts of term subordinated debt and intermediate-term preferred stock.

The leverage and risk-based capital standards are only minimums that apply to sound, well-run institutions. As a result, most institutions are expected to and, in fact, do operate with capital ratios well above the minimum standards.

**I. Leverage Standard**

At the time the risk-based capital policy statement was adopted, the FDIC indicated that the risk-based capital framework did not replace or eliminate the existing part 325 leverage ratios but that, once the risk-based framework was implemented, the FDIC would consider whether the part 325 definitions of capital for leverage purposes and the minimum leverage ratios should be amended. The FDIC is now proposing to amend the existing part 325 leverage standard and to retain this revised standard in conjunction with the minimum risk-based capital standard.

The FDIC believes that retention of some form of leverage standard is desirable in order to maintain some constraint on a bank's overall leverage. Retention of an overall leverage constraint is important since, in the absence of such a constraint and without a comprehensive measure for interest rate risk and various operational risks, the assignment of a significant volume of assets to the zero percent or other low risk-weight categories under the risk-based framework could allow a bank to

assume an unwarranted degree of leveraging and risk-taking without an appropriate capital cushion.

However, the FDIC recognizes that different capital definitions for leverage and risk-based purposes carry the potential for confusion and perhaps an element of undue burden. As a result, the FDIC is proposing a revised leverage standard that is based on the definition of TIER 1 core capital presently used in the risk-based framework. In conjunction with this revision, the FDIC hopes to maintain an effective minimum leverage standard, using the proposed new definition of capital, that is consistent with the 6 percent leverage standard that uses the present definition of capital.

### *II. Proposed Minimum Leverage Capital Requirement*

The proposed revisions to the leverage standard would result in a definition of capital (i.e., core capital) which, for most state nonmember banks, would only include common stockholders' equity, less all intangible assets other than mortgage servicing rights. (Most banks do not have any significant amounts of the other two Tier 1 capital elements, i.e., noncumulative perpetual preferred stock and minority interests in consolidated subsidiaries.) This definition of capital is much narrower than the primary capital definition used in the existing leverage standard which, in addition to core capital, includes all forms of perpetual preferred stock, the entire amount of the allowance for loan and lease losses, and certain amounts of mandatory convertible debt. In view of the fact that these other primary capital elements usually do not comprise more than 1 to 2 percent of a bank's total assets, and since these elements no longer would be included in the definition of capital under the proposed leverage standard, the FDIC believes that a minimum leverage standard of 4 to 5 percent, based on core capital, is substantially equivalent with the 5.5 percent, primary capital and 6 percent total capital leverage standards that presently exist.

In view of this, the FDIC now is proposing to eliminate from the part 325 leverage regulation the current definitions for primary and total capital, replace them with a single definition of Tier 1 (or core) capital, and establish a minimum leverage standard of 3 percent Tier 1 capital to total assets for the most highly-rated banks (i.e., those that would be assigned a composite CAMEL rating of (1) that are not anticipating or experiencing any significant growth. All other state nonmember banks would need to meet a minimum leverage ratio

that is at least 100 to 200 basis points above this minimum—that is, an absolute minimum leverage ratio of not less than 4 percent for those banks that are not highly-rated or that are anticipating or experiencing significant growth.

The proposed minimum leverage standard is very similar in substance to the minimum leverage capital guidelines adopted on August 2, 1990 by the Board of Governors of the Federal Reserve System. In this regard, although the Federal Reserve Board adopted a 3 percent minimum leverage standard, that minimum would only apply to the most highly-rated institutions that are not experiencing or anticipating significant growth. Under the Federal Reserve's guidelines, all other institutions would need to meet a minimum leverage requirement of 3 percent "plus an additional cushion of at least 100 to 200 basis points"—that is, an effective minimum leverage standard of 4 to 5 percent. Once again, it is emphasized that this requirement is only a minimum and most institutions are expected to operate with capital levels well above the minimum that are commensurate with the institution's particular risk profile.

On the other hand, the 3 percent minimum core capital leverage standard that was adopted on November 7, 1989, by the Office of Thrift Supervision for savings associations (12 CFR part 567), and a similar leverage standard that was proposed by the Office of the Comptroller of the Currency for national banks on November 3, 1989, would appear to apply to all affected institutions rather than just to the most highly-rated institutions.

With respect to the FDIC's capital definitions, however, one difference exists in the definition of Tier 1 capital under the FDIC's proposed revisions to the leverage standard versus the Tier 1 definition under the FDIC's risk-based framework. For risk-based capital purposes, a transition period is allowed until year-end 1992, during which time frame certain supplementary capital elements that would otherwise be included in Tier 2 capital can be included as part of Tier 1 capital. Under the proposed leverage standard, no such transition or phase-in period is allowed and only those capital elements that technically meet the definition or core capital can be included as part of Tier 1 capital.

### *III. Unsafe or Unsound Practice*

As under the current part 325 regulation, the revised rule would provide that any state nonmember bank not in compliance with the minimum

leverage capital requirement does not have adequate capital and will be deemed to be engaged in an unsafe or unsound practice pursuant to section 8(b)(1) and/or 8(c) of the Federal Deposit Insurance Act unless the bank is in compliance with a written agreement or has submitted and is in compliance with a written agreement or has submitted and is in compliance with a capital plan approved by the FDIC. (This, however, does not preclude the FDIC from taking action against any bank with capital above the minimum requirement if the specific circumstances deem such action to be appropriate.) The revised regulation would also require any state nonmember bank that has less than the minimum leverage capital requirement to submit to its FDIC regional director for review and approval a reasonable capital plan for achieving the minimum capital requirement, with such plan to be submitted within 60 days of the date as of which the bank fails to comply with the capital requirement.

Any FDIC-insured institution making an application to the FDIC that requires the FDIC to consider the adequacy of the institution's capital structure would also be deemed to have an inadequate capital structure if it does not meet this minimum leverage capital requirement and normally will not receive approval for such an application. Since FDIC now is also the insurer for savings associations, the revised leverage standard would also cover any applications filed by these institutions that require the FDIC to make an evaluation of the institution's capital adequacy. This could include applications for deposit insurance or for the right to exercise additional powers, as well as certain applications for mergers, acquisitions or other business combinations. This minimum leverage standard would not, however, apply in the case of remedial-type applications or notices, such as those relating to junk bond divestment plans or the rollover of brokered deposits in undercapitalized institutions.

Except in conjunction with the consideration of certain types of applications noted above, the part 325 minimum leverage capital requirement would not directly apply to savings associations for which the FDIC is not the primary regulator. Rather, savings associations are subject to the minimum capital requirements that are included in part 567 of the OTS regulations. These OTS standards require savings associations to meet a 1.5 percent tangible capital, a 3 percent core leverage, and a risk-based capital

requirement that has a transition period until year-end 1992 for meeting a final 3 percent total capital to risk-weighted assets ratio. However, under the conditions set forth in section 8(t) of the Federal Deposit Insurance Act (12 U.S.C. 1818(t)), the FDIC may take section 8(b)(1) and/or 8(c) enforcement action against any savings association that is deemed to be engaged in an unsafe or unsound practice on account of its inadequate capital structure. In making this determination, the FDIC would evaluate whether the insured institution meets the minimum leverage capital standards set forth in part 325, but would also consider the extent to which the institution is in compliance with the capital requirements of its primary regulator and any related capital plans. Both the OTS and the FDIC capital rules represent minimum standards and institutions may be required to operate with capital levels well above the minimums.

#### IV. Unsafe or Unsound Condition

The current FDIC regulation contains a provision indicating that any FDIC-insured bank (including any national, state member or state nonmember bank) with a ratio of primary capital to total assets of less than three percent is deemed to be in an unsafe or unsound condition pursuant to section 8(a) of the Federal Deposit Insurance Act (12 U.S.C. 1818(a)). The FDIC believes it is appropriate to retain an "unsafe and unsound condition" provision in part 325 that would apply to all FDIC-insured depository institutions. At the same time, however, since the FDIC is eliminating the primary and total capital definitions and replacing them with one based on a more narrow definition of core capital, the FDIC believes it is also appropriate to reduce the ratio used in determining an unsafe or unsound condition from 3 percent to 2 percent.

Therefore, the FDIC is proposing to amend § 325.4(c) to indicate that any insured depository institution with a Tier 1 capital to total assets ratio of less than two percent is deemed to be in an unsafe or unsound condition pursuant to section 8(a) of the FDI Act unless the institution has entered into and is in compliance with a written agreement with the FDIC to increase its capital and take any other action deemed necessary for the institution to be operated in a safe and sound manner.

An institution with a Tier 1 leverage ratio in excess of two percent may also be operating in an unsafe or unsound condition. Thus, the FDIC is not precluded from bringing section 8(a) or other enforcement action against an institution with Tier 1 capital in excess

of this amount if the circumstances deem such action to be appropriate, including those situations where the institution is experiencing adverse results or other problems with regard to asset quality, earnings, liquidity, interest rate risk, or other factors.

#### V. Application of Part 325 to Savings Associations

Certain provisions have been added to Part 325 to reflect the fact that the FDIC, in addition to insuring savings associations, also has certain additional supervisory authorities over these institutions. These include: the authority to approve or disapprove certain applications that require the FDIC to evaluate an institution's capital structure, such as applications for deposit insurance or the right to exercise additional powers and certain applications for mergers, acquisitions or business combinations; the authority to take section 8(b) and/or 8(c) enforcement actions in accordance with section 8(t) of the FDI Act when an unsafe or unsound practice exists; and the authority to initiate section 8(a) termination of insurance proceedings when an institution is in an unsafe or unsound condition. These additional supervisory responsibilities were effectively given to the FDIC in the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA").

The FDIC, however, also recognizes that the Office of Thrift Supervision (OTS), as the primary federal regulator of savings associations, has established minimum Tier 1 (core) leverage, tangible capital and risk-based capital requirements for savings associations (see 12 CFR part 567). In this regard, certain differences exist between the methods used by the OTS to calculate a savings association's capital and the methods set forth by the FDIC in part 325. These differences include, among others, the Tier 1 capital treatment for investments in subsidiaries and for intangible assets such as qualifying supervisory goodwill. In determining whether a savings association's application should be approved, or whether an unsafe or unsound practice or condition exists, the FDIC will consider the extent of the savings association's capital as determined in accordance with part 325, including any qualifying supervisory goodwill that is eligible for core capital treatment pursuant to 12 CFR part 567. However, the FDIC will also consider the extent to which a savings association is in compliance with (a) The minimum capital requirements set forth by the OTS, (b) any related capital plans for

meeting the minimum capital requirements, and/or (c) any other criteria deemed by the FDIC as appropriate based on the association's specific circumstances.

In addition, when evaluating the capital structure of a savings association that has qualifying supervisory goodwill which, over a phase-out period, counts as Tier 1 capital under the OTS capital standards but is not recognized under the FDIC's part 325 capital standard, the FDIC will accord special attention to the existence of this difference in capital standards. For example, in determining whether a savings association with less than 2 percent Tier 1 capital (as defined in part 325) is in an unsafe or unsound condition pursuant to section 8(a) of the FDI Act on account of the institution's inadequate capital structure, or whether the association has entered into and is in compliance with a written agreement acceptable to the FDIC, the presence of qualifying supervisory goodwill will be duly considered. A savings association with qualifying supervisory goodwill that is recognized as core capital by the OTS will be deemed to be compliance with the FDIC requirement for a written agreement for so long as the association is in compliance with the minimum capital requirements set forth by the OTS and, therefore, will not be deemed to be in an unsafe and unsound condition solely on account of its capital structure. However, it is also noted that, pursuant to section 18(n) of the FDI Act (12 U.S.C. 1828(n)), the federal banking agencies (including the OTS) cannot allow any insured depository institutions to include an unidentifiable intangible asset (i.e., goodwill in their calculation of compliance with the appropriate capital standards, if such intangible asset was acquired after April 12, 1989. In addition, for part 325 purposes, mutual savings associations with "nonwithdrawable accounts" or "pledged deposits" may include these instruments as Tier 1 capital to the extent these instruments are the functional equivalent of common equity capital or noncumulative perpetual preferred stock and to the extent they are allowed to be included as core capital under the OTS capital standards.

#### VI. Other Proposed Revisions

The FDIC also is proposing to reformat certain portions to part 325 and make conforming adjustments to the FDIC's Statement of Policy on Risk-Based Capital, which was adopted in 1989 and is included as Appendix A to part 325, and to the FDIC's Statement of Policy on Capital, which was adopted in 1985 when the original part 325 leverage

standard was issued and which, under this proposal, would be added as a new appendix B to part 325.

In this regard, (1) New definitions would be added for Tier 1 (core) capital and for the various elements that comprise Tier 1 capital, replacing the existing definitions for primary, secondary and total capital, (2) definitions for mandatory convertible debt and term subordinated debt obligations would be moved from the body of the part 325 leverage regulation to the risk-based capital policy statement at Appendix A, since these instruments no longer would qualify as capital for the leverage standard under the proposed revision but will continue to qualify as Tier 2 capital under the risk-based framework, (3) the 1985 Statement of Policy on Capital would be updated to include references to certain of the new supervisory responsibilities for savings associations that were granted to the FDIC pursuant to FIRREA, and (4) the two interpretations set forth in §§ 325.101 and 325.102 would be maintained but relocated to other parts of the FDIC capital standards, with interpretation 325.101 being incorporated into the risk-based capital policy statement at Appendix A and interpretation 325.102 being added to § 325.5(e) of the part 325 regulation.

#### VII. Purchased Mortgage Servicing Rights Proposal

On January 30, 1990, the FDIC proposed a rule (55 FR 4623, February 9, 1990) that would limit the amount of purchased mortgage servicing rights that state nonmember banks and savings associations could recognize for regulatory capital purposes. Any purchased servicing intangible assets above the limits would be deducted from assets and capital in determining the appropriate capital ratios, subject to certain exceptions for grandfathered purchased servicing intangibles and separately capitalized mortgage banking subsidiaries. This proposal remains outstanding and it is expected that any final decision on that proposal will be incorporated into the revised leverage standard without further comment.

#### VIII. Issues for Public Comment

The FDIC requests comment on all aspects of the proposed changes to the FDIC's capital requirements. In particular, the FDIC requests specific comment on the following:

(1) Is the Tier 1 definition of capital under the leverage standard appropriate, or should some other definition of capital be used?

(2) Is it appropriate to establish a minimum leverage capital requirement

of 3 percent Tier 1 capital to total assets for highly-rated state nonmember banks (i.e., those that would be assigned a composite CAMEL rating of 1) that are not anticipating or experiencing any significant growth and to require all other institutions to meet a minimum leverage ratio that is at least 100 to 200 basis points above this minimum (i.e., an absolute minimum leverage ratio of not less than 4 percent for those banks that are not highly-rated or that are anticipating or experiencing significant growth), or should some other minimum leverage requirement be used?

(3) Is the 2 percent Tier 1 leverage test an appropriate benchmark to use for determining when an insured depository institution is operating in an unsafe or unsound condition, or is some other figure or mechanism more appropriate to use for this purpose?

(4) To the extent savings associations would be affected by these proposed changes to part 325, are the provisions appropriately applied, consistent with the FDIC's added supervisory responsibilities over savings associations that arose pursuant to FIRREA?

#### Regulatory Flexibility Act Statement

The Board of Directors of the FDIC hereby certifies that the proposed amendments to part 325, if promulgated, will not have a significant economic impact on a substantial number of small business entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) In light of this certification, the Regulatory Flexibility Act requirements (at 5 U.S.C. 603, 604) to prepare initial and final regulatory flexibility analyses do not apply.

#### List of Subjects in 12 CFR Part 325

Bank deposit insurance, Banks, banking, Capital adequacy, Reporting and recordkeeping requirements, State nonmember banks, Savings associations.

The Board of Directors of the Federal Deposit Insurance Corporation proposes to amend part 325 of title 12 of the Code of Federal Regulations as follows:

#### PART 325—CAPITAL MAINTENANCE

1. The authority citation for part 325 is revised to read as follows:

Authority: 12 U.S.C. 1464(t), 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819(Tenth), 1828(c), 1828(d), 1828(i), 1828(n), 3907, 3909.

2. Sections 325.1 through 325.6 are revised to read as follows:

#### § 325.1 Scope.

The provisions of this part apply to those circumstances for which the Federal Deposit Insurance Act or this chapter requires an evaluation of the adequacy of an insured depository institution's capital structure. The FDIC is required to evaluate capital before approving various applications by insured depository institutions. The FDIC also must evaluate capital, as an essential component, in determining the safety and soundness of state nonmember banks it insures and supervises. This part establishes the criteria and standards FDIC will use in calculating the minimum leverage capital requirement and in determining capital adequacy. In addition, appendix A to this part sets forth the FDIC's risk-based capital policy statement and appendix B to this part includes a statement of policy on capital adequacy that provides interpretational and definitional guidance as to how this part will be administered and enforced.

#### § 325.2 Definitions.

(a) *Allowance for loan and lease losses* means those general valuation allowances that have been established through charges against earnings to absorb losses on loans or lease financing receivables. Allowances for loan and lease losses exclude allocated transfer risk reserves established pursuant to 12 U.S.C. 3904 and specific reserves created against identified losses.

(b) *Assets classified loss* means:

(1) When measured as of the date of examination of an insured depository institution, those assets that have been determined by an evaluation made by a state or federal examiner as of that date to be a loss; and

(2) When measured as of any other date, those assets:

(i) That have been determined—

(A) By an evaluation made by a state or federal examiner at the most recent examination of an insured depository institution to be a loss; or

(B) By evaluations made by the insured depository institution since its most recent examination to be a loss; and

(ii) That have not been charged off from the insured depository institution's books or collected.

(c) *Bank* means an FDIC-insured, state-chartered commercial or savings bank that is not a member of the Federal Reserve System.

(d) *Common stockholders' equity* means the sum of common stock and related surplus, undivided profits, disclosed capital reserves that represent

a segregation of undivided profits, and foreign currency translation adjustments; less net unrealized losses on marketable equity securities.

(e) *Identified losses* means:

(1) When measured as of the date of examination of an insured depository institution, those items that have been determined by an evaluation made by a state or federal examiner as of that date to be chargeable against income, capital and/or general valuation allowances such as the allowance for loan and lease losses (examples of identified losses would be assets classified loss, off-balance sheet items classified loss, liabilities not shown on the institution's books, estimated losses in contingent liabilities, and differences in accounts which represent shortages); and

(2) When measured as of any other date, those items:

(i) That have been determined—

(A) By an evaluation made by a state or federal examiner at the most recent examination of an insured depository institution to be chargeable against income, capital and/or general valuation allowances; or

(B) By evaluations made by the insured depository institution since its most recent examination to be chargeable against income, capital and/or general valuation allowances; and

(ii) For which the appropriate accounting entries to recognize the loss have not yet been made on the insured depository institution's books nor has the item been collected or otherwise settled.

(f) *Insured depository institution* means any depository institution (except for a foreign bank having an insured branch) the deposits of which are insured in accordance with the provisions of the Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*)

(g) *Intangible assets* means those assets that are required to be reported as intangible assets in a banking institution's "Reports of Condition and Income" (Call Report) or in a savings association's "Thrift Financial Report."

(h) *Minority interest in consolidated subsidiaries* means minority interests in equity capital accounts of those subsidiaries that have been consolidated for the purpose of computing regulatory capital under this part, except that minority interests which fail to provide meaningful capital support are excluded from this definition.

(i) *Mortgage servicing rights* means those intangible assets that represent the purchased rights to perform the servicing function for a specific group of mortgage loans that are owned by others. Mortgage servicing rights must

be amortized over a period not to exceed 15 years or their estimated useful life, whichever is shorter.

(j) *Noncumulative perpetual preferred stock* means perpetual preferred stock (and related surplus) where the issuer has the option to waive payment of dividends and where the dividends so waived do not accumulate to future periods nor do they represent a contingent claim on the issuer. Preferred stock issues where the dividend is reset periodically based, in whole or in part, upon the bank's current credit standing, including but not limited to, auction rate, money market and remarketable preferred stock, are excluded from this definition of noncumulative perpetual preferred stock, regardless of whether the dividends are cumulative or noncumulative.

(k) *Perpetual preferred stock* means a preferred stock that does not have a maturity date, that cannot be redeemed at the option of the holder, and that has no other provisions that will require future redemption of the issue. It includes those issues of preferred stock that automatically convert into common stock at a stated date. It excludes those issues, the rate on which increases, or can increase, in such a manner that would effectively require the issuer to redeem the issue.

(l) *Savings association* means any federally-chartered savings association, any state-chartered savings association, and any corporation (other than a bank) that the Board of Directors of the FDIC and the Director of the Office of Thrift Supervision jointly determine to be operating in substantially the same manner as a savings association.

(m) *Tier 1 capital or core capital* means the sum of common stockholders' equity, noncumulative perpetual preferred stock (including any related surplus), and minority interests in consolidated subsidiaries, minus all intangible assets other than mortgage servicing rights and qualifying supervisory goodwill eligible for inclusion in core capital pursuant to 12 CFR part 567, minus identified losses, and minus investments in securities subsidiaries subject to 12 CFR 337.4.

(n) *Total assets* means the average of total assets required to be included in a banking institution's "Reports of Condition and Income" (Call Reports) or, for savings associations, the consolidated total assets required to be included in the "Thrift Financial Report," as these reports may from time to time be revised, as of the most recent report date (and after making any necessary subsidiary adjustments for state nonmember banks as described in §§ 325.5(c) and 325.5(d) of this part),

minus intangible assets other than mortgage servicing rights and qualifying supervisory goodwill eligible for inclusion in core capital pursuant to 12 CFR part 567, and minus assets classified loss and any other assets that are deducted in determining Tier 1 capital. For banking institutions, the average of total assets is found in the Call Report schedule of quarterly averages. For savings associations, the consolidated total assets figure is found in Schedule CSC of the Thrift Financial Report.

(o) *Written agreement* means an agreement in writing executed by authorized representatives entered into with the FDIC by an insured depository institution which is enforceable by an action under section 8(a) and/or section 8(b) of the Federal Deposit Insurance Act (12 U.S.C. 1818 (a), (b)).

### § 325.3 Minimum leverage capital requirement.

(a) *General.* Banks must maintain at least the minimum leverage capital requirement set forth in this section. The capital standards in this part are the minimum acceptable for banks whose overall financial condition is fundamentally sound, which are well-managed and which have no material or significant financial weaknesses. Where the FDIC determines that the financial history or condition, managerial resources and/or the future earnings prospects of a bank are not adequate, or where a bank has sizable off-balance sheet or funding risks, excessive interest rate risk exposure, or a significant volume of assets classified substandard, doubtful or loss or otherwise criticized, the FDIC may determine that the minimum amount of capital for that bank is greater than the minimum standards stated in this section. These same criteria will apply to any insured depository institution making an application to the FDIC that requires the FDIC to consider the adequacy of the institution's capital structure.

(b) *Minimum leverage capital requirement.* (1) Except for institutions qualifying under paragraph (b)(2) of this section, the minimum leverage capital requirement for a bank (or for insured depository institution making an application to the FDIC) shall consist of a ratio of Tier 1 capital to total assets of not less than 4 percent.

(2) The minimum leverage capital requirement for a bank (or an insured depository institution making application to the FDIC) shall consist of a ratio of Tier 1 capital to total assets of not less than 3 percent if the FDIC determines that the institution is not

anticipating or experiencing significant growth and has no undue interest rate risk exposure, excellent asset quality, high liquidity, good earnings and other attributes indicative of an institution that would be assigned a composite rating of 1 under the Uniform Financial Institutions Rating System established by the Federal Financial Institutions Examination Council.

(c) *Insured depository institutions with less than the minimum leverage capital requirement.* (1) A bank (or an insured depository institution making an application to the FDIC) operating with less than the minimum leverage capital requirement does not have adequate capital and therefore has inadequate financial resources.

(2) Any insured depository institution operating with an inadequate capital structure, and therefore inadequate financial resources, will not receive approval for an application requiring the FDIC to consider the adequacy of its capital structure or its financial resources.

(3) A bank having less than the minimum leverage capital requirement shall, within 60 days of the date as of which it fails to comply with the capital requirement, submit to its FDIC regional director for review and approval a reasonable plan describing the means and timing by which the bank shall achieve its minimum leverage capital requirement.

(4) In any merger, acquisition or other type of business combination where the FDIC must give its approval, where it is required to consider the adequacy of the financial resources of the existing and proposed institutions, and where the resulting entity is either insured by the FDIC or not otherwise federally insured, approval will not be granted when the resulting entity does not meet the minimum leverage capital requirement.

(d) *Exceptions.* Notwithstanding the provisions of paragraphs (a), (b) and (c) of this section:

(1) The FDIC, in its discretion, may approve an application pursuant to the Federal Deposit Insurance Act where it is required to consider the adequacy of capital if it finds that such approval must be taken to prevent the closing of a depository institution or to facilitate the acquisition of a closed depository institution, or, when severe financial conditions exist which threaten the stability of an insured depository institution or of a significant number of depository institutions insured by the FDIC or of insured depository institutions possessing significant financial resources, such action is taken to lessen the risk to the FDIC posed by

an insured depository institution under such threat of instability.

(2) The FDIC, in its discretion, may approve an application pursuant to the Federal Deposit Insurance Act where it is required to consider the adequacy of capital or the financial resources of the insured depository institution where it finds that the applicant has committed to and is in compliance with a reasonable plan to meet its minimum leverage capital requirements within a reasonable period of time.

#### § 325.4 Inadequate capital as an unsafe or unsound practice or condition.

(a) *General.* As a condition of federal deposit insurance, all insured depository institutions must remain in a safe and sound condition.

(b) *Unsafe or unsound practice.* Any bank which has less than its minimum leverage capital requirement is deemed to be engaged in an unsafe or unsound practice pursuant to section 8(b)(1) and/or 8(c) of the Federal Deposit Insurance Act (12 U.S.C. 1818(b)(1) and/or 1818(c)). Except that such a bank which has entered into and is in compliance with a written agreement with the FDIC or has submitted to the FDIC and is in compliance with a plan approved by the FDIC to increase its Tier 1 leverage capital ratio to such level as the FDIC deems appropriate and to take such other action as may be necessary for the bank to be operated so as not to be engaged in such an unsafe or unsound practice will not be deemed to be engaged in an unsafe or unsound practice pursuant to section 8(b)(1) and/or 8(c) of the Federal Deposit Insurance Act (12 U.S.C. 1818(b)(1) and/or 1818(c)) on account of its capital ratios. The FDIC is not precluded from taking section 8(b)(1), section 8(c) or any other enforcement action against a bank with capital above the minimum requirement if the specific circumstances deem such action to be appropriate. Under the conditions set forth in section 8(t) of the Federal Deposit Insurance Act (12 U.S.C. 1818(t)), the FDIC also may take section 8(b)(1) and/or 8(c) enforcement action against any savings association that is deemed to be engaged in an unsafe or unsound practice on account of its inadequate capital structure.

(c) *Unsafe or unsound condition.* Any insured depository institution with a ratio of Tier 1 capital to total assets that is less than two percent is deemed to be operating in an unsafe or unsound condition pursuant to section 8(a) of the Federal Deposit Insurance Act (12 U.S.C. 1818(a)).

(1) A bank with a ratio of Tier 1 capital to total assets of less than two percent which has entered into and is in

compliance with a written agreement with the FDIC (or any other insured depository institution with a ratio of Tier 1 capital to total assets of less than two percent which has entered into and is in compliance with a written agreement with its primary federal regulator and to which agreement the FDIC is a party) to increase its Tier 1 leverage capital ratio to such level as the FDIC deems appropriate and to take such other action as may be necessary for the insured depository institution to be operated in a safe and sound manner, will not be subject to a proceeding by the FDIC pursuant to 12 U.S.C. 1818(a) on account of its capital ratios.

(2) An insured depository institution with a ratio of Tier 1 capital to total assets that is equal to or greater than two percent may be operating in an unsafe or unsound condition. The FDIC is not precluded from bringing an action pursuant to 12 U.S.C. 1818(a) where an insured depository institution has a ratio of Tier 1 capital to total assets that is equal to or greater than two percent.

#### § 325.5 Miscellaneous.

(a) *Intangible assets.* Any intangible assets that were explicitly approved by the FDIC as part of the bank's regulatory capital on a specific case basis will be included in capital under the terms and conditions that were approved by the FDIC, provided that the intangible asset is being amortized over a period not to exceed 15 years or its estimated useful life, whichever is shorter. However, pursuant to section 18(n) of the Federal Deposit Insurance Act (12 U.S.C. 1828(n)), an unidentifiable intangible asset such as goodwill, if acquired after April 12, 1989, cannot be included in calculating regulatory capital under this part.

(b) *Reservation of authority.* Notwithstanding the definition of "Tier 1 capital" in § 325.2(m) of this part and the risk-based capital definitions of Tier 1 and Tier 2 capital in appendix A to this part, the Director of the Division of Supervision may, if the Director finds a newly developed or modified capital instrument or a particular balance sheet entry or account to be the functional equivalent of a component of Tier 1 or Tier 2 capital, permit one or more insured depository institutions to include all or a portion of such instrument, entry, or account as Tier 1 or Tier 2 capital, permanently, or on a temporary basis, for purposes of this part. Similarly, the Director of the Division of Supervision may, if the Director finds that a particular Tier 1 or Tier 2 capital component or balance sheet entry or account has

characteristics or terms that diminish its contribution to an insured depository institution's ability to absorb losses, require the deduction of all or a portion of such component, entry, or account from Tier 1 or Tier 2 capital.

(c) *Securities subsidiary.* For purposes of this part, any securities subsidiary subject to 12 CFR 337.4 shall not be consolidated with its bank parent and any investment therein shall be deducted from the bank parent's Tier 1 capital and total assets.

(d) *Depository institution subsidiary.* Any domestic depository institution subsidiary that is not consolidated in the "Reports of Condition and Income" (Call Reports) of its insured parent bank shall be consolidated with the insured parent bank for purposes of this part. The financial statements of the subsidiary that are to be used for this consolidation must be prepared in the same manner as the "Reports of Condition and Income" (Call Reports). A domestic depository institution subsidiary of a savings association shall be consolidated also is required pursuant to the capital requirements of the association's primary federal regulator.

(e) *Restrictions relating to capital components.* To qualify as Tier 1 capital under this part or as Tier 1 or Tier 2 capital under appendix A to this part, a capital instrument must not contain or be subject to any conditions, covenants, terms, restriction, or provisions that are inconsistent with safe and sound banking practices. A condition, covenant, term, restriction, or provision is inconsistent with safe and sound banking practices if it:

(1) Unduly interferes with the ability of the issuer to conduct normal banking operations;

(2) Results in significantly higher dividends or interest payments in the event of deterioration in the financial condition of the issuer;

(3) Impairs the ability of the issuer to comply with statutory or regulatory requirements regarding the disposition of assets or incurrence of additional debt; or

(4) Limits the ability of the FDIC or a similar regulatory authority to take any necessary action to resolve a problem bank or failing bank situation.

Other conditions and covenants that are not expressly listed in paragraphs (e)(1) through (e)(4) of this section also may be inconsistent with safe and sound banking practices.

#### § 325.6 Issuance of directives.

(a) *General.* A directive is a final order issued to a bank that fails to maintain capital at or above the

minimum leverage capital requirement as set forth in §§ 325.3 and 325.4. A directive issued pursuant to this section, including a plan submitted under a directive, is enforceable in the same manner and to the same extent as a final cease-and-desist order issued under 12 U.S.C. 1818(b).

(b) *Issuance of directives.* If a bank is operating with less than the minimum leverage capital requirement established by this regulation, the Board of Directors, or its designee(s), may issue and serve upon any insured state nonmember bank a directive requiring the bank to restore its capital to the minimum leverage capital requirement within a specified time period. The directive may require the bank to submit to the appropriate FDIC regional director, or other specified official, for review and approval, a plan describing the means and timing by which the bank shall achieve the minimum leverage capital requirement. After the FDIC has approved the plan, the bank may be required under the terms of the directive to adhere to the monitor compliance with the plan. The directive may be issued during the course of an examination of the bank, or at any other time that the FDIC deems appropriate, if the bank is found to be operating with less than the minimum leverage capital requirement.

(c) *Notice and opportunity to respond to issuance of a directive.* (1) If the FDIC makes an initial determination that a directive should be issued to a bank pursuant to paragraph (b) of this section, the FDIC, through the appropriate designated official(s), shall serve written notification upon the bank of its intent to issue a directive. The notice shall include the current Tier 1 leverage capital ratio, the basis upon which said ratio was calculated, the proposed capital injection, the proposed date for achieving the minimum leverage capital requirement and any other relevant information concerning the decision to issue a directive. When deemed appropriate, specific requirements of a proposed plan for meeting the minimum leverage capital requirement may be included in the notice.

(2) Within 14 days of receipt of notification, the bank may file with the appropriate designated FDIC official(s) a written response, explaining why the directive should not be issued, seeking modification of its terms, or other appropriate relief. The bank's response shall include any information, mitigating circumstances, documentation or other relevant evidence which supports its position, and may include a plan for attaining the minimum leverage capital requirement.

(3) After considering the bank's response, the appropriate designated FDIC official(s) shall serve upon the bank a written determination addressing the bank's response and setting forth the FDIC's findings and conclusions in support of any decision to issue or not to issue a directive. The directive may be issued as originally proposed or in modified form. The directive may order the bank to:

(i) Achieve the minimum leverage capital requirement established by this regulation by a certain date;

(ii) Submit for approval and adhere to a plan for achieving the minimum leverage capital requirement;

(iii) Take other action as is necessary to achieve the minimum leverage capital requirement; or

(iv) A combination of the above actions.

If a directive is to be issued, it may be served upon the bank along with the final determination.

(4) Any bank, upon a change in circumstances, may request the FDIC to reconsider the terms of a directive and may propose changes in the plan under which it is operating to meet the minimum leverage capital requirement. The directive and plan continue in effect while such request is pending before the FDIC.

(5) All papers filed with the FDIC must be postmarked or received by the appropriate designated FDIC official(s) within the prescribed time limit for filing.

(6) Failure by the bank to file a written response to notification of intent to issue a directive within the specified time period shall constitute consent to the issuance of such directive.

(d) *Enforcement of a directive.* (1) Whenever a bank fails to follow the directive or to submit or adhere to its capital adequacy plan, the FDIC may seek enforcement of the directive in the appropriate United States district court, pursuant to 12 U.S.C. 3907(b)(2)(B)(ii), in the same manner and to the same extent as if the directive were a final cease-and-desist order. In addition to enforcement of the directive, the FDIC may seek assessment of civil money penalties for violation of the directive against any bank, any officer, director, employee, agent, or other person participating in the conduct of the affairs of the bank, pursuant to 12 U.S.C. 3909(d).

(2) The directive may be issued separately, in conjunction with, or in addition to, any other enforcement mechanisms available to the FDIC, including cease-and-desist orders, orders of correction, the approval or

denial of applications, or any other actions authorized by law. In addition to addressing a bank's minimum leverage capital requirement, the capital directive may also address minimum risk-based capital requirements that are to be maintained and calculated in accordance with appendix A to this part.

§§ 325.101 and 325.102 [Removed]

3. Sections 325.101 and 325.102 are removed.

4. The second paragraph of section I.A.2.(c)(4) of appendix A to part 325 is revised to read as follows:

Appendix A to Part 325—Statement of Policy on Risk-Based Capital

\* \* \* \* \*

- I. \* \* \*
- A. \* \* \*
- 2. \* \* \*
- (c) \* \* \*
- (4) \* \* \*

Mandatory convertible debt securities, which are subordinated debt instruments that require the issuer to convert such instruments into common or perpetual preferred stock by a date at or before the maturity of the debt instruments, will qualify as hybrid capital instruments provided the maturity of these instruments is 12 years or less and the instruments meet the criteria set forth below for "term subordinated debt." There is no limit on the amount of hybrid capital instruments that may be included within Tier 2 capital.

\* \* \* \* \*

5. The last sentence of the first paragraph of section I.A.2.(d) of appendix A to part 325 is revised and three new sentences are added at the end of the first paragraph of section I.A.2.(d) to read as follows:

Appendix A to Part 325—Statement of Policy on Risk-Based Capital

\* \* \* \* \*

- I. \* \* \*
- A. \* \* \*
- 2. \* \* \*

(d) \* \* \* For state nonmember banks, a "term subordinated debt" instrument is an obligation other than a deposit obligation that:

(1) Bears on its face, in boldface type, the following: This obligation is not a deposit and is not insured by the Federal Deposit Insurance Corporation;

(2)(i) Has a maturity of at least five years; or

(ii) In the case of an obligation or issue that provides for scheduled repayments of principal, has an average maturity of at least five years; provided that the Director of the Division of Supervision may permit the issuance of an obligation or issue with a shorter maturity or average maturity if the Director has determined that exigent circumstances require the issuance of such obligation or issue; provided further that the provisions of this paragraph I.A.2.(d)(2) shall

not apply to mandatory convertible debt obligations or issues;

(3) States expressly that the obligation:

(i) Is subordinated and junior in right of payment to the issuing bank's obligations to its depositors and to the bank's other obligations to its general and secured creditors; and

(ii) Is ineligible as collateral for a loan by the issuing bank;

(4) Is unsecured;

(5) States expressly that the issuing bank may not retire any part of its obligation without the prior written consent of the FDIC or other primary federal regulator; and

(6) Includes, if the obligation is issued to a depository institution, a specific waiver of the right of offset by the lending depository institution.

Subordinated debt obligations issued prior to December 2, 1987 that satisfied the definition of the term "subordinated note and debenture" that was in effect prior to that date also will be deemed to be term subordinated debt for risk-based capital purposes. An optional redemption ("call") provision in a subordinated debt instrument that is exercisable by the issuing bank in less than five years will not be deemed to constitute a maturity of less than five years, provided that the obligation otherwise has a stated contractual maturity of at least five years; the call is exercisable solely at the discretion or option of the issuing bank, and not at the discretion or option of the holder of the obligation; and the call is exercisable only with the express prior written consent of the FDIC under 12 U.S.C. 1828(i)(1) at the time early redemption or retirement is sought, and such consent has not been given in advance at the time of issuance of the obligation. Optional redemption provisions will be accorded similar treatment when determining the perpetual nature and/or maturity of preferred stock and other capital instruments.

\* \* \* \* \*

6. A new Appendix B to part 325 is added to read as follows:

Appendix B to Part 325—Statement of Policy on Capital Adequacy

Part 325 of the Federal Deposit Insurance Corporation rules and regulations (12 CFR part 325) sets forth minimum leverage capital requirements for fundamentally sound, well-managed banks having no material or significant financial weaknesses. It also defines capital and sets forth sanctions which will be used against banks which are in violation of part 325. This statement of policy on capital adequacy provides some interpretational and definitional guidance as to how this part 325 will be administered and enforced by the FDIC.

I. Enforcement of Minimum Capital Requirements

Section 325.3(b)(2) specifies that FDIC-insured, state-chartered nonmember commercial and savings banks (or other insured depository institutions making applications to the FDIC that require the FDIC to consider the adequacy of the institution's capital structure) must maintain a minimum leverage ratio of Tier 1 (or core)

capital to total assets of at least 3 percent; however, this minimum only applies to the most highly-rated banks (i.e., those that would be assigned a composite CAMEL rating of 1) that are not anticipating or experiencing any significant growth. All other state nonmember banks would need to meet a minimum leverage ratio that is at least 100 to 200 basis points above this minimum. That is, in accordance with § 325.3(b)(1), an absolute minimum leverage ratio of not less than 4 percent must be maintained by those banks that are not highly-rated or that are anticipating or experiencing significant growth.

In addition to the minimum leverage capital standards, Section III of Appendix A to Part 325 indicates that state nonmember banks generally are expected to maintain a minimum risk-based capital ratio of qualifying total capital to risk-weighted assets of 8 percent by December 31, 1992 (and at least 7.25 percent by December 31, 1990), with at least one-half of that total capital amount consisting of Tier 1 capital.

State nonmember banks (hereinafter referred to as "banks") operating with leverage capital ratios below the minimums set forth in part 325 will be deemed to have inadequate capital and will be in violation of part 325. Furthermore, banks operating with risk-based capital ratios below the minimums set forth in appendix A to part 325 generally will be deemed to have inadequate capital. Banks failing to meet the minimum leverage and/or risk-based capital ratios normally can expect to have any application submitted to the FDIC denied (if such application requires the FDIC to evaluate the adequacy of the institution's capital structure) and also can expect to be subject to the use of capital directives or other formal enforcement action by the FDIC to increase capital.

Capital adequacy in banks which have capital ratios at or above the minimums will be assessed and enforced based on the following factors (these same criteria will apply to any insured depository institutions making applications to the FDIC and to any other circumstances in which the FDIC is requested or required to evaluate the adequacy of a depository institution's capital structure):

A. Banks Which Are Fundamentally Sound and Well-Managed

The minimum leverage capital ratios set forth in § 325.3(b) and the minimum risk-based capital ratios set forth in section III of appendix A to part 325 generally will be viewed as the minimum acceptable capital standards for banks whose overall financial condition is fundamentally sound, which are well-managed and which have no material or significant financial weaknesses.

While the FDIC will make this determination in each bank based upon its own condition and specific circumstances, this definition will generally apply to those banks evidencing a level of risk which is no greater than that normally associated with a Composite rating of 1 or 2 under the Uniform Financial Institutions Rating System. Banks meeting this definition which are in compliance with the minimum leverage and

risk-based capital ratio standards will not generally be required by the FDIC to raise new capital from external sources. The FDIC does, however, encourage such banks to maintain capital well above the minimums, particularly those institutions that are anticipating or experiencing significant growth, and will carefully evaluate their earnings and growth trends, dividend policies, capital planning procedures and other factors important to the continuous maintenance of adequate capital.

Adverse trends or deficiencies in these areas will be subject to criticism at regular examinations and may be an important factor in the FDIC's action on applications submitted by such banks. In addition, the FDIC's consideration of capital adequacy in banks making applications to the FDIC will also fully examine the expected impact of those applications on the bank's ability to maintain its capital adequacy. In all cases, banks should maintain capital commensurate with the level and nature of risks, including the volume and severity of adversely classified assets, to which they are exposed.

#### B. All Other Banks

Banks not meeting the definition set forth above, that is, banks evidencing a level of risk which is at least as great as that normally associated with a Composite rating of 3, 4, or 5 under the Uniform Financial Institutions Rating System, will be required to maintain capital higher than the minimum regulatory requirement and at a level deemed appropriate in relation to the degree of risk within the institution. These higher capital levels will normally be addressed through Memorandums of Understanding between the FDIC and the bank or, in cases of more pronounced risk, through the use of formal enforcement actions under section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818).

#### C. Capital Requirements of Primary Regulator

Notwithstanding the above, all banks (or other depository institutions making applications to the FDIC that require the FDIC to consider the adequacy of the institutions' capital structure) will be expected to meet any capital requirements established by their primary state or federal regulator which exceed the minimum capital requirement set forth in the FDIC's regulation. In addition, the FDIC will, when establishing capital requirements higher than the minimum set forth in the regulation, consult with an institution's primary state or federal regulator.

#### II. Capital Plans

Section 325.4(b) specifies that any which has less than its minimum leverage capital requirement is deemed to be engaging in an unsafe or unsound banking practice unless it has submitted, and is in compliance with, a plan approved by the FDI to increase its Tier 1 leverage capital ratio to such level as the FDIC deems appropriate.

A bank having less than the minimum leverage capital requirement is required to submit a reasonable plan to the FDIC within 60 days of the date as of which it fails to comply with the capital requirement

(§ 325.3(c)(3)). The amount of time allowed to achieve the minimum leverage capital requirement will be evaluated by the FDIC on a case-by-case basis and will depend on a number of factors, including the viability of the bank and whether it is fundamentally sound and well-managed.

Banks evidencing more than normal levels of risk will normally have their minimum capital requirements established in a formal or informal enforcement proceeding. The time frames for meeting these requirements will be set forth in such actions and will generally require some immediate action on the bank's part to meet its minimum capital requirement. The reasonableness of capital plans submitted by depository institutions in connection with applications as provided for in § 325.3(d)(2) will be determined in conjunction with the FDIC's consideration of the application.

#### III. Written Agreements

Section 325.4(c)(1) requires that any insured depository institution with a tier 1 capital to total assets (leverage) ratio of less than 2 percent must enter into and be in compliance with a written agreement with the FDIC (or with its other primary federal regulatory with FDIC as a party to the agreement) to increase its Tier 1 leverage capital ratio to such level as the FDIC deems appropriate or be subject to a termination of insurance action by the FDIC. Except in the very rarest of circumstances, the FDIC will require that such agreements contemplate immediate efforts by the depository institution to acquire the required capital.

A bank which has received net worth certificates from the FDIC or approval from the FDIC to defer agricultural loan losses will be considered to be in compliance with this requirement for so long as it is in compliance with the FDIC requirements set forth in the net worth certificate program and/or agricultural loan loss deferral program, provided that both its board and the FDIC agree that the net worth certificate or agricultural loan loss deferral agreements they enter into or have entered into are written agreements as defined in the regulation. In addition, a savings association with qualifying supervisory goodwill that is being recognized as Tier 1 capital by the association's primary federal regulator will be considered to be in compliance with this requirement for so long as the association is in compliance with the minimum capital requirements set forth by its primary federal regulatory.

The guidance in this section is not intended to preclude the FDIC from taking section 8(a) or other enforcement action against any institution, regardless of its capital level, if the specific circumstances deem such action to be appropriate.

#### IV. Capital Components

Section 325.2 sets forth the definition of Tier 1 capital for the leverage standard as well as the definitions for the various instruments and accounts which are included therein. Although nonvoting common stock, noncumulative perpetual preferred stock, and minority interests in consolidated subsidiaries are normally included in Tier 1 capital, voting common stockholder's equity

generally will be expected to be the dominant form of Tier 1 capital. Thus, banks should avoid undue reliance on nonvoting equity, preferred stock and minority interests. The following provides some additional guidance with respect to some of these items that affect the calculation of Tier 1 capital.

#### A. Intangible Assets

The FDIC permits state nonmember banks to record intangible assets on their books and to report the value of such assets in the Consolidated Reports of Condition and Income ("Call Reports"). As noted in the instructions for preparation of the Consolidated Reports of Condition and Income (published by the Federal Financial Institutions Examination Council), intangible assets may arise from business combinations accounted for under the purchase method in accordance with Accounting Principles Board Opinion No. 16, as amended, and acquisitions of portions or segments of another institution's business, such as branch offices, mortgage servicing portfolios, and credit card portfolios.

Intangible assets created from such transactions may be booked in accordance with generally accepted accounting principles with one exception. For the purpose of reporting such assets on Call Reports, banks reporting to the FDIC shall amortize such assets over their estimated useful lives or a period not in excess of 15 years, whichever is shorter.

Notwithstanding the authority to report all intangible assets in the Consolidated Reports of Condition and Income, § 325.2(m) of the regulation specifies that mortgage servicing rights are the only intangible assets which will be allowed as Tier 1 capital.<sup>1</sup> The portion of equity capital represented by other types of intangible assets will be deducted from equity and assets in the computation of the bank's Tier 1 capital. Certain of these intangible assets may, however, be recognized for regulatory capital purposes if explicitly approved by the Director of the Division of Supervision as part of the bank's regulatory capital on a specific case basis. The intangibles will be included in regulatory capital under the terms and conditions that are specifically approved by the FDIC.<sup>2</sup>

<sup>1</sup> Although intangible assets in the form of purchased mortgage servicing rights are generally recognized for regulatory capital purposes, the deduction of part or all of the mortgage servicing rights may be required if the carrying amounts of these rights are excessive in relation to their market value or the level of the bank's capital accounts.

<sup>2</sup> This specific approval must be received in accordance with § 325.5(b). In evaluating whether other types of intangibles should be recognized for regulatory capital purposes, the FDIC will accord special attention to the general characteristics of the intangibles, including: (1) The separability of the intangible asset and the ability to sell it separate and apart from the bank or the bulk of the bank's assets, (2) the certainty that a readily identifiable stream of cash flows associated with the intangible asset can hold its value notwithstanding the future prospects of the bank, and (3) the existence of a market of sufficient depth to provide liquidity for the intangible asset. However, pursuant to section 18(n) of the Federal Deposit Insurance Act (12

In certain instances banks may have investments in unconsolidated subsidiaries or joint ventures that have large volumes of intangible assets. In such instances the bank's consolidated statements will reflect an investment in a tangible asset even though such investment will, in fact, be represented by a large volume of intangible assets. In any such situation where this is material and, consistent with the treatment of mortgage servicing rights set forth above, the bank's investment in the unconsolidated subsidiary will be divided into a tangible and an intangible portion based on the percentage of intangible assets to total assets in the subsidiary. The intangible portion of the investment will be treated as if it were an intangible asset on the bank's books in the calculation of Tier 1 capital.

#### B. Perpetual Preferred Stock

Perpetual preferred stock is defined as preferred stock that does not have a maturity date, that cannot be redeemed at the option of the holder, and that has no other provisions that will require future redemption of the issue. Also, pursuant to section 18(i)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1828(i)(1)), a state nonmember bank cannot, without the prior consent of the FDIC, reduce the amount or retire any part of its preferred stock. (This prior consent is also required for the reduction or retirement of any part of a state nonmember bank's common stock or capital notes and debentures.)

Noncumulative perpetual preferred stock is generally included in Tier 1 capital. Nonetheless, it is possible for banks to issue preferred stock with a dividend rate which escalates to such a high rate that the terms become so onerous as to effectively force the bank to call the issue (for example, an issue with a low initial rate that is scheduled to escalate to much higher rates in subsequent periods). Preferred stock issues with such onerous terms have much the same characteristics as limited life preferred stock in that the bank would be effectively forced to redeem the issue to avoid performance of the onerous terms. Such instruments may be disallowed as Tier 1 capital and, for risk-based capital purposes, would be included in Tier 2 capital only to the extent that the instruments fall within the limitations applicable to intermediate-term preferred stock. Banks which are contemplating issues bearing terms which may be so characterized are encouraged to submit them for FDIC review prior to issuance. Nothing herein shall prohibit banks from issuing floating rate preferred stock issues where the rate is constant in relation to some outside market or index rate. However, noncumulative floating rate instruments where the rate paid is based in some part on the current credit standing of the bank, and all cumulative preferred stock instruments, are excluded from Tier 1 capital. These instruments are included in Tier 2 capital for risk-based capital purposes in accordance with the limitations set forth in Appendix A to part 325.

U.S.C. 1828(n)), specific approval cannot be given for an unidentifiable intangible asset, such as goodwill, if acquired after April 12, 1989.

The FDIC will also require that issues of perpetual preferred stock be consistent with safe and sound banking practices. Issues which would unduly enrich insiders or which contain dividend rates or other terms which are inconsistent with safe and sound banking practices will likely be the subject of appropriate supervisory response from the FDIC. Banks contemplating preferred stock issues which may pose safety and soundness concerns are encouraged to submit such issues to the FDIC for review prior to sale.

#### C. Other Instruments or Transactions Which Fail To Provide Capital Support

Section 325.5(b) specifies that any capital instrument, transaction, or balance sheet entry which would increase an insured depository institution's capital but which does not provide support to the institution by providing a cushion to absorb losses shall be deducted from capital. An example involves certain types of minority interests in consolidated subsidiaries. Minority interests in consolidated subsidiaries have been included in capital based on the fact that they provide capital support to the risk in the consolidated subsidiaries. Certain transactions have been structured where a bank forms a subsidiary by transferring essentially risk-free or low-risk assets to the subsidiary in exchange for common stock of the subsidiary. The subsidiary then sells preferred stock to third parties.

The preferred stock becomes a minority interest in a consolidated subsidiary but, in effect, represents an essentially risk-free or low-risk investment for the preferred stockholders. This type of minority interest fails to provide any meaningful capital support to the consolidated entity inasmuch as it has a preferred claim on the essentially risk-free or low-risk assets of the subsidiary. In addition, certain minority interests are not substantially equivalent to perpetual equity in that the interests must be paid off on specified future dates, or at the option of the holders of the minority interests, or contain other provisions or features that limit the ability of the minority interests to effectively absorb losses. Capital instruments or transactions of this nature which fail to absorb losses or provide meaningful capital support will be deducted from Tier 1 capital.

#### D. Mandatory Convertible Debt

Mandatory convertible debt securities are subordinated debt instruments that require the issuer to convert such instruments into common or perpetual preferred stock by a date at or before the maturity of the debt instruments. The maturity of these instruments must be 12 years or less and the instruments must also meet the other criteria set forth in appendix A to part 325. Mandatory convertible debt is excluded from Tier 1 capital but, for risk-based capital purposes, is included in Tier 2 capital as a "hybrid capital instrument."

So-called "equity commitment notes," which merely require a bank to sell common or perpetual preferred stock during the life of the subordinated debt obligation, are specifically excluded from the definition of mandatory convertible debt securities and are only included in Tier 2 capital under the

risk-based capital framework to the extent that they satisfy the requirements for "term subordinated debt" set forth in appendix A to part 325.

#### V. Analysis of Consolidated Companies

In determining a bank's compliance with its minimum capital requirements the FDIC will, with two exceptions, generally utilize the bank's consolidated statements as defined in the instructions for the preparation of Consolidated Reports of Condition and Income.

The first exception relates to securities subsidiaries of state nonmember banks which are subject to § 337.4 of the FDIC's rules and regulations (12 CFR 337.4). Any subsidiary subject to this section must be a bona fide subsidiary which is adequately capitalized. In addition, § 337.4(b)(3) requires that any insured state nonmember bank's investment in such a subsidiary shall not be counted towards the bank's capital. In those instances where the securities subsidiary is consolidated in the bank's Consolidated Report of Condition it will be necessary, for the purpose of calculating the bank's Tier 1 capital, to adjust the Consolidated Report of Condition in such a manner as to reflect the bank's investment in the securities subsidiary on the equity method. In this case, and in those cases where the securities subsidiary has not been consolidated, the investment in the subsidiary will then be deducted from the bank's capital and assets prior to calculation of the bank's Tier 1 capital ratio. (Where deemed appropriate, the FDIC may also consider deducting investments in other subsidiaries, either on a case-by-case basis or, as with securities subsidiaries, based on the general characteristics or functional nature of the subsidiaries.)

The second exception relates to the treatment of subsidiaries of insured banks that are domestic depository institutions such as commercial banks, savings banks, or savings associations. These subsidiaries are not consolidated on a line-by-line basis with the insured bank parent in the bank parent's Consolidated Reports of Condition and Income. Rather, the instructions for these reports provide that bank investments in such depository institution subsidiaries are to be reported on an unconsolidated basis in accordance with the equity method. Since the FDIC believes that the minimum capital requirements should apply to a bank's depository activities in their entirety, regardless of the form that the organization's corporate structure takes, it will be necessary, for the purpose of calculating the bank's Tier 1 and total capital ratios, to adjust a bank parent's Consolidated Report of Condition to consolidate its domestic depository institution subsidiaries on a line-by-line basis. The financial statements of the subsidiary that are used for this consolidation must be prepared in the same manner as the Consolidated Report of Condition.

The FDIC will, in determining the capital adequacy of a bank which is a member of a bank holding company or chain banking group, consider the degree of leverage and risks undertaken by the parent company or

other affiliates. Where the level of risk in a holding company system is no more than normal and the consolidated company is adequately capitalized at all appropriate levels, the FDIC generally will not require additional capital in subsidiary banks under its supervision over and above that which would be required for the subsidiary bank on its own merit. In cases where a holding company or other affiliated banks (or other companies) evidence more than a normal degree of risk (either by virtue of the quality of their assets, the nature of the activities conducted, or other factors) or where the affiliated organizations are inadequately capitalized, the FDIC will consider the potential impact of the additional risk and excess leverage upon an individual bank to determine if such factors will likely result in excessive requirements for dividends, management fees, or other support to the holding company or affiliated organizations which would be detrimental to the bank. Where the excessive risk or leverage in such organizations is determined to be potentially detrimental to the bank's condition or its ability to maintain adequate capital, the FDIC may initiate appropriate supervisory action to limit the bank's ability to support its weaker affiliates and/or require higher than minimum capital ratios in the bank.

#### VI. Applicability of Part 325 to Savings Associations

Section 325.3(c) indicates that, where the FDIC is required to evaluate the adequacy of any depository institution's (including any savings association's) capital structure in conjunction with an application filed by the institution, the FDIC will not approve the application if the depository institution does not meet the minimum leverage capital requirement set forth in § 325.3(b).

Also, § 325.4(b) states that, under certain conditions specified in section 8(t) of the Federal Deposit Insurance Act, the FDIC may take section 8(b)(1) and/or 8(c) enforcement action against a savings association that is deemed to be engaged in an unsafe or unsound practice on account of its inadequate capital structure. Section 325.4(c) further specifies that any insured depository institution with a Tier 1 leverage ratio (as defined in part 325) of less than 2 percent is deemed to be operating in an unsafe or unsound condition pursuant to section 8(a) of the Federal Deposit Insurance Act.

In addition, the Office of Thrift Supervision (OTS), as the primary federal regulator of savings associations, has established minimum core capital leverage, tangible capital and risk-based capital requirements for savings associations (12 CFR part 567). In this regard, certain differences exist between the methods used by the OTS to calculate a savings association's capital and the methods set forth by the FDIC in part 325. These differences include, among others, the core capital treatment for investments in subsidiaries and for intangible assets such as qualifying supervisory goodwill.

In determining whether a savings association's application should be approved pursuant to § 325.3(c), or whether an unsafe or unsound practice or condition exists pursuant to §§ 325.4(b) and 325.4(c), the FDIC will consider the extent of the savings

association's capital as determined in accordance with part 325. However, the FDIC will also consider the extent to which a savings association is in compliance with (a) The minimum capital requirements set forth by the OTS, (b) any related capital plans for meeting the minimum capital requirements, and/or (c) any other criteria deemed by the FDIC as appropriate based on the association's specific circumstances.

By order of the Board of Directors.

Dated at Washington, DC, this 18th day of September, 1990.

**Hoyle L. Robinson,**

*Executive Secretary, Federal Deposit Insurance Corporation.*

[FR Doc. 90-22739 Filed 9-25-90; 8:45 am]

BILLING CODE 6714-01-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Chapter I

[Summary Notice No. PR-90-23]

#### Petition for Rulemaking; Summary of Petitions Received; Dispositions of Petitions Issued

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of petitions for rulemaking received and of dispositions of prior petitions.

**SUMMARY:** Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

**DATES:** Comments on petitions received must identify the petition docket number involved and must be received on or before: November 26, 1990.

**ADDRESSES:** Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. \_\_\_\_\_, 800 Independence Avenue, SW., Washington, DC 20591.

**FOR FURTHER INFORMATION CONTACT:** The petition, any comments received,

and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on September 19, 1990.

**Denise Donohue Hall,**

*Manager, Program Management Staff, Office of the Chief Counsel.*

#### Petitions for Rulemaking

*Docket No.:* 26315.

*Petitioner:* Aircraft Owners and Pilots Association.

*Regulations affected:* 14 CFR 23.1305(g).

*Description of petition:* To allow differential pressure transducer flow-indicated devices to serve as one means of indicating fuel pressure for pump-fed engines.

*Petitioner's reason for the request:* The petitioner believes granting the petition will lead to truly useful engine monitoring systems for general aviation. This will result in maximizing fuel efficiency, engine life, and power output without fear of damage or excessive wear.

*Docket No.:* 26281.

*Petitioner:* Aircraft Owners and Pilots Association.

*Regulations affected:* 14 CFR part 67.

*Description of petition:* To amend part 67 to: (1) Add a provision for continued limited pilot privileges pending FAA action on an application for renewal of a medical certificate. (2) Permit applicants for all classes of medical certificates to meet revised hearing standards in either or both ears with or without a corrective device. (3) Change the 2-year period of abstinence from alcohol to a period "reasonable to ensure abstinence." (4) Permit issuance of second- and third-class medical certificates to diabetics using hypoglycemic drugs other than insulin provided the Federal Air Surgeon finds that control is adequate and significant complications are absent.

*Petitioner's reason for the request:* The petitioner believes these amendments will, for the most part, conform the medical standards to current FAA certification policies. In doing so, they will relieve applicants and the FAA of time-consuming, often costly, administrative burdens in processing requests for exceptions from

the present standards and, thus, will be in the public interest.

*Docket No.:* 26322.

*Petitioner:* Air Transport Association of America.

*Regulations affected:* 14 CFR Section 139.319.

*Description of petition:* To amend Section 139.319 to require that airport aircraft rescue and firefighting teams be equipped with the Emergency Response Guidebook.

*Petitioner's reason for the request:* The petitioner believes that the amendment will help both to assure the quickest possible aircraft evacuations in the event of an emergency and provide a comprehensive network of properly equipped and trained responders.

[FR Doc. 90-22743 Filed 9-25-90; 8:45 am]

BILLING CODE 4910-13-M

## DEPARTMENT OF LABOR

### Mine Safety and Health Administration

#### 30 CFR Part 77

RIN 1219-AA49

#### Inspections of Refuse Piles and Waste Impoundment Dams at Surface Coal Mines and Surface Work Areas of Underground Coal Mines

**AGENCY:** Mine Safety and Health Administration, Labor.

**ACTION:** Extension of comment period.

**SUMMARY:** The Mine Safety and Health Administration (MSHA) is extending the period for public comment regarding the Agency's proposed rule revising safety standards that address refuse piles and impoundment structures used at coal mines to dispose of refuse or contain water, sediment or slurry.

**DATES:** Written comments must be received on or before October 19, 1990.

**ADDRESSES:** Send written comments to the Office of Standards, Regulations and Variances, MSHA, room 631, Ballston Towers No. 3, 4015 Wilson Boulevard, Arlington, Virginia 22203.

**FOR FURTHER INFORMATION CONTACT:** Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA, (703) 235-1910.

**SUPPLEMENTARY INFORMATION:** On June 15, 1990, MSHA published a proposed rule (55 FR 24526) to revise safety standards that address refuse piles and impoundment structures used at coal mines. Proposed revisions would also address certifications for hazardous refuse piles, frequency of inspections and the method of abandonment for impoundments and impounding

structures. The comment period for the proposed rule was scheduled to close on September 21, 1990 but in response to a request from the mining community, MSHA is extending the comment period to October 19, 1990. All interested parties are encouraged to submit comments prior to this date.

Dated: September 21, 1990.

**John B. Howerton,**

*Deputy Assistant Secretary for Mine Safety and Health.*

[FR Doc. 90-22801 Filed 9-25-90; 8:45 am]

BILLING CODE 4510-43-M

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 916

#### Kansas Permanent Regulatory Program

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

**ACTION:** Proposed rule; reopening and extension of comment period.

**SUMMARY:** OSM is announcing receipt of additional explanatory information and revisions pertaining to a previously proposed amendment to the Kansas permanent regulatory program (hereinafter, the "Kansas program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The additional information and revisions pertain to the proposed revegetation success guidelines. The amendment is intended to revise the State program to be consistent with the corresponding Federal standards.

This notice sets forth the times and locations that the Kansas program, the proposed amendment to that program, and the additional information are available for public inspection, and the reopened comment period during which interested persons may submit written comments on the proposed amendment.

**DATES:** Written comments must be received on or before 4 p.m., c.d.t. October 11, 1990.

**ADDRESSES:** Written comments should be mailed or hand delivered to Jerry R. Ennis at the address listed below.

Copies of the Kansas program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of

the proposed amendment by contacting OSM's Kansas City Field Office.

Jerry R. Ennis, Director, Kansas City Field Office, Office of Surface Mining Reclamation and Enforcement, 934 Wyandotte, Room 500, Kansas City, MO 64105, Telephone: (816) 374-6405. Kansas Department of Health and Environment, Surface Mining Section, Shirk Hall, 4th Floor, 1501 S. Joplin, P.O. Box 1418, Pittsburg, KS 66762, Telephone: (316) 231-8615.

**FOR FURTHER INFORMATION CONTACT:** Jerry R. Ennis, Director, Kansas City Field Office; telephone number (816) 374-6405.

#### SUPPLEMENTARY INFORMATION:

##### I. Background on the Kansas Program

On January 21, 1981, the Secretary of Interior conditionally approved the Kansas program. General background information on the Kansas program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Kansas program can be found in the January 21, 1981, *Federal Register* (46 Fr 5892). Subsequent actions concerning Kansas' program and program amendments can be found at 30 CFR 916.12, 916.15, and 916.16.

##### II. Proposed Amendment

By letter dated June 8, 1990 (Administrative Record No. KS-468), Kansas submitted a proposed amendment to its program pursuant to SMCRA. Kansas submitted the proposed amendment in response to a September 8, 1989, letter from OSM citing deficiencies in an amendment submitted June 29, 1989.

Kansas is proposing to adopt guidelines on the methods for determination of revegetation success prior to phase III bond release as required by 30 CFR 816.116(a)(1) and 817.116(a)(1).

OSM published a notice in the June 20, 1990, *Federal Register* (55 FR 25139) announcing receipt of the amendment and inviting public comment on the adequacy of the proposed amendment (Administrative Record No. KS-475). The public comment period ended July 20, 1990.

During its review of the amendment, OSM identified concerns related to the technical adequacy of the proposed guidelines. OSM notified Kansas of the concerns by letter dated August 14, 1990 (Administrative Record No. KS-483). OSM held a public meeting on August 23, 1990 (Administrative Record No. KS-485), allowing Kansas to answer OSM's concerns on the technical adequacy of

the guidelines. Kansas responded in letters dated September 14 and September 17, 1990 (Administrative Record No. KS-486), by submitting revised guidelines.

### III. Public Comment Procedures

OSM is reopening the comment period on the proposed Kansas program amendment to provide the public an opportunity to reconsider the adequacy of the amendment in light of the additional materials submitted. In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Kansas program.

Written comments should be specific, pertain only to the issue proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Kansas City Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

#### List of Subjects in 30 CFR Part 916

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 18, 1990.

**Raymond L. Lowrie,**  
Assistant Director, Western Field Operations.  
[FR Doc. 90-22783 Filed 9-25-90; 8:45 am]

BILLING CODE 4310-05-M

### FEDERAL COMMUNICATIONS COMMISSION

#### 47 CFR Part 73

[MM Docket No. 89-347; RM-6721]

#### Radio Broadcasting Services; Illinois City, IL

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule; correction.

**SUMMARY:** This document corrects a Proposed rule in 55 FR 36840, September 7, 1990, which dismisses a petition filed by Martin F. Beckey, requesting the allotment of Channel 223A to Illinois City, Illinois.

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

In FR Doc. 90-21051, published in the Federal Register on page 36840, September 7, 1990, the following correction is made:

The entry for "(MM Docket No. 89-437; RM-6721)" should be corrected to read "(MM Docket No. 89-347; RM 6721)"

Federal Communications Commission.

**Donna R. Searcy,**  
Secretary.

[FR Doc. 90-22794 Filed 9-25-90; 8:45 am]

BILLING CODE 6712-01-M

### DEPARTMENT OF THE INTERIOR

#### Fish and Wildlife Service

#### 50 CFR Part 17

RIN 1018 AB52

#### Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Six Plants From the Kokee Region, Island of Kauai, Hawaii

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) proposes endangered status pursuant to the Endangered Species Act of 1973, as amended (Act), for six plants: *Chamaesyce halemanui* (no common name (NCN)), *Dubautia latifolia* (NCN), *Poa sandvicensis* (Hawaiian bluegrass), *Poa siphonoglossa* (NCN), *Stenogyne campanulata* (NCN), and *Xylosma crenatum* (NCN). These species are known only from the Kokee region of Kauai Island, Hawaii. The six species have been variously affected and are threatened by one or more of the following: Habitat degradation by feral animals; competition for space, light, nutrients, and/or water from alien plant species; road or trail maintenance activities; and an increased potential for extinction from stochastic events because of the small numbers of extant individuals and their restricted distributions. A limited gene pool may result in depressed reproductive vigor. Probable threats include predation by feral animals. A determination that these six species are endangered would implement the Federal protection and recovery provisions provided by the Act. Comments and materials related to this proposal are solicited.

**DATES:** Comments from all interested parties must be received by November 27, 1990. Public hearing requests must be received by November 13, 1990.

**ADDRESSES:** Comments and materials concerning this proposal should be sent to Ernest F. Kosaka, Field Station Supervisor, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, room 6307, P.O. Box 50167, Honolulu, Hawaii

96850. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Joan E. Canfield, at the above address (808/541-2749 or FTS-551-2749).

#### SUPPLEMENTARY INFORMATION:

##### Background

The island of Kauai is 627 square miles (mi) (1,624 square kilometers (km)) in area (Armstrong 1983). The island was formed about six million years ago by a single shield volcano, whose caldera was 9 to 12 mi (15 to 20 km) in diameter, the largest caldera in the Hawaiian Islands (Macdonald *et al.* 1983). The remains of this caldera now extend about 10 mi (16 km) in length, forming the Alakai Swamp, an extremely wet, elevated tableland. Faulting and erosion on the western side of the Alakai Swamp have carved the deeply dissected Waimea Canyon, 10 mi (16 km) long and 1 mi (1.6 km) wide, its near-vertical cliffs well over 2,000 feet (ft) (600 meters (m)) high. The distribution of the six species in this proposed rule centers at Kokee, which lies just above the northern reaches of Waimea Canyon, with the wet Alakai Swamp to the east, steep cliffs of the Na Pali coast to the north, and drier leeward ridges to the west. Kokee is not a strictly defined area; in this document, "Kokee" refers to the boundary of Kokee State Park, roughly 8 square mi (20 square km) in area. To most conveniently delimit the greater part of the range of these species, "Kokee region" used here refers to the uplands (above 3,500 ft (1,070 m)) surrounding upper Waimea Canyon: On the west side of Waimea Canyon from Kauhao Valley northeast to the rim of Kalalau Valley, and south to Kohua Ridge on the canyon's east side, an area of about 15 square mi (40 square km).

The historical range of the six species in this proposed rule included leeward slopes on the west side of Waimea Canyon as far south as Lapa Ridge, north to the rim of Kalalau Valley, and on the east side of Waimea Canyon as far south as Olokele Canyon. That area is approximately 9 by 7 mi (14 by 11 km) in size, with plant localities ranging from 2,200 to 3,900 ft (670 to 1,190 m) in elevation. The currently known range of these species differs primarily from the historical range only on the east side of Waimea Canyon, where Kohua Ridge is now the southernmost locality. The present range is circumscribed by an area 5 by 6 mi (8 by 10 km), from 2,500 to 3,900 ft (760 to 1,190 m) in elevation,

although most localities are above 3,500 ft (1,070 m). Hence, the range of these species may have been reduced by almost 50 percent.

In the Kokee region, the annual rainfall ranges from about 45 to 80 inches (in) (115 to 200 centimeters (cm)), with a sharp orographic gradient increasing to the east. The average annual temperature is about 62° F (17° C) (Armstrong 1983). These six species are primarily found on well-drained, gently sloping to very steep, silty clay loam (Foote *et al.* 1972). The vegetation of the Kokee region is primarily mesic to wet forests dominated by 'ohi'a (*Metrosideros polymorpha*) and koa (*Acacia koa*). Because of the island's age, abrupt topography, and sharp climatic gradient, the native flora of the Kokee region is quite diverse, with a high proportion of locally endemic species.

#### Discussion of the Six Species Proposed for Listing

*Chamaesyce halemanui* was first collected in 1840 on Kauai by the U.S. South Pacific Exploring Expedition (Degener and Degener 1959b). In 1936 Edward Sherff named that specimen *Euphorbia remyi* var. *wilkesii*, and also named specimens from one collection from the Halemanu drainage both *E. halemanui* and *E. remyi* var. *leptopoda* (Koutnik 1987). Otto and Isa Degener and L. Croizat (Degener and Croizat 1936, Degener and Degener 1959a, 1959b) transferred all of those names to the genus *Chamaesyce*. In 1987, Daryl Koutnik reduced the two varieties listed above, and *E. remyi* var. *molesta* (Sherff 1938), to synonymy under *Chamaesyce halemanui*.

All collections and confirmed sightings of this species are from seven areas: Kauhao and Makaha valleys in Na Pali-Kona Forest Reserve; Mahanaloa Valley in Kuia Natural Area Reserve; the Halemanu drainage and near Waipoo Falls and Kokee Ranger Station in Kokee State Park; and Olokele Canyon on privately owned land (Hawaii Heritage Program (HHP) 1990a through 1990f). *Chamaesyce halemanui* is known to be extant at the Kauhao, Makaha, and Halemanu sites, all on State-owned land (HHP 1990c, 1990f; Timothy Flynn, Assistant Botanist, National Tropical Botanical Garden, Lawai, Kauai, pers. comm., 1990).

*Chamaesyce halemanui* is a scandent (climbing) shrub in the spurge family (Euphorbiaceae) with stems 3 to 13 ft (1 to 4 m) long. The egg-shaped to inversely lance-shaped leaves are decussate (successive pairs of leaves at right angles to the previous pair). The leaves

are 1.6 to 5 in (4 to 13 cm) long and 0.4 to 1.8 in (1 to 4.5 cm) wide, with persistent stipules (leaf-like appendages on leaves). Groups of flowers (cyathia) are in dense, compact, nearly spherical clusters or occasionally solitary in leaf axils. The stems of cyathia are about 0.08 in (2 millimeters (mm)) long, or if solitary, about 0.2 in (5 mm) long. The fruits are in green capsules, about 0.1 in (3 mm) long, on recurved stalks, enclosing gray to brown seeds.

*Chamaesyce halemanui* is distinguished from closely related species by its decussate leaves, persistent stipules, more compact flower clusters, shorter stems on cyathia and smaller capsules (Koutnik 1987, Koutnik and Huft 1990).

*Chamaesyce halemanui* typically grows on the steep slopes of gulches in mesic koa forests at an elevation of 2,160 to 3,600 ft (660 to 1,100 m) (HHP 1990a, 1990e). Associated native species include 'ohi'a *Alphitonia ponderosa* (kauila), *Antidesma Platyphyllum* (hame), *Coprosma* (pilo), *Diospyros* (lama), *Dodonaea viscosa* ('a'li'i), *Elaeocarpus bifidus* (kalia), *Pisonia* (papala kepa), *Santalum freycinetianum* ('iliahi), and *Styphelia tameiameia* (pukiawe) (HHP 1990a, 1990c, 1990e, 1990f; T. Flynn, pers. comm., 1990). Associated alien species include *Aleurites moluccana* (kukui), *Lantana camara* (lantana), *Psidium cattleianum* (strawberry guava), *Rubus argutus* (blackberry), and *Stenotaphrum secundatum* (St. Augustine grass) (HHP 1990e, 1990f; T. Flynn, pers. comm., 1990).

The greatest immediate threat to the survival of *Chamaesyce halemanui* is competition for space and light from alien plants: St. Augustine grass, lantana, and strawberry guava (T. Flynn, pers. comm., 1990; Joel Lau, Assistant Botanist, HHP, pers. comm., 1990). Habitat degradation by feral pigs (*Sus scrofa*) (digging activity which destroys plants and leads to soil erosion and the invasion of alien plants) threatens the Kauhao and Makaha populations of this species (J. Lau, pers. comm., 1990). The 3 known populations, which extend over a distance of about 2 mi (3 km), contain fewer than 25 individuals (HHP 1990c, 1990f; T. Flynn, pers. comm., 1990). With such a small population size and restricted distribution, *C. halemanui* faces an increased potential for extinction resulting from stochastic events. This species' limited gene pool also constitutes a serious potential threat because of the possibility of depressed reproductive vigor.

*Dubautia latifolia* was first collected in the mountains of Kauai by the U.S. Exploring Expedition in 1840 (Carr 1982).

Twenty-one years later, Asa Gray (1861) described that specimen as *Raillardia latifolia* (an orthographic error for *Railliardia latifolia*, as Sherff pointed out in 1935), in reference to its broad leaves. In 1936, David Keck transferred the name to the genus *Dubautia*. Sherff published the name *Railliardia latifolia* var. *helleri* in 1952, which Gerald Carr (1985) considered only a phenological variant not worthy of taxonomic recognition. All collections and confirmed sightings of this species are from six areas: Makaha and Awaawapuhi valleys in Na Pali-Kona Forest Reserve, Nualolo Trail and Valley in Kuia Natural Area Reserve, Halemanu in Kokee State Park, along Mohihi Road in both Kokee State Park and Na Pali-Kona Forest Reserve, along the Mohihi-Wai'ala'e Trail on Mohihi and Kohua ridges in both Na Pali-Kona Forest Reserve and Alakai Wilderness Preserve, and Kaholuamanu on privately owned land (Carr 1982; HHP 1990h through 1990m; T. Flynn, pers. comm., 1990). *Dubautia latifolia* is known to be extant at all but the Halemanu and Kaholuamanu sites (T. Flynn and J. Lau, pers. comms., 1990; Steven Perlman, Plant Collector, Hawaii Plant Conservation Center, Lawai, Kauai, pers. comm., 1990). The species is now known only from State-owned land.

*Dubautia latifolia* is a diffusely branched, woody vine in the aster family (Asteraceae) with stems up to 26 ft (8 m) long and occasionally up to 3 in (7 cm) in diameter near the base. The paired, egg- to oval-shaped leaves are 3 to 7 in (8 to 17 cm) long and 1 to 3 in (2.5 to 7 cm) wide. The leaves are conspicuously net-veined, with the smaller veins outlining nearly square areas. The distinct petioles (leaf stems) are usually about 0.2 in (5 mm) long. The flower clusters comprise a large aggregation of very small, yellow-flowered heads. The fruits are dry seeds, usually about 0.2 in (5 mm) long. *Dubautia latifolia* is distinguished from closely related species by its vining habit, distinct petioles, and broad leaves with conspicuous net veins outlining squarish areas (Carr 1982, 1985, 1990).

*Dubautia latifolia* typically grows on gentle to steep slopes on well-drained soil in semi-open, diverse montane mesic forest dominated by koa with 'ohi'a, at an elevation of 3,200 to 3,900 ft (975 to 1,200 m) (Carr 1982, 1990; HHP 1988; Perlman 1990a). Less often, this species is found in either closed forest, conifer plantations, or 'ohi'a-dominated forest, and as low as 2,800 ft (850 m) in elevation (HHP 1988, 1990j, 1990k; Perlman 1990a). The most common associated native species are kauila,

*Athyrium sandwicensis*, *Bobea* ('ahakea), *Coprosma waimeae* ('olena), *Dicranopteris linearis* (uluhe), *Hedyotis terminalis* (manono), *Ilex anomala* (aiea), *Melicope anisata* (mokihana), *Psychotria mariniana* (kopiko), and *Scaevola* (naupaka kuahiwi) (Carr 1982; HHP 1990g, 1990h, 1990j through 1990m). Associated alien species include blackberry, strawberry guava, *Acacia mearnsii* (black wattle), *Acacia melanoxylon* (Australian blackwood), *Hedychium* (ginger), *Lonicera japonica* (honeysuckle), *Myrica faya* (firetree), and *Passiflora mollissima* (banana poka) (Carr 1982; HHP 1990g, 1990j; T. Flynn, pers. comm., 1990).

The greatest immediate threat to the survival of *Dubautia latifolia* is competition from alien plants. Banana poka, a vine now invading four of *D. latifolia*'s six diffuse populations, is the most serious threat (Carr 1982, 1985). Blackberry, honeysuckle, black wattle, Australian blackwood, ginger, and strawberry guava are other alien species that dominate the habitat of and/or threaten *D. latifolia* (HHP 1990g, 1990h, 1990k, 1990m; Perlman 1990a; T. Flynn, pers. comm., 1990). Habitat degradation by feral pigs currently threatens four populations of *D. latifolia* (HHP 1990m; T. Flynn and J. Lau, pers. comm., 1990). Black-tailed deer (*Odocoileus hemionus columbianus*) threaten two populations through trampling that destroys plants, and disturbs the ground leading to soil erosion or favoring the invasion of alien plants; predation by deer is also a probable threat (HHP 1989; Perlman 1990a; S. Perlman, pers. comm., 1990). Vehicle traffic and road maintenance constitute a potential threat to several *D. latifolia* individuals that overhang a State park road. This species suffers from a seasonal dieback that could be a potential threat (Gerald Carr, Professor of Botany, University of Hawaii, pers. comm., 1990).

Since at least some individuals of *D. latifolia* require cross-pollination, the wide spacing of individual plants (e.g., each 0.3 mi (0.5 km) apart) may pose a threat to the reproductive potential of the species (Carr 1982). The very low seed set noted in plants in the wild indicates a reproductive problem, possibly flowering asynchrony (G. Carr, pers. comm., 1990). Seedling establishment is rather rare in the wild (Carr 1982), presumably due to limited reproduction. The estimated 40 individuals of *D. latifolia* known to be extant are spread over a total distance of about 6.5 by 2.5 mi (10.5 by 4 km) (Carr 1982; HHP 1990h, 1990j through 1990m; S. Perlman, pers. comm., 1990), comprising a limited gene pool that

constitutes a potential threat to the species.

Probably the earliest collection of *Poa sandwicensis* was that of Horace Mann and William Brigham from "above Waimea" in 1864 or 1865 (Hillebrand 1888). This species was first described as *Festuca sandwicensis* by H.W. Reichardt in 1878, based on collections from Halemanu. Ten years later, William Hillebrand (1888) described Mann and Brigham's specimen, along with other material, as *Poa longeradiata*. In 1922, Albert Hitchcock combined these and additional collections under the name *Poa sandwicensis*.

All collections and confirmed sightings of this species are from six areas: The rim of Kalalau Valley in Na Pali Coast State Park; Halemanu and Kumuwela Ridge/Kauaikinana drainage in Kokee State Park; Awaawapuhi Trail in Na Pali-Kona Forest Reserve; Kohua Ridge/Mohihi drainage in both the Forest Reserve and Alakai Wilderness Preserve; and Kaholuamanu on privately owned land (HHP 1990n, 1990p, 1990q; Hitchcock 1922; Perlman 1990b; T. Flynn, pers. comm., 1990). *Poa sandwicensis* is known to be extant at the Kalalau, Awaawapuhi, Kumuwela/Kauaikinana, and Kohua/Mohihi localities; it is therefore currently known only from State-owned land. Hillebrand's (1888) questionable reference to a Maui locality is most likely an error.

*Poa sandwicensis* is a perennial grass (family Poaceae) with densely tufted, mostly erect culms (stems) 1 to 3.3 ft (0.3 to 1 m) tall. The short rhizomes (underground stems) from a hardened base for the solid, slightly flattened culms. The leaf sheaths are closed and fused, but may split with age. The toothed ligule (appendage where leaf sheath and blade meet completely surrounds the culm and has a hard tooth extending upward from the mouth of the sheath. The leaf blades are 4 to 8 in (10 to 20 cm) long, and up to 0.2 in (6 mm) wide. The flowers occur in complex clusters with lower panicle (primary) branches up to 4 in (10 cm) long. The lemmas (inner bracts) have only a sparse basal tuft of cobwebby hairs. The fruits are golden brown to reddish brown, oval grains. *Poa sandwicensis* is distinguished from closely related species by its shorter rhizomes, shorter culms which do not become rush-like with age, closed and fused sheaths, relatively even-edged ligules, and longer panicle branches (O'Conner 1990).

*Poa sandwicensis* grows on wet, shaded, gentle to usually steep slopes, ridges, and rock ledges in semi-open to closed, mesic to wet, diverse montane

forest dominated by 'ohi'a, at an elevation of 3,400 to 4,100 ft (1,035 to 1,250 m) (HHP 1990n through 1990q; Perlman 1990b). Associated native species include koa, kopiko, manono, naupaka kuahiwi, pilo, *Cheirodendron* ('olapa), and *Syzygium sandwicensis* ('ohi'a ha) (HHP 1990n, 1990p, 1990q; Perlman 1990b; T. Flynn, pers. comm., 1990). Associated alien species include blackberry, banana poka, ginger, and *Erigeron karvinskianus* (daisy fleabane) (HHP 1990p; T. Flynn, pers. comm., 1990).

The greatest immediate threat to the survival of *Poa sandwicensis* is competition from alien plants. Daisy fleabane is the primary alien plant threat to the Kalalau population of *P. sandwicensis* (T. Flynn, pers. comm., 1990). Blackberry threatens the Awaawapuhi, Kalalau, and Kohua Ridge populations (HHP 1990q; T. Flynn, pers. comm., 1990). Banana poka and ginger also threaten the Awaawapuhi population (HHP 1990p). Erosion caused by pigs currently threatens the Kohua Ridge population, and both pigs and goats (*Capra hircus*) (which trample plants, cause erosion, and promote the invasion of alien plants) threaten the Kalalau population (HHP 1990m; T. Flynn and J. Lau, pers. comm., 1990). State forest reserve trail maintenance threatens the trailside Awaawapuhi population (HHP 1990p). While about 40 individuals of *P. sandwicensis* are known from 4 populations spread over a distance of about 5 by 2 mi (8 by 3 km), 80 percent of the plants are concentrated at 1 major site (HHP 1990n, 1990q; T. Flynn, pers. comm., 1990). This species is therefore subject to an increased potential for extinction resulting from stochastic events, because a single event could extirpate 80 percent of the known individuals. The small population size with its limited gene pool also constitutes a serious potential threat.

*Poa siphonoglossa* was first collected in 1910 by Abbe Urbain Faurie, and was described two years later by E. Hackel (1912). According to Hitchcock (1922), one of the two specimens on which Hackel based his description was actually *Poa mannii*. While the localities for Faurie's two specimens are confused, the specimen that Hitchcock designated as the type was most likely collected at an elevation of about 3,000 ft (1,000 m) above Waimea town, possibly near Kaholuamanu (Hitchcock 1922).

All collections and confirmed sightings of *Poa siphonoglossa* are from two sites: Kohua Ridge in Na Pali-Kona Forest Reserve, and near Kaholuamanu on privately owned land (HHP 1990r).

*Poa siphonoglossa* is only known to be extant on Kohua Ridge, on State-owned land.

An additional *Poa* specimen sharing characteristics of both *P. siphonoglossa* and *P. mannii* was collected in 1988 by David Lorence from Kaulaula Valley in Puu Ka Pele Forest Reserve (David Lorence, Systematic Botanist, National Tropical Botanical Garden, Lawai, Kauai, pers. comm., 1990). Lorence and other local botanical authorities believe that the two species are conspecific, representing different growth stages. Even if the two names are combined, the plant remains extremely rare, since *Poa mannii* has not been collected since 1916 (O'Conner 1990). O'Conner (1990) treats *P. siphonoglossa* and *P. mannii* as distinct species.

*Poa siphonoglossa* differs from *P. sandwicensis* principally by its longer culms and shorter panicle branches. *Poa siphonoglossa* has extensive tufted and flattened culms that cascade from banks in masses up to 13 ft (4 m) long. The naked, rushlike older culms have bladeless sheaths; the sheaths do not split with age. The ligule has no hard tooth. The flat, loosely packed leaf blades are usually less than 4 in (10 cm) long and 0.1 in (2 mm) wide. The primary panicle branches are about 0.1 in (3 cm) long. The lemmas lack cobwebby hairs. The fruits are reddish brown and oval. *P. siphonoglossa* is distinguished from *P. mannii* and other closely related species by its shorter rhizomes, longer culms, closed and fused sheaths, and toothed ligules (O'Conner 1990).

*Poa siphonoglossa* typically grows on shady banks near ridge crests in predominantly native mesic 'ohi'a forest between about 3,300 and 3,900 ft (1,000 to 1,200 m) in elevation (HHP 1990; Hitchcock 1922). Associated species include the natives 'ali'i, manono, *Melicope* (alani), and *Vaccinium* ('ohelo), and the alien blackberry (HHP 1990r). The population from Kaulaula Valley, whose characteristics are similar to both *P. siphonoglossa* and *P. mannii*, grows on a steep, shady slope in Koa Forest with occasional 'ohi'a at an elevation of 2,900 ft (890 m) (D. Lorence, pers. comm., 1990). Associated species include pukiaawe, *Carex meyenii*, *Carex wahuensis*, and *Wilkesia gymnoxiphium* (iliau) (T. Flynn, pers. comm., 1990).

The primary threat to the survival of *Poa siphonoglossa* is habitat degradation by pigs and deer. The Kohua Ridge population of this species may be at risk due to erosion caused by pigs (J. Lau, pers. comm., 1990), and the presence of both pigs and deer may threaten the Kaulaula population (T.

Flynn, pers. comm., 1990). Predation by deer is also a potential threat there. The alien blackberry invading Kohua Ridge constitutes a probable threat to that population (HHP 1990r). *Poa siphonoglossa* (including the Kaulaula population) numbers fewer than 30 known individuals located at 2 populations about 6 mi (10 km) apart (HHP 1990r; T. Flynn, pers. comm., 1990). A limited gene pool and potential for one disturbance event to destroy the majority of known individuals are serious threats to this species.

*Stenogyne campanulata* was discovered in 1986 by Steven Montgomery on sheer, virtually inaccessible cliffs below the upper rim of Kalalau Valley on Kauai. The species is known only from that single population. In 1989, Stephen Weller and Ann Sakai described the plant as a new species, naming it for the flowers' bell-shaped calyces. *Stenogyne campanulata* was last seen in 1987 and presumably still exists (T. Flynn, pers. comm., 1990). Known only from State-owned land, *S. campanulata* is restricted to Na Pali Coast State Park.

*Stenogyne campanulata* is a member of the mint family (Lamiaceae), described as a vine with four-angled, hairy stems. The hairy leaves are broadly oval, about 2 in (5 cm) long and 1 in (3 cm) wide. The flowers occur in clusters of about 6 per leaf axil. The very broadly bell-shaped, hairy calyces are about 0.5 in (13 mm) long, with teeth that are 0.1 in (3 mm) long and 0.2 in (5 mm) wide at the base. The petals are fused into a straight, hairy, white tube about 0.5 in (13 mm) long, with short purple lobes. The fruits of this species have not been seen, but all other members of the genus have fleshy nutlets. *Stenogyne campanulata* is distinguished from closely related species by its large and very broadly bell-shaped calyces that nearly enclose the relatively small, straight corollas, and by small calyx teeth that are half as long as wide (Weller and Sakai 1990).

*Stenogyne campanulata* grows on the rock face of a nearly vertical, north-facing cliff at an elevation of about 3,700 ft (1,130 m) (Weller and Sakai 1990; T. Flynn, pers. comm., 1990). The associated shrubby vegetation includes the native species *Artemisia australis* ('ahinahina), *Lepidium serra* ('anaunau), *Lysimachia glutinosa*, *Perrottetia sandwicensis* (olomea), and *Remya montgomeryi*, and alien blackberry and daisy fleabane (T. Flynn, pers. comm., 1990).

Habitat degradation by feral goats is the primary threat to the survival of *Stenogyne campanulata* (T. Flynn, pers. comm., 1990). The restriction of this

species to virtually inaccessible cliffs suggests that predation by goats may have eliminated it from more accessible locations. Such predation remains a potential threat because goats may limit seedling establishment in more accessible areas and if they reached existing plants losses would occur. (T. Flynn, pers. comm., 1990). Feral pigs have disturbed vegetation in the vicinity of the only known population (T. Flynn, pers. comm., 1990). Erosion caused by goats or pigs exacerbates the potential threat of landslides to this population (T. Flynn, pers. comm., 1990). Daisy fleabane is the primary alien plant threatening *Stenogyne campanulata* (T. Flynn, pers. comm., 1990). *Stenogyne campanulata* is estimated to number 50 plants at the very most, all of which are concentrated at a single site. (T. Flynn, pers. comm., 1990). The small size of the single known population and its restricted distribution (probably well under 500 square ft (45 square m) in area) are serious potential threats to the species. The limited gene pool may depress reproductive vigor, or a single environmental disturbance such as a landslide could destroy all known extant individuals.

*Xylosma crenatum* was first collected in 1917 by Charles Forbes on the west side of the Waimea drainage basin. However, the collection was misidentified as *Hibiscus waimeae* (HHP 1990s). Over 50 years later (in 1968), Robert Hobdy made the second collection of this plant, along the banks of Mohihi Stream at the edge of the Alakai Swamp. Finally in 1972, Harold St. John recognized the plant as a distinct species, and named it *Antidesma crenatum*, after the rounded teeth along the leaf edges (St. John 1972). In 1976, St. John transferred the name to the genus *Xylosma*.

All collections subsequent to 1968 and confirmed sightings of *Xylosma crenatum* are from two sites: Along upper Nualolo Trail in Kuia Natural Area Reserve and along Mohihi Road between Waiakoali and Mohihi drainages in Na Pali-Kona Forest Reserve (HHP 1990s, 1990t, T. Flynn, pers. comm., 1990; Robert Hobdy, Forester, State Division of Forestry and Wildlife, Maui District, pers. comm., 1990). *Xylosma crenatum* is apparently extant only at the latter site (HHP 1990u; R. Hobdy, pers. comm., 1990). This species is found only on State-owned land.

*Xylosma crenatum* is a dioecious (unisexual) tree in the flacourtiaceae family (Flacourtiaceae), growing up to 46 feet (14 m) tall, and with dark gray bark. The somewhat leathery leaves are oval to

elliptic-oval, about 4 to 8 in (10 to 20 cm) long and 2.5 to 4 in (6.5 to 10 cm) wide, with coarsely toothed edges and moderately hairy undersides. The female flowers (male flowers have not been described) occur in clusters of 3 to 11 per leaf axil. The four oval sepals are about 0.1 in (2.5 mm) long; petals are absent. The young berries are oval to elliptic-oval and about 0.3 in (7 mm) long (mature fruits have not been seen). *Xylosma crenatum* is distinguished from the other Hawaiian member of this genus by its more coarsely toothed leaf edges and the hairy undersides of its leaves (St. John 1972, Wagner *et al.* 1990).

*Xylosma crenatum* is known from diverse koa/ohi'a montane mesic forest at an elevation of about 3,200 to 3,500 ft (975 to 1,065 m), sometimes along stream banks or within a planted conifer grove (HHP 1990t; St. John 1972; R. Hobdy, pers. comm., 1990). Associated species include the native manono and *Athyrium sandwicensis* and alien strawberry guava (HHP 1990t).

The three historical populations of *Xylosma crenatum* have apparently been reduced to one male individual (J. Lau, pers. comm., 1990), and as would be expected no regeneration is evident at the site (HHP 1990u). Because no surveys for this species have been conducted in its rather inaccessible habitat, it is hoped that additional research will reveal the presence of more individuals, including some female individuals. In any case, the total size of the population is probably very limited. Furthermore, a single man-caused or natural environmental disturbance (such as continued bulldozing during maintenance activities along the adjacent State forest reserve road) could easily destroy the only known individual of the species (J. Lau, pers. comm., 1990). *Xylosma crenatum* is also threatened by competition from alien plants, particularly strawberry guava, as well as the conifers dominating the only known site (HHP 1990t). In addition, feral pigs may threaten this species (T. Flynn, pers. comm., 1990).

#### Previous Federal Action

Federal action on these plant species began as a result of section 12 of the Act, which directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94-51, was presented to Congress on January 9, 1975. In that document, *Chamaesyce halemanui* (as *Euphorbia halemanui*), *Dubautia latifolia* (as *D. latifolia* var. *latifolia*), *Poa sandwicensis*, and

*Xylosma crenatum* (as *Antidesma crenatum*) were considered endangered. On July 1, 1975, the Service published a notice in the *Federal Register* (40 FR 27823) of its acceptance of the Smithsonian report as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act, and giving notice of its intention to review the status of the plant taxa named therein. As a result of that review, on June 16, 1976, the Service published a proposed rule in *Federal Register* (41 FR 24523) to determine approximately 1,700 vascular plant species, including *Chamaesyce halemanui*, *Dubautia latifolia*, *Poa sandwicensis*, and *Xylosma crenatum*, to be endangered species pursuant to section 4 of the Act. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94-51 and the July 1, 1975, *Federal Register* publication.

General comments received in relation to the 1976 proposal are summarized in an April 26, 1978, *Federal Register* publication (43 FR 17909). In 1978, amendments to the Act required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. On December 10, 1979, the Service published a notice in the *Federal Register* (44 FR 70796) withdrawing the portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired. The Service published an updated notice of review for plants on December 15, 1980 (45 FR 82479), and September 27, 1985 (50 FR 39525). *Chamaesyce halemanui* (as *Euphorbia halemanui*), *Dubautia latifolia*, *Poa sandwicensis*, and *Poa siphonoglossa* were included as Category 1 candidates on both lists, indicating that the Service had substantial information warranting their proposal for listing as endangered or threatened. *Xylosma crenatum* was included as a Category 2 candidate species on both notices, meaning that the Service had some evidence of vulnerability, but not enough data to support a listing proposal at the time. In the last notice of review, published on February 21, 1990 (55 FR 6183), all six of the species included in this proposed rule were considered Category 1 candidates. *Stenogyne campanulata* was not included in prior notices, since it was not discovered until 1986.

Section 4(b)(3)(B) of the Act requires the Secretary to make findings on certain pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires all

petitions pending on October 13, 1982, be treated as having been newly submitted on that date. The latter was the case for *Chamaesyce halemanui*, *Dubautia latifolia*, *Poa sandwicensis*, *Poa siphonoglossa*, and *Xylosma crenatum* because the Service had accepted the 1975 Smithsonian report as a petition. On October 13, 1983, the Service found that the petition listing of these species was warranted, but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act; notification of this finding was published on January 20, 1984 (49 FR 2485). Such a finding requires the petition to be recycled, pursuant to section 4(b)(3)(C)(i) of the Act. The finding was reviewed in October of 1984, 1985, 1986, 1987, 1988, and 1989. Publication of the present proposal constitutes the final 1-year finding for these species.

#### Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act (16 U.S.C. 1533) and regulations (50 CFR part 424) promulgated to implement the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Chamaesyce halemanui* (Sherff) Croizat and Degener (NCN), *Dubautia latifolia* (A. Gray) Keck (NCN), *Poa sandwicensis* (Reichardt) Hitchc. (Hawaiian bluegrass), *Poa siphonoglossa* Hack. (NCN), *Stenogyne campanulata* Weller and Sakai (NCN), and *Xylosma crenatum* (St. John) St. John (NCN) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The flora of the Kokee region is considered very vulnerable because of past and present land management practices, including grazing, deliberate alien plant and animal introductions, water diversion, and recreational development (Wagner *et al.* 1985). Feral animals have made the greatest overall impact, altering and degrading the vegetation and habitats of the Kokee region.

Cattle (*Bos taurus*) were introduced to Kauai by the 1820s and were allowed to run wild (Joesting 1984). Cattle not only feed on native vegetation, but trample roots and seedlings, cause erosion, and promote the invasion of alien plants by creating new sites for colonization, and by spreading seeds in their feces and in their coats (Scott *et al.* 1986). In addition, cattle trails provide new routes

for feral pigs to expand their range (e.g., into the Alakai Swamp) (Paul Higashino, Maui Preserves Naturalist, The Nature Conservancy of Hawaii, pers. comm., 1981). Kokee was leased for cattle grazing in the 1850s (Ryan and Chang 1985). Large cattle ranching operations were underway on both flanks of Waimea Canyon by the 1870s, with many animals wandering into the upper forests. Feral cattle were common at Halemanu in Kokee at this time (Joesting 1984). Concerned over the destruction of upland forests by cattle and goats, Augustus Knudsen, the district forester and cattle rancher on the west side of Waimea Canyon, built a two mile (3 km) long fence in 1898 near the southwest corner of what became Kokee State Park in 1952 (Daehler 1973b). Knudsen had begun eliminating cattle from the northern (Kokee) side of this boundary in 1882. Three of the 6 Kokee plant species proposed for listing historically occurred within 0.5 mi (0.8 km) of this boundary on the Kokee side. Most of the Kokee region, as far southwest as Knudsen's boundary fence, was given forest reserve status (Na Pali-Kona Forest Reserve) in 1907 to protect the watershed from further erosion by feral animals and to ensure the future water supply for lowland use (Daehler 1973a). At that time, Knudsen described the area south of the boundary fence as grazing land outside any true forest (Daehler 1973b). One of the plants proposed for listing (*P. siphonoglossa*) occurs in this area, which in 1938 was designated Puu Ka Pele Forest Reserve and described as unsuitable for grazing because of excessive soil erosion (Daehler 1973b). On the east side of Waimea Canyon, efforts were underway by 1904 to eliminate cattle from the uplands, including the Alakai Swamp (Daehler 1973a). In 1916 considerable damage by cattle to the forests around the Alakai Swamp was reported (Daehler 1973a). Stray unbranded ranch stock still roamed the forests of Kokee and Puu Ka Pele in the 1960s (Tomich 1986). The State-owned portion of the Alakai Swamp was designated as a Wilderness Preserve in 1964. Today, very few if any cattle remain within the range of the six plant species.

Feral goats have inhabited the drier, more rugged areas of Kauai since the 1820s (Cuddihy and Stone 1990). Like cattle, feral goats consume native vegetation, trample roots and seedlings, cause erosion, and promote the invasion of alien plants (Scott *et al.* 1986). They have denuded many ridges of Waimea Canyon, including areas within the historical distribution of *Dubautia latifolia*, *Poa sandvicensis* and *P.*

*siphonoglossa* (Daehler 1973a). During dry periods, goats venture into wet areas, including the Kokee region (Scott *et al.* 1986). They have degraded the forests at the drier edge of the Alakai Swamp, which lie within the present range of the six Kokee species proposed for listing (Scott *et al.* 1986). Although the State attempted to remove goats when the forest reserve was established in 1907, these animals are now managed by the State as a game species, with a limited hunting season (Daehler 1973a, Tomich 1986). Goats are considered a serious threat to the lower and drier outlying sections of the Kokee region (HHP and Hawaii Division of Forestry and Wildlife (DOFAW) 1989), coinciding roughly with the lower elevation limit of the six Kokee species proposed for listing. The primary threat to *Stenogyne campanulata* is habitat degradation by feral goats (T. Flynn, pers. comm., 1990). While browsing on vegetation, goats disturb the ground, accelerating erosion and creating sites for invasion by more aggressive alien plant species. The restriction of *Stenogyne campanulata* to virtually inaccessible cliffs suggests that predation by goats may have eliminated the species from more accessible locations, as is the case for many rare plants of the Na Pali region. Goats also threaten the Kalalau population of *Poa sandvicensis*, 0.3 mi (0.5 km) from the *Stenogyne* site (T. Flynn, pers. comm., 1990).

Feral pigs have inhabited forests of Kauai for at least 100 years (Cuddihy and Stone 1990). Pigs consume native plants, destroy vegetation by rooting and trampling, cause severe erosion, and spread alien plant seeds in their feces (Scott *et al.* 1986). Pig activity promotes the establishment of alien plants by creating open spaces and increasing soil fertility with their feces; without the disturbance and increase in nutrients many native species would have an advantage, because endemic species often are better adapted to less disturbed sites on poorer soils (Stone 1985).

Because pigs typically expand their range in forested areas by following trails made by other animals or human beings, their ingress into areas of native vegetation has been aided by various human activities (Culliney 1988). Cattle trails helped open the Alakai Swamp to pig traffic (P. Higashino, pers. comm., 1981). The sandalwood trade that flourished on Kauai between about 1810 and 1840 created innumerable minor trails, as Hawaiians dragged the logs on their backs down to Waimea on the southern coast from throughout the upland forests (Anonymous 1978,

Joesting 1984). To provide irrigation for the expanding sugar cane industry in the lowlands, the extensive Kokee/Kekaha ditch and water diversion system was built in the 1920s. Access roads and trails to and along the ditch and tunnels enabled feral pigs to gain new access to Kokee's native forests (Culliney 1988). The food source provided by plum trees (*Prunus cerasifera* X *P. salicina*) planted in Kokee State Park during the 1930s has attracted greater concentrations of pigs to the general vicinity of several of the species proposed for listing.

Currently, pigs are recognized as the primary feral animal threat to the upland forests of the Kokee region (HHP and Dofaw 1989), common in both wet and mesic areas. At least five of these species are threatened by habitat degradation by feral pigs. Fresh pig sign was noted in November 1989 and May 1990 throughout the area of Kohus Ridge where populations of *Poa sandvicensis*, *P. siphonoglossa*, and *Dubautia latifolia* are located (HHP 1190m; J. Lau, pers. comm., 1990). At this steep site, erosion caused by pig activity is a present threat to the two *Poa* species (J. Lau, pers. comm., 1990). The extensive erosion scars on lower Kohua Ridge are expanding and gradually moving upslope toward these two species (J. Lau, pers. comm., 1990). Similarly, by increasing erosion, pig activity would exacerbate the potential threat of landslides to the only known population of *Stenogyne campanulata* on the nearly vertical rim of Kalalau (T. Flynn, pers. comm., 1990). Just 0.3 mi (0.5 km) from the *Stenogyne* population, there was considerable pig damage to vegetation adjacent to a population of *Poa sandvicensis* in May 1990 (T. Flynn, pers. comm., 1990). For *Dubautia latifolia*, pigs constitute a definite threat at the Awaawapuhi population and are known to have caused damage near the Nualolo population (HHP 1989; J. Lau, pers. comm., 1990). Pig sign has been reported from within 200 yards (180 m) of one *D. latifolia* individual in the Mohihi Road population, and from near the Kauhao and Makaha populations of *Chamaesyce halemanui* (T. Flynn and J. Lau, pers. comms., 1990). Pigs are a potential threat to the Kaulaula population of *Poa siphonoglossa* and may also threaten the only known individual of *Xylosma crenatum* (T. Flynn, pers. comm., 1990).

Black-tailed deer were first introduced to the forests of western Kauai in 1961 (Culliney 1988). The estimated 350 animals now occupy dry to mesic, alien-dominated forests up to an elevation of 4,000 ft (1,220 m), including the lower distributional range of these 6 Kokee

plant species (Cuddihy and Stone 1990). Like other feral ungulates, deer feed on and trample native vegetation. Deer trails and loss of vegetation from deer foraging activities can cause erosion. Deer are a serious threat to the lower and drier outlying sections of the Kokee region (HHP and DOFAW 1989). Deer also are known to range into the wettest portion of the Kokee area during dry periods, constituting a potential threat to the wet forest habitat (Scott *et al.* 1986). Light to moderate damage by deer was reported from the vicinity of the Nualolo population of *Dubautia latifolia* in 1989 (also a former site of *Xylosma crenatum*) (HHP 1989). Deer occur in the area of the Kaulaula population of *Poa siphonoglossa* and the Makaha population of *Dubautia latifolia*, constituting a potential threat (Perlman 1990a; T. Flynn and S. Perlman, pers. comm., 1990).

In November 1982, Hurricane Iwa caused locally extensive damage to the forest canopy in many parts of Kauai, including numerous areas in the Kokee region. The vicinity of the *Dubautia latifolia* site (and former *Xylosma crenatum* site) along Nualolo Trail was one such area (R. Hobdy, pers. comm. 1990). Since the Nualolo population of *Xylosma crenatum* was not found during a recent survey of the Kuia Natural Area Reserve, it seems likely that the hurricane destroyed the two 40-foot (12 m) individuals that had constituted that population (HHP 1989). Hurricane Iwa's damage to the forest canopy also greatly exacerbated the invasion of fast-growing, light-loving alien plants, which pose a major threat to the native plants of the Kokee region (Wagner *et al.* 1985). Along Nualolo Trail, banana poka, strawberry guava, and blackberry have shown the greatest growth response, threatening *Dubautia latifolia* and other native species (HHP 1989, 1990j).

Of the six Kokee species being proposed for listing, *Dubautia latifolia* is most seriously threatened by competition from alien plants. Primary among these is banana poka, an aggressive vine introduced to Kokee about 50 years ago, now constituting a major infestation (Carr 1985, Smith 1985). Banana poka kills trees by smothering their canopies with its heavy vines. Once the trees fall, the increased sunlight in the understory favors other fast-growing alien species over native plants (Cuddihy and Stone 1990). With its climbing habit, *D. latifolia* occupies a niche similar to banana poka, often growing in close proximity to the aggressive vine (Carr 1982). Banana poka is therefore considered a serious

competitor and threat to *D. latifolia* (Carr 1982). Along with banana poka, alien species such as honeysuckle, black wattle, Australian blackwood, ginger, and strawberry guava dominate the habitat of and threaten the Mohihi Road population of *Dubautia latifolia* (HHP 1990g; T. Flynn, pers. comm., 1990). Alien species are also increasing at the site of the Awaawapuhi population of *D. latifolia* (HHP 1990h). Banana poka and blackberry are invading the Mohihi-Waiialae Trail and Makaha populations of this species as well, with blackberry overgrowing the latter area (HHP 1990k, 1990m, Perlman 1990a). Over the past 40 years, blackberry has invaded much of the native wet and mesic forests of Kokee, where it forms dense thickets that compete with native understory species (Cuddihy and Stone 1990, Daehler 1973a). Blackberry threatens the Kalalua population of *P. sandvicensis* (T. Flynn, pers. comm., 1990). The westernmost section of the Kohua Ridge population of *P. sandvicensis* and an adjacent population of *P. siphonoglossa* are heavily invaded by blackberry (HHP 1990q, 1990r). Banana poka and ginger, as well as blackberry, threaten the Awaawapuhi population of *P. sandvicensis* (HHP 1990p). The Halemanu population of *Chamaesyce halemanui* is threatened by St. Augustine grass, whose thick growth prevents regeneration of this native tree (T. Flynn, pers. comm., 1990). The other two populations of *C. halemanui* are threatened by lantana and strawberry guava (J. Lau, pers. comm., 1990). Alien plants, particularly strawberry guava, are increasing at the only known site of *Xylosma crenatum* (HHP 1990t). Daisy fleabane is the primary alien plant threat to *Stenogyne campanulata* and the Kalalau population of *P. sandvicensis* (T. Flynn, pers. comm., 1990).

Several potentially threatening alien plant species were originally introduced deliberately for reforestation or timber utilization. These include conifers (such as the grove surrounding the only known *Xylosma crenatum* individual); firetree, planted on Waimea Canyon's eastern drainages; and karaka nut (*Corynocarpus laevigata*), one of the alien species aerially broadcast over the Kokee region in the 1920s (Daehler 1973a, Wagner *et al.* 1985). While these species do not directly threaten the six species proposed for listing, they may possibly have crowded out former populations, and eventually could invade extant populations. Marijuana (*Cannabis sativa*) is cultivated in the Kokee region, and that activity is considered a management threat to Kuia

Natural Area Reserve, where *Chamaesyce halemanui* and *Dubautia latifolia* occur (HHP and DOFAW 1989). Native vegetation is destroyed when areas are cleared for marijuana cultivation. More significantly, other alien species are inadvertently introduced into the forest from soil and other material brought to the site. After the site is abandoned, it forms a locus for the spread of alien species (Medeiros *et al.* 1988).

Construction of water collection and diversion systems that began in the 1920s for the lowland sugar cane industry damaged the vegetation of Kokee (Wagner *et al.* 1985). Since the Kokee ditch and tunnel system and its access roads run through habitat of four of the six species proposed for listing (particularly *Xylosma crenatum*), it may possibly have destroyed former populations of those species. The ditch system created new routes for the invasion of alien plants and animals into intact native forest (Culliney 1988). Recreational development, concentrated in the 4,640 acre (1,800 hectare) Kokee State Park, has had an equally significant impact on the native vegetation (Wagner *et al.* 1985). Vacation cabins have existed in Kokee for well over a century. The construction and use of an extensive system of hiking, hunting, fishing, and horse trails (45 mi (72 km) in total) has resulted in the direct destruction of some habitat, and has accelerated rate of erosion and the spread of alien plants and animals enormously (Wagner *et al.* 1985). Three of the species proposed for listing are currently threatened by road or trail maintenance activities. State forest reserve road maintenance threatens the sole known individual of *X. crenatum*. Freshly bulldozed dirt was noted immediately adjacent to this plant in November 1989 (J. Lau, pers. comm., 1990). Forest reserve trail maintenance threatens the Awaawapuhi population of *Poa sandvicensis*. The single clump comprising that population had been cut back to the base by trail clearing, but was resprouting as of September 1989 (HHP 1990p). Several individuals of *Dubautia latifolia* overhang a State park road, and have been injured by passing vehicles. Road maintenance constitutes a potential threat to these plants.

While fire has been suggested as a threat to *Dubautia latifolia* (Center for Plant Conservation 1990, St. John 1981), experienced field botanists with the most direct knowledge of this species believe that the potential for fire within the mesic habitat of this species is quite low (T. Flynn, J. Lau, and S. Perlman, pers. comms., 1990). The same applies to

the other five Kokee species proposed for listing.

*B. Overutilization for commercial, recreational, scientific, or educational purposes.* Illegal collecting for scientific or horticultural purposes or excessive visits by individuals interested in seeing rare plants could result from increased publicity, and would seriously threaten several of these species. For five of these species, disturbance to sites by trampling during recreational use (hiking, for example) could promote erosion and greater ingress by competing alien species. The site of the only known individual of *Xylosma crenatum* is relatively accessible. Overutilization is not a factor for *Stenogyne campanulata*, due to the virtually inaccessible location of the only known population. However, trampling of more accessible nearby areas would promote erosion and increased alien plant invasion. The same potential for erosion and weed ingress applies to *Chamaesyce halemanui*, *Dubautia latifolia*, *Poa sandvicensis* and *P. siphonoglossa*, which are somewhat more accessible than *S. campanulata*.

*C. Disease or predation.* Although there is no evidence of predation on these species, none of them are known to be unpalatable to goats or deer. Predation is therefore a probable threat at sites where those animals have been reported. Predation by goats is considered a probable threat to *Stenogyne campanulata* and *Poa sandvicensis* (T. Flynn, pers. comm., 1990). The restriction of *S. campanulata* to inaccessible cliffs suggests that predation by goats may have eliminated the species from more accessible locations. Predation by deer potentially threatens *Dubautia latifolia* and *Poa siphonoglossa*. No threat of predation has been reported for *Chamaesyce halemanui* or *Xylosma crenatum*. No evidence of disease is known for any of the species proposed herein except, perhaps *D. latifolia*, where a seasonal blackening and dieback of *D. latifolia* shoot tips could potentially be caused by a disease; however, it may instead be a natural phenological phenomenon (G. Carr, pers. comm., 1990).

*D. The inadequacy of existing regulatory mechanisms.* All of the known populations of the six Kokee plant species proposed for listing are located on State-owned land, either in forest reserves (five species), parks (four species), a natural area reserve (one species), or a wilderness preserve (two species). State regulations prohibit the removal, destruction, or damage of plants found on these lands. However,

those regulations are difficult to enforce due to limited personnel. Hawaii's Endangered Species Act (HRS, section 195D-4(a)) states, "Any species of wildlife or wild plant that has been determined to be an endangered species pursuant to the Endangered Species Act (of 1973) shall be deemed to be an endangered species under the provisions of this chapter \* \* \* ." Further, the State may enter into agreements with Federal agencies to administer and manage any area required for the conservation, management, enhancement, or protection of endangered species (section 195D-5(c)). Funds for these activities could be made available under section 6 of the Federal Act (State Cooperative Agreements). Listing of these six plant species would therefore reinforce and supplement the protection available to the species under State law. The Federal Act also would offer additional protection to these species because if they were listed as endangered, it would be a violation of the Act for any person to remove, cut, dig up, damage, or destroy any such plant in an area not under Federal jurisdiction in knowing violation of State law or regulation or in the course of any violation of a State criminal trespass law.

*E. Other natural or manmade factors affecting its continued existence.* The small number of populations and of individual plants of these species increases the potential for extinction from stochastic events. The limited gene pool may depress reproductive vigor, or a single man-caused or natural environmental disturbance could destroy a significant percentage of the individuals of these species. *Xylosma crenatum* epitomizes the problem of small numbers of extant individuals. For this dioecious (unisexual) species, only one male tree is known. *Xylosma crenatum* may be reproductively extinct. If no female individuals remain in the wild, no further sexual reproduction would take place. *Stenogyne campanulata* numbers approximately 50 plants at the very most, concentrated at a single site (T. Flynn, pers. comm., 1990). *Poa siphonoglossa* numbers fewer than 30 known individuals at 2 populations (including the Kaulaula population that also exhibits characteristics of *P. manni*) (HHP 1990r; T. Flynn, pers. comm., 1990). Whereas about 40 individuals of *Poa sandvicensis* are known from 4 populations, 80 percent of the plants are concentrated at 1 major site (HHP 1990n, 1990q; T. Flynn, pers. comm., 1990). The fewer than 25 known individuals of *Chamaesyce halemanui* are distributed fairly evenly

between 3 populations, 2 of them reported to include seedlings as well as mature trees (HHP 1990c, 1990f; T. Flynn, pers. comm., 1990). Most *Dubautia latifolia* populations consist of fewer than 6 plants, often widely scattered (e.g., each 0.3 mi (0.5 km) apart). Individual localities are typically 270 to 1,600 square ft (25 to 150 square m) in area (Carr 1982). Only about 40 individuals of *D. latifolia* are known to be extant, also comprising a limited gene pool (Carr 1982; HHP 1990g through 1990m; S. Perlman, pers. comm., 1990).

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Chamaesyce halemanui*, *Dubautia latifolia*, *Poa sandvicensis*, *Poa siphonoglossa*, *Stenogyne campanulata*, and *Xylosma crenatum* as endangered. Total numbers of known individuals of these 6 species range from a low of 1 (*Xylosma crenatum*) to an estimated high of 50 (*Stenogyne campanulata*). These species are threatened by one or more of the following: competition from alien plants; habitat degradation by feral pigs, goats, and deer; and trail and road maintenance. Small population size makes these species particularly vulnerable to extinction from stochastic events. Given these circumstances, the determination of endangered status for these six species seems warranted.

#### Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time the species is proposed to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for the six Kokee species proposed for listing. The publication of descriptions and maps required in a proposal for critical habitat would increase the degree of threat to these species from possible take or vandalism and therefore could contribute to their decline and increase enforcement problems. The listing of species as either endangered or threatened publicizes the rarity of the plants, and thus could make them attractive to researchers, curiosity seekers, or collectors of rare plants. As the result of its nearly inaccessible location, *Stenogyne campanulata* does not appear to be threatened by potential vandalism. However, actions of nearby curiosity seekers could result in increased erosion or cause land slides.

Because the known distributions of all six species are on State-owned land and there are no known or anticipated Federal actions for the areas in which the plants are located, designation of critical habitat would have no known benefit to these species. All involved parties and landowners have been notified of the location and importance of protecting the habitat of these species. Protection of the species' habitat will be addressed through the recovery process. Therefore, the Service finds that designation of critical habitat for these species is not prudent at this time because such designation would increase the degree of threat from vandalism, collecting, or other human activities.

#### Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the State and requires that recovery actions be carried out for all listed species. Since the six Kokee species being proposed are known to occur on State land, cooperation between Federal and State agencies is necessary to provide for their conservation. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical

habitat, the responsible Federal agency must enter into formal consultation with the Service. As none of these species are on Federal land and no Federal activities are currently anticipated in the area, no section 7 consultations or impact on activities of Federal agencies are anticipated as the result of this proposal.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 for endangered plant species set forth a series of general trade prohibitions and exceptions that apply to all endangered plants. With respect to the six plants from the Kokee region, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, make it illegal with respect to any endangered plant for any person subject to the jurisdiction of the United States to import or export; transport in interstate or foreign commerce in the course of a commercial activity; sell or offer for sale these species in interstate or foreign commerce; or to remove and reduce to possession any such species from areas under Federal jurisdiction; or to maliciously damage or destroy any such plants on any area under Federal jurisdiction; or to remove, cut, dig up, damage, or destroy any such species on any other area in knowing violation of any State law or regulation or in the course of any violation of a State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued because the species are not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, room 432, 4401 N. Fairfax Drive, Arlington, Virginia 22203 (703/358-2104, FTS 921-2104, FAX 703/358-2281).

#### Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to these six species;

(2) The location of any additional populations of these species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of these species; and

(4) Current or planned activities in the subject area and their possible impacts on these species.

Any final decision on this proposal concerning these six species of plants will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Field Office Supervisor (see **ADDRESSES** section).

#### National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined pursuant to the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the *Federal Register* on October 25, 1983 (48 FR 49244).

#### References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Field Office Supervisor (see **ADDRESSES** above).

#### Author

The primary author of this proposed rule is Dr. Joan E. Canfield, Fish and Wildlife Enhancement, Pacific Islands Office, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, Room 6307, P.O. Box 50167, Honolulu, Hawaii 96850, (808/541-2749 or FTS 551-2749).

#### List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and record-keeping requirements, and Transportation.

**Proposed Regulations Promulgation**

**PART 17—[AMENDED]**

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1544; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500, unless otherwise noted.

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical

order under the families indicated, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

\* \* \* \* \*  
(h) \* \* \*

Species		Historic range	Status	When listed	Critical habitat	Special rule
Scientific name	Common name					
Asteraceae—Aster family:						
<i>Dubautia latifolia</i>	None	U.S.A. (HI)	E		NA	NA
Euphorbiaceae—Spurge family:						
<i>Chamaesyce halemanui</i>	None	U.S.A. (HI)	E		NA	NA
Flacourtiaceae—Flacourtia family:						
<i>Xylosma crenatum</i>	None	U.S.A. (HI)	E		NA	NA
Lamiaceae—Mint family:						
<i>Stenogyne campanulata</i>	None	U.S.A. (HI)	E		NA	NA
Poaceae—Grass family:						
<i>Poa sandvicensis</i>	Hawaiian bluegrass	U.S.A. (HI)	E		NA	NA
<i>Poa siphonoglossa</i>	None	U.S.A. (HI)	E		NA	NA

(Proposal: *Chamaesyce halemanui*, *Dubautia latifolia*, *Poa sandvicensis*, *Poa siphonoglossa*, *Stenogyne campanulata*, and *Xylosma crenatum*—endangered.)

Dated: September 14, 1990.  
Richard N. Smith,  
Acting Director, Fish and Wildlife Service.  
[FR Doc. 90-22740 Filed 9-25-90; 8:45 am]  
BILLING CODE 4310-55-M

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 638**

**Coral and Coral Reefs of the Gulf of Mexico and the South Atlantic**

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Notice of availability of an amendment to a fishery management plan and request for comments.

**SUMMARY:** NOAA announces that the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) have submitted Amendment 1 to the Fishery Management Plan for the Coral and Coral Reefs of the Gulf of

Mexico and South Atlantic (FMP) for review by the Secretary of Commerce (Secretary). Written comments are invited from the public.

**DATES:** Written comments must be received on or before November 20, 1990.

**ADDRESSES:** Copies of the amendment are available from the Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, suite 881, Tampa, FL 33609 or the South Atlantic Fishery Management Council, Southpark Building, suite 306, One Southpark Circle, Charleston, SC 29407-4699.

Comments should be sent to Michael E. Justen, Southeast Region, NMFS, 9450 Koger Boulevard, St. Petersburg, FL 33702. Mark envelopes, "Comments on Amendment 1 to the Coral FMP."

**FOR FURTHER INFORMATION CONTACT:** Michael E. Justen, 813-893-3722.

**SUPPLEMENTARY INFORMATION:** The Magnuson Fishery Conservation and Management Act (Magnuson Act), as amended, requires that a Council-prepared fishery management plan or amendment be submitted to the Secretary for review and approval or disapproval. The Magnuson Act also requires that the Secretary immediately publish a notice that the document is available for public review and

comment. The Secretary will consider these comments in determining approvability of the document.

In July 1989, NOAA published revised guidelines interpreting the Magnuson Act's national standards for fishery management plans. In compliance with the revised guidelines, the Councils have submitted Amendment 1, which includes octocorals in the management unit as a controlled species; restates the determination of optimum yield to include octocorals; adds a definition of overfishing; provides for a limited harvest of certain octocorals through permit and data reporting requirements; includes a section on vessel safety considerations; and revises the FMP section on habitat of the stocks. The intended effect of this rule is to conserve and manage the coral resources.

Regulations proposed by the Councils to implement Amendment 1 are scheduled for publication within 15 days.

**Authority:** 16 U.S.C. 1801, et seq.

Dated: September 20, 1990.

Richard H. Schaefer,  
Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90-22725 Filed 9-20-90; 4:14 am]

BILLING CODE 3510-22-M

# Notices

Federal Register

Vol. 55, No. 187

Wednesday, September 26, 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.

## ACTION

### Information Collection Submitted to the Office of Management and Budget for Review

**AGENCY:** Action.

**ACTION:** Information Collection Submitted to the Office of Management and Budget for review.

**SUMMARY:** The following form(s) have been submitted to OMB for approval under the Paperwork Reduction Act (44 U.S.C. chapter 35). This entry is not subject to 44 U.S.C. 3504(h). Copies of the submission(s) may be obtained from the ACTION Clearance Officer.

**DATES:** OMB and ACTION will consider comments received by October 26, 1990. Send comments to both:

Janet Smith, Clearance Officer,  
ACTION, 1100 Vermont Avenue NW.,  
Washington, DC 20525, Tel: (202) 634-9245.

and

Daniel Chenok, Desk Officer for  
ACTION, Office of Management and  
Budget, 3002 New Executive Office  
Building, Washington, DC 20503, Tel:  
(202) 395-7316.

*Title of Form(s):* Project Application  
Form: Student Community Service  
Program.

*ACTION Forms No(s):* ACTION Form  
424-SCS.

*Need and Use:* To assure that grantees  
meet program requirements; *USE:* the  
information provided is considered by  
ACTION with regard to initial and  
renewal funding.

*Type of Request:* Project Grant  
Application.

*Respondent's Obligation to Reply:*  
Required to obtain/retain benefits.

*Descriptions of Respondents:* Public  
agencies and private non-profits.

*Frequency of Collection:* Annual.

*Estimated Number of Annual*

*Responses:* 177.

*Average Burden Hours per Response:*

New grantees—20.

Renewal grantees—10.

### Estimated Annual Reporting or

Disclosure Burden:

New grantees—20.

Renewal grantees—10.

Janet Smith,

Clearance Officer, ACTION.

[FR Doc. 90-22782 Filed 9-25-90; 8:45 am]

BILLING CODE 6050-28-M

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

[Docket No. 90-186]

### Scrapie Negotiated Rulemaking Advisory Committee; Meeting

**AGENCY:** Animal and Plant Health  
Inspection Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The purpose of this notice is to announce the fifth meeting in a series of sessions of the Scrapie Negotiated Rulemaking Advisory Committee.

#### PLACE, DATES, AND TIME OF MEETING:

The meeting will be held on October 12, 1990, from 1 p.m. to 5 p.m., and on October 13, 1990, from 8 a.m. to 4 p.m. The meeting will be held at the National Center for Animal Health Information Systems, 555 South Howes Street, Fort Collins, Colorado 80521.

#### FOR FURTHER INFORMATION CONTACT:

David Galbreath, Planning and Risk Analysis Systems, PPD, APHIS, USDA, room 806, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8017.

**SUPPLEMENTARY INFORMATION:** In a Federal Register notice published on February 26, 1990 (55 FR 6662-6663, Docket No. 89-139), we announced our intent to establish a Scrapie Negotiated Rulemaking Advisory Committee (Committee), chartered under the Federal Advisory Committee Act (5 U.S.C. App., Pub. L. No. 92-463). The Committee will develop alternatives to the current regulatory program designed to control scrapie in sheep and goats. The first meeting of the Committee was held on May 8 and 9, 1990, with three subsequent meetings in July, August, and September, 1990. This notice announces the fifth meeting in a series of sessions of the Committee.

The purpose of the meeting is to bring together members of the Animal and Plant Health Inspection Service, representatives of the sheep industry, and representatives of other parties with a definable stake in scrapie issues to frame a recommended rulemaking proposal as an alternative to the current regulatory program for the control of scrapie.

The tentative agenda for the fifth meeting of the Committee is as follows:

#### First Day

*Afternoon session—1 p.m.*

Discussion of draft Scrapie Certification and Control Plan.

#### Second Day

*Morning session—8 a.m.*

Discussion of draft Scrapie Certification and Control Plan.

*Afternoon session—1 p.m.*

Committee Administrative Issues.

Discussion of Future Committee Meeting Agendas.

Public Comments.

The meetings will be open to the public. Public participation at the meetings will be allowed during periods announced at the meeting for this purpose. Anyone who wants to file a written statement with the Committee may do so before, at the time of the meeting, or after the meeting by sending the statement on or before October 26, 1990, to Helene Wright, Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to the Scrapie Negotiated Rulemaking Advisory Committee.

This notice of meeting is given in compliance with the Federal Advisory Committee Act (5 U.S.C. App., Pub. L. No. 92-463).

Done in Washington, DC, this 20th day of September 1990.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90-22781 Filed 9-25-90; 8:45 am]

BILLING CODE 3410-34-M

## Forest Service

### Sequoia National Forest, Timber Sales; Exemption

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of exemption from appeal, Hot Springs Ranger District, Sequoia National Forest.

**SUMMARY:** The Forest Service is exempting from appeal any decisions related to the salvage of fire-damaged timber within the Stormy 1 analysis area on the Hot Springs Ranger District, Sequoia National Forest. This area includes approximately 1,500 acres of the 24,200 acre Stormy Complex fire. The fire was started by lightning strikes on August 5, 1990. The Forest Service proposes to salvage harvest approximately 15 million board feet (MMBF) of the estimated 27 MMBF of dead and dying timber within this 1,500 acre area. It is expected that approximately 12 MMBF of the dead and dying timber will not be salvaged because of economic, watershed, sensitive plants, and other environmental constraints.

The Stormy 1 analysis area is located approximately 6 air miles southeast of California Hot Springs, California, sections 7, 8, 17, 18, 19, 20, 21, and 28 of T24S, R32E, MDB&M. Terrain is suitable for cable yarding and tractor skidding systems. Some additional temporary access road construction and the reconstruction of some existing roads will be required. No new road construction is proposed. The value and volume of lumber recovered from burned timber declines rapidly as the wood deteriorates. Thus, the prompt removal of affected timber minimizes value loss. If dead timber is not removed promptly, the decline in value caused by deterioration will prevent economical removal.

If not removed in timber salvage operations, excessive numbers of dead trees can lead to heavy fuel concentrations. This compounds future fire suppression difficulty, which in turn increases the risk of further severe watershed disturbance. In some areas ground cover was completely consumed, effectively preparing the ground for the planting of trees. But to be effective in the long term, standing dead and damaged timber must first be removed. If left in place this timber will eventually fall, damaging planted trees and creating barriers to cultural activities such as thinning and weeding. If removal is delayed, the site preparation provided by the fire will be lost due to shrub and herbaceous regrowth, further delaying

the time at which a new timber stand can be established.

Prompt timber harvest can replace some ground cover consumed in the fire with logging slash. Harvest activities also create disturbance that helps break up fire-caused "hydrophobic" soils that inhibit water infiltration. The combination of creating ground cover and increasing the ability of soils to absorb water helps to initiate watershed recovery in the shortest time possible.

A decision on the proposed salvage is expected by September 30, 1990. If subsequent projects are delayed because of administrative appeal, it is likely that the onset of winter weather would prevent salvage until the spring of 1991. This delay could cause an estimated loss of 10% of the wood volume to deterioration; and some portions of watershed restoration and reforestation to be delayed by as much as three years.

Pursuant to 36 CFR part 217.4(a)(11), it is my decision to exempt from appeal any decisions relating to the harvest and restoration of lands following fire-induced timber mortality within the Stormy 1 analysis area on the Hot Springs Ranger District, Sequoia National Forest. My decision is conditional upon the Forest Supervisor determining through analysis that there is good cause to proceed with projects to recover value in dead and dying timber and to rehabilitate National Forest lands affected by catastrophic fire.

Environmental documents under preparation will address the effects of the proposed action on the environment, will document appropriate levels of public involvement and will address the issues raised by the public.

**EFFECTIVE DATE:** This decision will be effective September 28, 1990.

**FOR FURTHER INFORMATION CONTACT:** Questions about this decision should be addressed to Ed Whitmore, Timber Staff Director, Pacific Southwest Region, USDA Forest Service, 830 Sansome Street, San Francisco, CA 94111, (415) 705-2648, or James A. Crates, Forest Supervisor, Sequoia National Forest, 900 West Grand Avenue, Porterville, CA 93257, (209) 784-1500.

**ADDITIONAL INFORMATION:** Catastrophic damage caused by the Stormy Complex Fire covers approximately 24,200 acres. Within this area, trees containing approximately 150 MMBF of salvable timber, are severely damaged or killed. Selling value of the salvage volume is estimated at 9 million dollars. This does not include the many jobs and thousands of dollars in benefits that are realized in related service, supply and construction industries. An estimated

volume of 15 MMBF, valued at approximately \$900,000, is practical to salvage within the 1500 acre Stormy 1 analysis area.

A large percentage of the damaged timber in the 24,200 acre Stormy Complex Fire area lies within potential habitat delineations for California spotted owls (*Strix occidentalis occidentalis*) and a sensitive plant species, Shirley Meadow mariposa lily (*Calochortus westoni*). Appropriate surveys to determine the presence of these species cannot be done until the spring of 1991. However, the 1500 acre Stormy 1 analysis area is located outside all potential habitat for spotted owls, and outside most of the potential habitat for the mariposa lily.

Approximately 700 acres of potential mariposa lily habitat are included in the analysis area because they are considered to be critical in terms of watershed rehabilitation. Watershed rehabilitation needs that can be accomplished through either timber sale activities or appropriate cooperative deposits from timber sales will be determined through the analysis. Logging activity will be prohibited in potential habitat areas until a survey for locating existing plant populations is completed. Appropriate protection measures to protect plant populations found during the survey will be specified in the environmental document. Other sensitive plants are known to exist within the 24,200 acre burned area, but their habitat is not present in the Stormy 1 analysis area.

Damaged timber will be harvested using partial cutting and clearcutting prescriptions. Partial cutting will be prescribed where portions of an area have been burned, and there is an opportunity to save and protect the residual unburned and lightly burned trees. Clearcutting will be prescribed in areas burned at such as high intensity that essentially all trees are either dead or expected to die within the next few months. Some logging prescriptions will be designed specifically to meet watershed, wildlife habitat and other resource objectives. All proposed harvest areas are designated as suitable for timber harvest in the Sequoia National Forest Land and Resource Management Plan.

Salvage projects are not expected to adversely affect snag-dependent wildlife species. Snags will be left in numbers sufficient to meet or exceed guidelines stated in the Sequoia National Forest Land and Resource Management Plan. No giant Sequoia groves or threatened or endangered plants or animals are located in the projects areas.

Delays for any reason could jeopardize chances of accomplishing recovery and rehabilitation of the damaged resources within the timber sale project areas during the rest of this field season. These delays would result in significant volume and value losses.

Dated: September 20, 1990.

David M. Jay,

Deputy Regional Forester.

[FR Doc. 90-22763 Filed 9-25-90; 8:45 am]

BILLING CODE 3410-11-M

### Soil Conservation Service

[37-6001-061-431]

**Oak Hollow Lake, Critical Area Treatment, RC&D Measure North Central Piedmont RC&D Area; Guilford County, NC**

**AGENCY:** Soil Conservation Service, USDA.

**ACTION:** Notice of a Finding of No Significant Impact.

**SUMMARY:** Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Oak Hollow Lake RC&D Measure, Guilford County, North Carolina. For further information contact Mr. Bobby J. Jones, State Conservationist, 4405 Bland Road, Raleigh, North Carolina 27609; Phone (919) 790-2888.

**SUPPLEMENTARY INFORMATION:** The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Bobby J. Jones, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for reducing erosion and resulting sedimentation on the Oak Hollow Lake Park. The planned works of improvement include installing gabions, shaping and grading, and the establishment of vegetation. Grading and shaping will be done to fill in behind the gabions. All disturbed areas will be seeded with adapted permanent vegetation.

All construction activity will be carried out in accordance with an approved Sedimentation and Erosion

Control Plan which meets the requirements of North Carolina's erosion and sedimentation control laws. The United States Army Corps of Engineers has determined that an individual 404 permit will be required for this project. The sponsors have submitted an application for this permit.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Bobby J. Jones. No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the *Federal Register*.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Dated: September 14, 1990.

Bobby J. Jones,

State Conservationist.

[FR Doc. 90-22762 Filed 9-25-90; 8:45 am]

BILLING CODE 3410-16-M

### DEPARTMENT OF COMMERCE

#### Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

**Agency:** National Oceanic and Atmospheric Administration, Commerce.

**Title:** Application for Commission in the NOAA Corps.

**Form Number:** NOAA—65-42, 42A, 42C, 42D; OMB—0648-0047.

**Type of Request:** Extension of the expiration date of a currently approved collection.

**Burden:** 185 respondents; 277 reporting hours; average hours per response—3.75 hours.

**Needs and Uses:** This information collection is used to apply for a commission in the NOAA Corps. The information is used by NOAA to determine the service potential of applicants.

**Affected Public:** Individuals.

**Frequency:** On occasion.

**Respondent's Obligation:** Required to obtain or retain a benefit.

**OMB Desk Officer:** Ronald Minsk, 395-3084.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Ronald Minsk, OMB Desk Officer, room 3201, New Executive Office Building, Washington, DC 20503.

Dated: September 20, 1990.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 90-22755 Filed 9-25-90; 8:45 am]

BILLING CODE 3510-CW-M

#### Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

**Agency:** Bureau of the Census.

**Title:** Plant and Equipment Expenditures Survey.

**Form Number(s):** PE-1, PE-2, PE-3, PE-4, PE-4(P), PE-5, PE-5(P), PE-6.

**Agency Approval Number:** 0607-0641.

**Type of Request:** Revision of currently approved collection.

**Burden:** 27,175 hours.

**Number of Respondents:** 15,000.

**Avg Hours Per Response:** 42 minutes (avg.).

**Needs and Uses:** The Bureau of the Census uses the Plant and Equipment Expenditures Survey (P&E) to obtain data quarterly and annually on planned and actual capital spending of nonagricultural business firms.

These estimates are one of the most important indicators used by business and public officials in assessing near-term economic activity. These quarterly data will also be collected annually from small companies and from those companies who have not responded to the quarterly forms.

**Affected Public:** Businesses or other for-profit organizations Non-profit institutions; Small businesses or organizations.

**Frequency:** PE-1, PE-2, PE-3, PE-4, PE-4(P)—Quarterly. PE-5, PE-5(P), PE-6—Annually.

*Respondent's Obligation:* Quarterly forms—Voluntary. Annual forms—Mandatory.

OMB Desk Officer: Marshall Mills, 396-7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Clearance Officer, (202) 377-3271, Department of Commerce, room 5312, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: September 21, 1990.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 90-22791 Filed 9-25-90; 8:45 am]

BILLING CODE 3510-07-M

## Bureau of Export Administration

### Transportation and Related Equipment; Technical Advisory Committee; Partially Closed Meeting

A meeting of the Transportation and Related Equipment Technical Advisory Committee will be held October 11, 1990, 9:30 a.m., Herbert C. Hoover Building, room 1629, 14th Street and Constitution Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to transportation and related equipment or technology.

#### Agenda

##### General Session

1. Opening Remarks by the Chairman or Commerce Representative.
2. Introduction of Members and Visitors.
3. Presentation of Papers or Comments by the Public.
4. Discussion of the CORE List.
5. Discussion of the Annual Report.
6. Discussion of the Annual Plan.

##### Executive Session

7. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control programs and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may

be submitted at any time before or after the meeting. However, in order to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that you forward your public presentation materials two weeks prior to the meeting to the below listed address: Ms. Ruth D. Fitts, U.S. Department of Commerce/BXA, Office of Technology & Policy Analysis, 14th & Constitution Avenue NW., room 4069A, Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on December 17, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittee thereof, dealing with the classified materials listed in 5 U.S.C. 552(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public. A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6628, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes call Ruth D. Fitts, 202-377-4959.

Dated: September 21, 1990.

Betty A. Ferrell,

Director, Technical Advisory Committee Unit, Office of Technology and Policy Analyses.

[FR Doc. 90-22788 Filed 9-25-90; 8:45 am]

BILLING CODE 3510-DT-M

## International Trade Administration

[A-588-055]

### Acrylic Sheet From Japan; Determination Not To Revoke Antidumping Finding

**AGENCY:** International Trade Administration/Import Administration Department of Commerce.

**ACTION:** Notice of determination not to revoke antidumping finding.

**SUMMARY:** The Department of Commerce is notifying the public of its determination not to revoke the antidumping finding on acrylic sheet from Japan.

**EFFECTIVE DATE:** September 26, 1990.

**FOR FURTHER INFORMATION CONTACT:** Sheila Forbes or Robert Marenick,

Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5255.

**SUPPLEMENTARY INFORMATION:** On August 2, 1990, the Department of Commerce (the Department published in the *Federal Register* (55 FR 31413) its intent to revoke the antidumping finding on acrylic sheet from Japan (41 FR 36497, August 30, 1976). The Department may revoke an order if the Secretary concludes that the order is no longer of interest to interested parties. We had not received a request for an administrative review of the finding for the last four consecutive annual anniversary months and therefore published a notice of intent to revoke pursuant to § 353.25(d)(4) of the Department's regulations (19 CFR 353.25(d)(4)(1990)).

On August 31, 1990, several interested parties objected to our intent to revoke the finding. Therefore, we no longer intend to revoke the finding.

Dated: September 18, 1990.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 90-22756 Filed 9-25-90; 8:45 am]

BILLING CODE 3510-DS-M

[C-355-001]

### Leather Wearing Apparel From Uruguay, Final Results of Countervailing Duty Administrative Review

**AGENCY:** International Trade Administration/Import Administration Department of Commerce.

**ACTION:** Notice of final results of countervailing duty administrative review.

**SUMMARY:** On July 23, 1990, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on leather wearing apparel from Uruguay. We have now completed that review and determine the net subsidy to be *de minimis* for the period January 1, 1988 through December 31, 1988.

**EFFECTIVE DATE:** September 26, 1990.

**FOR FURTHER INFORMATION CONTACT:** Patricia W. Stroup or Paul J. McGarr, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

**SUPPLEMENTARY INFORMATION:****Background**

On July 23, 1990, the Department of Commerce ("the Department") published in the *Federal Register* (55 FR 29875) the preliminary results of the administrative review of the countervailing duty order on leather wearing apparel from Uruguay (47 FR 31032; July 16, 1982). The Department has now completed that review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

**Scope of Review**

Imports covered by this review are shipments of Uruguayan leather wearing apparel and parts and pieces thereof. During the period of review, such merchandise was classifiable under items 791.7620, 791.7640, and 791.7660 of the Tariff Schedules of the United States Annotated. These products are currently classifiable under item numbers 4203.10.4030, 4203.10.4060 and 4203.10.4090 of the Harmonized Tariff Schedule. The HTS numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period January 1, 1988 through December 31, 1988, and four programs: (1) Export tax refunds; (2) bonification payments; (3) uncollected social security taxes; and (4) preferential export financing.

**Analysis of Comments Received**

We gave interested parties an opportunity to comment on the preliminary results. We received no comments.

**Final Results of Review**

As a result of our review, we determine the net subsidy to be 0.12 percent *ad valorem* during the period of review. The Department considers any rate less than 0.50 percent *ad valorem* to be *de minimis*.

The Department will instruct the Customs Service to liquidate, without regard to countervailing duties, all shipments of this merchandise exported on or after January 1, 1988 and on or before December 31, 1988.

The Department will also instruct the Customs Service to waive cash deposits of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, on all shipments of this merchandise which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This waiver of deposit requirement shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.22 of the Commerce Regulations (19 CFR 355.22).

Dated: September 19, 1990.

Marjorie A. Chorlins,  
*Acting Assistance Secretary for Import Administration.*

[FR Doc. 90-22724 Filed 9-25-90; 8:45 am]

BILLING CODE 3510-DS-M

**Export Trade Certificate of Review**

**ACTION:** Notice of application for an amendment to an export trade certificate of review.

**SUMMARY:** The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an amendment to an Export Trade Certificate of Review. This notice summarizes the amendment and requests comments relevant to whether the amended Certificate should be issued.

**FOR FURTHER INFORMATION CONTACT:**

George Muller, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the *Federal Register* identifying the applicant and summarizing its proposed conduct.

**Request for Public Comments**

Interested parties may submit written comments relevant to the determination whether the Certificate should be amended. An original and five (5) copies should be submitted not later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1800H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this

application as "Export Trade Certificate of Review, application number 90-A0007."

OETCA has received the following application for an amendment to Export Trade Certificate of Review No. 90-00007, which was issued on August 22, 1990 (55 FR 35445, August 30, 1990). The applicant has requested expedited review of the application.

**Summary of Application**

**Applicant:** United States Surimi Commission ("USSC") 4200 First Interstate Center, Seattle, Washington 98104-4082; Contact: Mr. Wm. Paul MacGregor, Legal Counsel; Telephone: 206/624-5950.

**Application No.:** 90-A0007.

**Date deemed submitted:** September 14, 1990.

**Request for amended conduct:** USSC seeks to amend its Certificate to:

1. Add "pollock roe" to the "Products" covered by the Certificate.

2. Revise the provisions appearing in Items 1 and 7 of the Export Trade Activities and Methods of Operation of the Certificate to specify that the restrictions imposed by those provisions will not apply to pollock roe.

Dated: September 20, 1990.

George Muller,

*Director, Office of Export Trading Company Affairs.*

[FR Doc. 90-22765 Filed 9-25-90; 8:45 am]

BILLING CODE 3510-DR-M

**Short-Supply Review: Certain Continuous Cast Steel Slabs**

**AGENCY:** Import Administration/ International Trade Administration, Commerce.

**ACTION:** Notice of short-supply review and request for comments; certain continuous cast steel slabs.

**SUMMARY:** The Secretary of Commerce ("Secretary") hereby announces a review and request for comments on a short-supply request for 215,000 net tons of certain continuous cast slabs for the fourth quarter of 1990 through the second quarter of 1991 under Article 8 of the U.S.-EC and U.S.-Brazil Arrangements and Paragraph 8 of the U.S.-Japan Arrangement

Short-Supply Review Number: 24.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 4(b)(3)(B) of the Steel Trade Liberalization Program Implementation Act, Public Law No. 101-221, 103 Stat. 1898 (1989) ("the Act"), and § 357.104(b) of the Department of Commerce's Short-Supply Regulations, published in the *Federal Register* on January 12, 1990, 55

FR 1348 ("Commerce's Short-Supply Regulations"), the Secretary hereby announces that a short-supply determination is under review with respect to certain continuous cast slabs for critical exposed applications. On September 18, 1990, the Secretary received an adequate petition from Rouge Steel Company ("Rouge Steel") requesting a short-supply allowance for 215,000 net tons of this product for the fourth quarter of 1990 and the first and second quarters of 1991 under Article 8 of the Arrangement Between the European Coal and Steel Community and the European Economic Community, and the Government of the United States of America Concerning Trade in Certain Steel Products, Article 8 of the Arrangement Between the Government of Brazil and the Government of the United States Concerning Trade in Certain Steel Products, and Paragraph 8 of the Arrangement Between the Government of Japan and the Government of the United States Concerning Trade in Certain Steel Products.

The requested material meets the following specifications:

1. Continuous cast slab—Class I, Class II, & Class III—Critical exposed material
2. Gauge—7.0 inches to 8.25 inches
3. Length—383 inches
4. Width—38 inches to 63 inches
5. Type—Class I: SAE C-1006 AK, Class II: SAE C-1010 AK, Class III: SAE 940 XF-950 XF

**Tolerances:**

1. Width: Plus or minus 0.5 inch
2. Thickness: Plus 0.25 inch or minus 0.5 inch
3. Length: Plus or minus 2.0 inches.

Section 4(b)(4)(B)(ii) of the Act and § 357.106(b)(2) of Commerce's Short-Supply Regulations require the Secretary to make a determination with respect to a short-supply petition not later than the 30th day after the petition is filed, unless the Secretary finds that one of the following conditions exist: (1) The raw steelmaking capacity utilization in the United States equals or exceeds 90 percent; (2) the importation of additional quantities of the requested steel product was authorized by the Secretary during each of the two immediately preceding years; or (3) the requested steel product is not produced in the United States. The Secretary finds that none of these conditions exist with respect to the requested product, and therefore, the Secretary will determine whether this product is in short supply not later than October 18, 1990.

Comments: Interested parties wishing to comment upon this review must send written comments not later than

October 3, 1990, to the Secretary of Commerce, Attention: Import Administration, room 7866, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW., Washington, DC 20230. Interested parties may file replies to any comments submitted. All replies must be filed not later than 5 days after October 3, 1990. All documents submitted to the Secretary shall be accompanied by four copies. Interested parties shall certify that the factual information contained in any submission they make is accurate and complete to the best of their knowledge.

Any person who submits information in connection with a short-supply review may designate that information, or any part thereof, as proprietary, thereby requesting that the Secretary treat that information as proprietary. Information that the Secretary designates as proprietary will not be disclosed to any person (other than officers or employees of the United States Government who are directly concerned with the short-supply determination) without the consent of the submitter unless disclosure is ordered by a court of competent jurisdiction. Each submission of proprietary information shall be accompanied by a full public summary or approximated presentation of all proprietary information which will be placed in the public record. All comments concerning this review must reference the above noted short-supply review number.

**FOR FURTHER INFORMATION CONTACT:**  
Kathleen McNamara or Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, room 7866, Pennsylvania Avenue and 14th Street NW., Washington, DC 20230, (202) 377-1390 or (202) 377-0159.

Dated: September 20, 1990.

Francis J. Sailer,  
*Acting Assistant Secretary for Import Administration.*  
[FR Doc. 90-22757 Filed 9-25-90; 8:45 am]

**BILLING CODE 3510-DS-M**

## DEPARTMENT OF DEFENSE

### Department of the Air Force

#### Acceptance of Group Application Under Public Law 95-202 and DODD 1000.20

In the matter of "Civilian Crewmen of United States Coast and Geodetic Survey Vessels Who Performed Their Service in Areas of Immediate Military Hazard While Conducting Cooperative Operations With

and for the United States Armed Forces Within a Time Frame of December 7, 1941 to August 15, 1945.

Under the provisions of section 401, Public Law 95-202 and DOD Directive 1000.20, the Department of Defense Civilian/Military Service Review Board has accepted an application on behalf of the group known as: "Civilian Crewmen of United States Coast and Geodetic Survey Vessels who performed Their Service in Areas of Immediate Military Hazard While Conducting Cooperative Operations with and for the United States Armed Forces Within a Time Frame of December 7, 1941, to August 15, 1945." Persons with information or documentation pertinent to the determination of whether the service of this group is to be considered equivalent to active military service to the Armed Forces of the United States are encouraged to submit such information or documentation within 60 days to the DOD Civilian/Military Service Review Board, Secretary of the Air Force (AFPC), Washington, DC 20330-1000. Copies of documents or other materials submitted cannot be returned. For further information, contact LtCol Harris, (202) 692-4747.

Patsy J. Conner,

*Air Force Federal Register Liaison Officer.*

[FR Doc. 90-22807 Filed 9-25-90; 8:45 am]

**BILLING CODE 3910-01-M**

### Corps of Engineers, Department of the Army

#### Inland Waterways Users Board: Meetings

**AGENCY:** Department of the Army.

**SUBAGENCY:** Corps of Engineers.

**ACTION:** Notice of open meeting.

**SUMMARY:** In accordance with 10(a)(2) of the Federal Advisory Committee Act (Pub L. 92-463), announcement is made of the following committee meeting:

*Name of Committee:* Inland Waterways Users Board.

*Date of Meeting:* October 23, 1990.

*Place:* Executive Inn, 1 Executive Boulevard, Paducah, KY 42001, (Tel. (502) 443-8000).

*Time:* 8:30 a.m. to 5 p.m.

Proposed Agenda

A.M. Session

8:30—Registration

*Business Session*

9—

- Administrative Announcements
- Chairman's Call to Order
- Executive Director's Comments

## -Approval of Prior Meeting Minutes

*Presentation of Information to the Board*

9:20—Trust Fund Analysis

9:45—Trust Fund Disbursements

10:15—Break

10:30—Investment Needs Assessment  
Phase 2 Results11:30—Construction Projects Update  
12—Lunch

P.M. Session

*Ohio River Division Presentations*1—Olmsted Project Development Status  
and Schedule

2—Olmstead Gate Test at Smithland

2:15—Ohio River System Modernization

2:45—Break

3—Public Comment Period

4:45—Other Business/Instructions to  
Board Staff

5—Adjourn

This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee.

**FOR FURTHER INFORMATION, CONTACT:**

Mr. David B. Sanford, Jr., Headquarters, U.S. Army Corps of Engineers, CECW-P, Washington, DC 20314-1000 at (202) 272-0146.

Hugh F. Boyd III,

Colonel, Corps of Engineers, Executive  
Director of Civil Works.

[FR Doc. 90-22719 Filed 9-25-90; 8:45 am]

BILLING CODE 3710-92-M

**Department of the Navy****Record of Decision for Proposed  
Developments at Naval Base Pearl  
Harbor, Oahu, HI**

Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969 and the Council on Environmental Quality Regulations (40 CFR parts 1500-1508), the Department of the Navy announces its decision to carry out the construction of various improvements at Naval Base Pearl Harbor, Oahu, Hawaii. The Final Environmental Impact Statement (EIS) providing full disclosure of this action was distributed for public review August 17, 1990. The U.S. Army Corps of Engineers and the U.S. Coast Guard were cooperating agencies in the preparation of the EIS. During preparation of the EIS, it was discovered that properties protected under section 4(f) of the Department of Transportation Act of 1966 (49 U.S.C. 303) will be affected by this section. Therefore, a separate document summarizing the EIS will be submitted with the request for

bridge construction permit to comply with section 4(f).

Three major components are included in the action, although each component is functionally independent of the others and could be implemented as a separate action:

(1) A retractable bridge connecting Ford Island to the mainside of Naval Base Pearl Harbor,

(2) Further development of Ford Island, and  
(3) Operational and personnel support facilities on Ford Island, Naval Station Pearl Harbor, and Naval Shipyard Pearl Harbor.

The improvements are required to support various activities, including the homeporting of a battleship and two cruisers in response to the Base Closure and Realignment Act (Pub. L. 100-526).

**Retractable Floating Bridge**

A retractable floating bridge will be constructed to improve access to Ford Island and to serve existing and future missions at Naval Base Pearl Harbor. Development of the mainside Pearl Harbor complex has reached the saturation point, while Ford Island contains 300 acres of open space (out of a total of 450 acres) which are not being used to the fullest possible potential by the Navy. Given improved access, approximately 2,800 feet of ship berthing space and other facilities could be put to more effective use. The slow and inefficient vehicular ferry and passenger boat transportation system presently in operation severely constrains the potential use of Ford Island vacant land and underused facilities.

The bridge will be a 4,100 feet long retractable floating bridge, consisting of a piling supported concrete bridge with a channel to allow passage of large Navy vessels through the retractable span, and a fixed side span of 30 feet vertical clearance and 100 feet horizontal clearance to allow passage for small boats. The bridge will have the following navigational clearances: Horizontal, 100 feet between fenders in the closed position and 650 feet in the open position; vertical, 30 feet above mean high water in the closed position and unlimited clearance in the open position. The Ford Island terminus of the retractable floating bridge would be to the north of the existing housing area, intersecting Saratoga Boulevard; the mainside terminus will be near Halawa Landing, north of the Bowfin Memorial and south of the Navy Marina. This bridge alignment is the environmentally preferred alternative.

Alternatives to the retractable floating bridge included no action, an expanded ferry system, fixed pile bridge without a moveable span, and sunken tube tunnel.

Alternative termini on Ford Island for the retractable floating bridge, fixed bridge, and tunnel alternatives included a terminus passing north of the Public Works Center, intersecting the realigned Saratoga Boulevard west of its present junction with Princeton Place, and a terminus passing through the housing area on the east end of the island, intersecting Lexington Boulevard west of the Arizona Memorial. Alternative termini on mainside included the Richardson Recreation Center and McGrew Point.

**Further Development of Ford Island**

Development of Ford Island will include construction of up to 1200 units of family housing, a Service Craft pier, a Surveillance Towed Array Sensor System (SURTASS) pier and support facilities, fire fighting and damage control trainer facilities, and bachelor enlisted quarters. About 100 acres in the old runway area is available for family housing. An existing runway is currently used as a general aviation practice landing airfield. These general aviation practice exercises will be displaced. Alternatives considered included: No Action (build no new housing and have families find housing elsewhere, either in existing military housing or in the private sector); construct up to 1,200 housing units on Ford Island, which would consist of a mixture of low and mid-rise buildings; and construct about 600 to 700 units on Ford Island and accommodate the remaining units in existing military housing areas, new military housing at other locations, or in the private sector. Alternative sites considered for development in lieu of Ford Island are the Manana storage area and Pearl City Junction, which are the only large tracts of Navy-owned land near Naval Base Pearl Harbor. Another alternative to the development of Ford Island would be increased development on the Naval Station by the building of high-rise structures and more buildings with the concurrent loss of open space and parking.

**Operational and Personnel Support  
Facilities**

The following projects will be required to support the homeporting of a battleship and two cruisers in response to Congressional mandate. Support facilities include the upgrading of berth F-5 and construction of a new pier outboard of the existing pier on Ford Island to accommodate the battleship, including new and maintenance dredging (355,000 cubic yards), utilities improvements and shore support facilities; upgrading the fender system at

Naval Station Wharf Bravo berths B-20 and B-21, and upgrading shore power outlets and electrical distribution at berths B-23 and B-24 to accommodate the two cruisers; new fender systems along berths B-15 to B-18, and upgrading shore power outlets and electrical distribution at berths B-25 and M-3 to support the existing ships displaced by the two cruisers; a 4,800 square foot pre-engineered building at Naval Shipyard Pearl Harbor to store parts for the homeported battleship; a 7,200 square foot addition to the Applied Instruction Building (Building 1377) at the Naval Station to provide additional training and administrative space required for Mobile Technical Unit One; two new buildings at the Naval Station to house transient enlisted personnel, administrative and shop space for the Transient Personnel Unit, and enlisted personnel assigned to the station; a 5,500 square foot addition to the club on Ford Island (Building 88) to house a snack bar, restrooms, and storage; and a Fleet Shoreside Support Center on Ford Island consisting of an amusement center, laundromat, outdoor basketball/volleyball courts, playing fields and racquetball courts. The siting for these facilities represents the environmentally preferred alternative.

Alternatives to these proposed operational and personnel support facilities include postponing the action and using other locations for specific projects. In accordance with provisions of the Base Closure and Realignment Act of 1988, the No Action alternative was not considered.

The following is a summary of the mitigative measures that will be taken during implementation of this action:

- (1) Minimize noise, dust, and erosion impacts by incorporating best management practices.
- (2) Upgrade sewage force mains and the Fort Kamehameha sewage treatment plant.
- (3) Retain mature trees in the area of Pier F-5 to provide screening for the U.S.S. Arizona Memorial.
- (4) Limit building heights to that of existing buildings on Ford Island.
- (5) Provide visual screening/landscaping at the U.S.S. Bowfin Park.
- (6) Install Coast Guard approved warning lights on the bridge.
- (7) Replace small boat moorings that are displaced by bridge construction.
- (8) Construct additional through and turning lanes on Kamehameha Highway, in cooperation with the State and City of Honolulu Departments of Transportation.
- (9) Reconfigure Salt Lake Boulevard in cooperation with Hawaii DOT.
- (10) Establish bridge operating procedures which provide for opening the bridge only during non-peak traffic hours, except for emergencies.

(11) Perform air quality monitoring at Richardson Recreation Center and move the child care center, if necessary, to reduce cumulative air quality impacts.

(12) Provide alternative means of mass transportation, such as a personnel boat shuttle, from Ford Island to mainside.

The Navy will continue a strong commitment to implement hazardous materials contingency plans, if necessary, and conduct all project activities located in contaminated areas in a manner that will ensure protection of human health and the environment.

The Environmental Protection Agency (EPA) has requested the Navy to coordinate with the Army Corps of Engineers (COE) to conduct supplemental studies to better quantify sediment characteristics in the area proposed to be dredged. Navy agrees with the request and will coordinate with COE/EPA to conduct the additional necessary sampling and analysis to support the proposed dredging and open ocean disposal. No dredging actions addressed for this Record of Decision will occur until these studies have been completed and until the regulatory agencies have approved the dredging and disposal actions. This, however, does not affect the Navy ability to proceed with the remainder of the action included in this Record of Decision.

Dated: September 20, 1990.

Jacqueline E. Schafer,  
Assistant Secretary of the Navy (Installation and Environment).

Dated: September 21, 1990.

Sandra K. Melancon,  
Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 90-22792 Filed 9-25-90; 8:45 am]

BILLING CODE 3810-AE-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 October 26, 1990.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs

Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to James O'Donnell, Department of Education, 400 Maryland Avenue SW., room 5624, Regional Office Building 3, Washington, DC 20202.

**FOR FURTHER INFORMATION CONTACT:** James O'Donnell (202) 708-5174.

**SUPPLEMENTARY INFORMATION:** Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Acting 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 James O'Donnell at the address specified above.

Dated: September 20, 1990.

James O'Donnell,  
Acting Director, for Office of Information Resources Management.

### Office of Postsecondary Education

*Type of Review:* Revision.

*Title:* Student Aid Report.

*Frequency:* Annually.

*Affected Public:* Individuals or households; businesses or other for profit; small businesses or organizations.

*Reporting Burden:*

*Responses:* 11,760,461.

*Burden Hours:* 1,607,108.

*Recordkeeping Burdens:*

*Recordkeepers:* 7,300.

*Burden Hours:* 505,647.

**Abstract:** The Student Aid Report (SAR) is used to notify applicants of their eligibility to receive Federal financial aid. The form is submitted by eligible students to the participating institution of their choice. The institution submits part 3 of the SAR to the Department to receive funds for the applicant.

**Office of Educational Research and Improvement**

**Type of Review:** New.

**Title:** Application for the Educational Research Program.

**Frequency:** Annually.

**Affected Public:** Individuals or households; state or local governments; businesses or other for-profit; non-profit institutions; small businesses or organizations.

**Reporting Burden:**

**Responses:** 400.

**Burden Hours:** 11,200.

**Recordkeeping Burden:**

**Recordkeepers:** 0.

**Burden Hours:** 0.

**Abstract:** This form will be used by public or private organizations, individuals or institutions of higher learning to apply for funding under the Educational Research Program. The Department uses the information to make grant awards.

**Office of Bilingual Education and Minority Languages Affairs**

**Type of Review:** New.

**Title:** Study of the Elementary and Secondary Education Act Title VII Bilingual Education Personnel Training Program.

**Frequency:** One time only.

**Affected Public:** Individuals or households; non-profit institutions.

**Reporting Burden:**

**Responses:** 3,182.

**Burden Hours:** 1,709.

**Recordkeeping Burden:**

**Recordkeepers:** 0.

**Burden Hours:** 0.

**Abstract:** This study will collect descriptive information on title VII funded college and university education personnel training programs. The Department will use this information to assess the accomplishments of project goals and objectives and to aid in effective program management.

[FR Doc. 90-22723 Filed 9-25-90; 8:45 am]

BILLING CODE 4000-01-M

**Office of Vocational and Adult Education**

**Intent To Award Grantback; California; Correction**

**AGENCY:** Department of Education.

**ACTION:** Correction—notice of intent to award grantback of funds to the California state Department of Education as a result of final audit determination.

**SUMMARY:** On August 30, 1990 in 55 FR 35451, the notice of intent to award grantback of funds to the California State Department of Education was published. This notice corrects the several errors that appeared in that notice to read as follows:

(1) **DATES:** All comments must be received by September 29, 1990. On September 29th, comments may be hand delivered between the hours of 8 a.m. and 4:30 p.m. to James Jankowski, Switzer Building, room 4318, 300 C Street, SW., Washington, DC. Telephone: (202) 732-2423. Or, comments may be telefaxed to: (202) 732-3897.

(2) In column three, paragraph (ii) heading, the word "audit" should be changed to "Adult"; in lines six and nine, the word "audit" should be changed to "Adult".

(3) On page 35452, column one, paragraph two, the amount of money should read \$40,693.

**FOR FURTHER INFORMATION CONTACT:** Dr. Marcel R. DuVall, (202) 732-2402; Dr. Carroll F. Towey, (202) 732-2391.

Dated: September 20, 1990.  
(Catalog of Federal Domestic Assistance Number 84.048, Basic Grants for Vocational Education and Adult Education Catalog Number 84.002, State-Administered Basic Grant Program)

Betsy Brand,

Assistant Secretary, Office of Vocational and Adult Education.

[FR Doc. 90-22741 Filed 9-25-90; 8:45 am]

BILLING CODE 4000-01-M

**DEPARTMENT OF ENERGY**

**Invention Available for License**

**AGENCY:** Department of Energy, Office of the General Counsel.

**ACTION:** Notice of invention available for license.

**SUMMARY:** The Department of Energy hereby announces that U.S. Patent No. 4,878,442, entitled "NO<sub>x</sub> Control for High Nitric Oxide Concentration Flows Through Combustion-Driven Reduction" is available for license, in accordance with 35 U.S.C. 207-209. A copy of the

patent may be obtained, for a modest fee, from the U.S. Patent and Trademark Office, Washington, DC 20231.

**FOR FURTHER INFORMATION CONTACT:** Robert J. Marchick, Office of the Assistant General Counsel for Patents, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585; Telephone (202) 586-2802.

**SUPPLEMENTARY INFORMATION:** 35 U.S.C. 207 authorizes licensing of Government-owned inventions. Implementing regulations are contained in 37 CFR 404.37 CFR 404.7(a)(1) authorizes exclusive licensing of Government-owned inventions under certain circumstances provided that notice of the invention's availability for license has been announced in the Federal Register.

Issued in Washington, DC, on September 20, 1990.

Stephen A. Wakefield,  
General Counsel.

[FR Dec. 90-22804 Filed 9-25-90; 8:45 am]

BILLING CODE 6450-01-M

**Office of Fossil Energy**

[FE Docket No. 90-71-NG]

**Petro-Canada Hydrocarbons Inc.; Application To Extend Blanket Authorization To Import Natural Gas From Canada**

**AGENCY:** Department of Energy, Office Of Fossil Energy.

**ACTION:** Notice of application for extension of blanket authorization to import natural gas.

**SUMMARY:** The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of an application filed on August 17, 1990, and amended August 22, 1990, by Petro-Canada Hydrocarbons Inc. (PCH) requesting to extend its blanket authorization to import Canadian natural gas for short-term sales to customers in the United States. Authorization is requested to import up to 150 Bcf of Canadian natural gas over a two-year period beginning March 4, 1991, the date PCH's present authority expires, through March 3, 1993.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention, and written comments are invited.

**DATES:** Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the

address listed below no later than 4:30 p.m., e.d.t., October 26, 1990.

**ADDRESS:** Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, FE-50, 1000 Independence Avenue, SW., Washington, DC 20585.

**FOR FURTHER INFORMATION:**

Larine A. Moore, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, FE-53, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9478.  
Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, room 6E-042, GC-32, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-6667

**SUPPLEMENTARY INFORMATION:** PCH, a wholly-owned subsidiary of Petro-Canada Inc. (PCI), is currently authorized by DOE/FE Opinion and Order 366 (Order 366) (1 FE 70,247), issued September 26, 1989, in FE Docket No. 89-30-NG, to import up to 75 Bcf of natural gas from Canada for one year beginning March 4, 1990, through March 3, 1991. The gas would continue to be supplied by PCI or such supply sources as may become available and sold by PCH on a short-term or spot basis to local gas distribution companies, natural gas pipelines, and direct sales customers in California, the Pacific Northwest, the Middle West, and other areas in the U.S. as market opportunities develop. PCH will act either as agent of PCI or will itself resell gas it has purchased. The specific terms of each import and sale would continue to be responsive to competitive market forces in the United States domestic gas market.

PCH intends to use existing facilities for the transportation of the natural gas. PCH would continue to file reports with FE within 30 days after the end of each calendar quarter giving the details of individual transactions.

The decision on the application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on these regulatory and policy considerations. The applicant asserts that the proposed imports will make competitively priced gas available to U.S. markets while the short-term nature of the transactions will minimize the potential for undue long-term dependence on foreign

sources of energy. Parties opposing the arrangement bear the burden of overcoming these assertions.

*NEPA Compliance*

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires the DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until the DOE has met its NEPA responsibilities.

*Public Comment Procedures*

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute

that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of PCH's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, September 20, 1990.

**Clifford P. Tomaszewcki,**  
*Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.*

[FR Doc. 90-22805 Filed 9-25-90; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 90-54-NG]

**Trans Marketing Houston, Inc., Order Granting Blanket Authorization To Import and Export Natural Gas, Including Liquefied Natural Gas**

**AGENCY:** Department of Energy, Office of Fossil Energy.

**ACTION:** Notice of an order granting blanket authorization to import and export natural gas, including liquefied natural gas.

**SUMMARY:** The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Trans Marketing Houston, Inc. (Trans Marketing) blanket authorization to import and export up to an aggregate of 100 Bcf of natural gas, including liquefied natural gas, over a two-year period beginning with the date of the first import or export.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, September 20, 1990.

Clifford P. Tomaszewski,  
Acting Deputy Assistant Secretary for Fuels  
Programs, Office of Fossil Energy.

[FR Doc. 90-22806 Filed 9-25-90; 8:45 am]

BILLING CODE 6450-01-M

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-3835-1]

### 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.

**DATES:** Comments must be submitted on or before October 26, 1990.

**FOR FURTHER INFORMATION CONTACT:** Sandy Farmer at EPA, (202) 382-2740.

#### SUPPLEMENTARY INFORMATION:

#### Office of Toxic Substances

**Title:** Toxic Chemical Release Inventory Reporting Form R and Petitions for Listing/Delisting (EPA ICR #1363.03; OMB #2070-0093). This ICR requests renewal of the existing clearance.

**Abstract:** This information collection combines two previously separate ICRs: the Toxic Chemical Release Inventory Reporting Form R (EPA #1363.02, OMB #2070-0093), and the Toxic Chemical Release Inventory Petitions (EPA #1357, OMB #2070-0090). In addition, this ICR is also being used for the "Sunset Rulemaking", which would make permanent two sections on Reporting Form R that would otherwise lapse after the 1989 reporting year: the range reporting option in section 5.A.1, and the optional waste minimization questions in section 8.

Under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), Form R must be used by owners and operators of certain facilities that manufacture, import, process or otherwise use listed toxic chemicals to annually report their releases of those chemicals to each environmental medium. These reports will provide the public with information

about possible chemical hazards in their communities, and thereby encourage planning for response to chemical accidents. It will also be used by local, state and Federal authorities as a data source for regulatory and oversight activities.

Finally, with respect to the petitions, anyone may petition to add or delete a chemical from the list of toxic chemicals subject to annual reporting on Form R. EPA will use the information supplied in the petition to evaluate the need to add or delete the chemical.

**Burden Statement:** The annual burden of reporting on Form R is 117 hours per facility for those not required to comply with supplier notification. Given an average of 4 reports per facility, this is a burden of approximately 29 hours per report. For facilities with supplier notification, the annual burden is 135 hours per facility, or 34 hours per report. The public reporting burden for submitting a petition 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 have 10 or more full-time employees and manufacture or process more than 25,000 pounds or otherwise use more than 10,000 pounds of a listed toxic chemical, and are in Standard Industrial Classification (SIC) codes 20-39; public interest groups, or anyone else concerned about adding or deleting a chemical from the list.

**Estimated Number of Respondents:** 147,800.

**Estimated Total Annual Burden on Respondents:** 3,872,500.

**Frequency of Collection:** Annually for Form R, once per petition.

Send comments regarding the burden estimates, 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

Timothy Hunt, Office of Management and Budget, Office of Management and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503, Telephone: (202) 395-3084.

Dated: September 20, 1990.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 90-22777 Filed 9-25-90; 8:45 am]

BILLING CODE 6560-50-M

[ECAO-RTP-0204; FRL-3834-9]

## Inhalation Reference Concentrations Methodology Draft

**AGENCY:** Environmental Protection  
Agency.

**ACTION:** Notice of availability of  
External Review Draft.

**SUMMARY:** This notice announces the availability of an external review draft of "Interim Methods for Development of Inhalation Reference Concentrations," prepared by the EPA's Environmental Criteria and Assessment Office of the Office of Health and Environmental Assessment.

**DATES:** The Agency will make the external review draft available for public review and comment on or about October 5, 1990. Comments must be in writing and postmarked by December 12, 1990.

**ADDRESSES:** To obtain a copy of the external review draft, interested parties should contact the ORD Publications Center, CERL-FRN, U.S. Environmental Protection Agency, 26 West Martin Luther King Drive, Cincinnati, OH 45268, or telephone (513) 569-7562 [FTS 684-7562] and request the external review draft of the "Interim Methods for Development of Inhalation Reference Concentrations." Please provide your name, mailing address, and the EPA document number, EPA/600/8-90/066A.

The external review draft will also be available for public inspection and copying at the EPA Library, EPA Headquarters, Waterside Mall, 401 M Street, SW., Washington, DC.

Comments on the external review draft should be sent to the Project Manager for Inhalation RfC Methodology, Environmental Criteria and Assessment Office (MD-52), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, (919) 541-4847, (FTS) 629-4847, [FAX] (919) 541-5078, (FTS) 629-5078.

**FOR FURTHER INFORMATION CONTACT:** Ms. Annie Jarabek, Environmental Criteria and Assessment Office (MD-52), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711.

**SUPPLEMENTARY INFORMATION:** An inhalation reference concentration (RfC) is an estimate (with uncertainty spanning perhaps an order of magnitude) of continuous exposure to the human population (including sensitive subgroups) that is likely to be without appreciable risk of deleterious effects during a lifetime. The purpose of the inhalation RfC methodology set forth in the "Interim Methods for

Development of Inhalation Reference Concentrations" is to develop regulatory benchmarks for use in determining negligible and residual risk for non-cancer health of air toxics under the pending Clean Air Act Amendments

The document will be reviewed by EPA's Science Advisory Board (SAB) in a public meeting. The date and location of the SAB meeting will be announced in a subsequent Federal Register notice.

Dated: September 18, 1990.

Carl R. Gerber,

Acting Assistant Administrator for Research and Development.

[FR Doc. 90-22778 Filed 9-25-90; 8:45 am]

BILLING CODE 6560-50-M

[OPP-00293; FRL-3802-1]

### Pesticidal Transgenic Plants; Open Meeting

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of meeting.

**SUMMARY:** There will be a 2-day conference for the purpose of discussing potential risk assessment issues during the development, field testing, and commercialization of pesticidal transgenic plants. Experts will make presentations on various aspects of this subject followed by general discussion periods. The conference will be open to the public.

**DATES:** The conference will be held on Tuesday, November 6, 1990, from 8:30 a.m. to 5:30 p.m. and Wednesday, November 7, 1990, from 8:30 a.m. to 1 p.m. The deadline for registration is October 22, 1990.

**ADDRESSES:** The conference will be held at the: Annapolis Waterfront Hotel, 80 Compromise St., Annapolis, MD 21401, (301) 268-7555.

**FOR FURTHER INFORMATION CONTACT:** Pat Kottmann, Eastern Research Group, Inc., 6 Whittemore St., Arlington, MA, 02174, (617) 641-5341.

**SUPPLEMENTARY INFORMATION:** The conference will consist of three sessions covering the following topics: (1) The development and commercialization of pesticidal transgenic plants as products, (2) potential risk assessment issues, and (3) data needs for risk assessment. Each session will include presentations given by experts from EPA, academia, public interest groups, and industry. At the end of each session there will be an open discussion of the presentations given during the session. Through this exchange EPA is seeking information, not consensus advice, recommendation, or resolution of the issues raised.

Interested persons should contact Pat Kottmann for registration information at the telephone listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: September 20, 1990.

Douglas D. Camp,

Director, Office of Pesticide Programs

[FR Doc. 90-22771 Filed 9-25-90; 8:45 am]

BILLING CODE 6560-50-F

[OPP-50710; FRL-3799-8]

### Receipt of Notification of Intent to Conduct Small-Scale Field Testing; Nonindigenous Microbial Pesticide

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces EPA's receipt of a notification of intent to conduct small-scale field testing of a nonindigenous strain of *Bacillus thuringiensis* from the E.I. duPont deNemours and Company, Inc.

**ADDRESSES:** By mail, submit written 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.

Information submitted in any comment(s) 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. Information on the proposed test and all written comments will be available for public inspection in Rm. 246 at the Virginia address given above from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** By mail: Phil Hutton, Product Manager (PM) 17, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 207, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-2690).

**SUPPLEMENTARY INFORMATION:** A notification of intent to conduct small-scale field testing pursuant to the EPA's

"Statement of Policy; Microbial Products Subject to the Federal Insecticide, Fungicide, and Rodenticide Act and the Toxic Substances Control Act" of June 26, 1986 (51 FR 23313), has been received from the E.I. duPont deNemours and Company, Inc. of Wilmington, Delaware. The purpose of the proposed testing is to evaluate the efficacy of the nonindigenous *Bacillus thuringiensis* strain towards lepidopterous and coleopterous insect pests of vegetables. The field tests are to take place in California, Delaware, Florida, and Texas for a combined acreage not to exceed 2.0 acres. Following the review of the application and any comments received in response to this Notice, EPA will decide whether or not an experimental use permit is required.

Dated: August 30, 1990.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 90-22772; Filed 9-25-90; 8:45 am]

BILLING CODE 6560-50-F

### FEDERAL RESERVE SYSTEM

#### Bartow Bancshares, Inc., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

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 on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a

hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 16, 1990.

**A. Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *Bartow Bancshares, Inc.*, Cartersville, Georgia; to engage *de novo* through its subsidiary, New South Finance, Inc., Cartersville, Georgia, in making, acquiring, and servicing loans or other extensions of credit for its own account and for the account of others, pursuant to § 225.25(b)(1); and engage in insurance agency and underwriting activities pursuant to § 225.25(b)(8)(ii) of the Board's Regulation Y.

**B. Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Peotone Bancorp, Inc.*, Peotone, Illinois; to engage *de novo* through its subsidiary, Rock River Bancorporation, Inc., Oregon, Illinois, in providing general insurance agency services in a town with a population of less than 5,000 pursuant to § 225.25(b)(8) of the Board's Regulation Y. These activities will be conducted in Oregon, Illinois.

**C. Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President), 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *C & L Investment Co.*, Miller, South Dakota; to engage in making, acquiring, or servicing loans or other extensions of credit pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 20, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-22752 Filed 9-25-90; 8:45 am]

BILLING CODE 6210-01-M

### Charles H. Dutcher, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12

CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they 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 indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 10, 1990.

**A. Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Charles H. Dutcher*, Wichita, Kansas; to acquire 100 percent of the Class A voting common, and Sidney L. Sanders, Hutchinson, Kansas, to acquire an additional 20.83 percent of the voting common shares of Yoder Bankshares, Inc., Yoder, Kansas, and thereby indirectly acquire Farmers State Bank, Yoder, Kansas.

**B. Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Richard Barsness*, Debra Holmes, and Robert Barsness, Prior Lake, Minnesota; to acquire an additional 52.2 percent of the voting shares of Norlo, Inc., Prior Lake, Minnesota, for a total of 100 percent, and thereby indirectly acquire Prior Lake State Bank, Prior Lake, Minnesota.

**C. Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Texarkana National Bancshares Employee Stock Ownership Stock Bonus Plan*, Texarkana, Texas; to acquire 15.39 percent of the voting shares of Texarkana National Bancshares, Inc., Texarkana, Texas, and thereby indirectly acquire The Texarkana National Bank, Texarkana, Texas.

Board of Governors of the Federal Reserve System, September 20, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-22753 Filed 9-25-90; 8:45 am]

BILLING CODE 6210-01-M

### Eurocapital, 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 October 16, 1990.

**A. Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Eurocapital, S.A.*, Madrid, Spain, and *Banco Europeo de Finanzas, S.A.*, Madrid, Spain; to become bank holding companies by acquiring 65 percent of the voting shares of First Community Trust Company, San Juan, Puerto Rico.

**B. Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Summit Bancorp*, Akron, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of Summit Bank, Akron, Ohio, a *de novo* institution.

**C. Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Anderson Brothers Bancshares, Inc.*, Mullins, South Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of Anderson Brothers Bank, Mullins, South Carolina.

**D. Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *C&S/Sovran Corporation*, Atlanta, Georgia, formerly Avantor Financial Corporation; to acquire 100 percent of the voting shares of First Federal Savings Bank of Brunswick, Brunswick, Georgia. First Interim Bank of Brunswick, Brunswick, Georgia, will be the successor by conversion to First

Federal Savings Bank of Brunswick, Brunswick, Georgia. First Interim Bank will be the surviving entity of a phantom merger transaction and will operate under the name The Citizens and Southern Bank of Glynn County, Brunswick, Georgia.

**E. Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *FSB Bancorp, Inc.*, Pound, Wisconsin; to become a bank holding company by acquiring 100 percent of the voting shares of Farmers State Bank of Pound, Pound, Wisconsin.

**F. Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *WNB Bancshares, Inc.*, Odessa, Texas; to merge with Kermit Financial Corporation, Kermit, Texas, and thereby indirectly acquire First National Bank of Kermit, Kermit, Texas.

**G. Federal Reserve Bank of San Francisco** (Kenneth R. Binning, Assistant Vice President) 101 Market Street, San Francisco, California 94105:

1. *CELCO Enterprises Incorporated*, Eugene, Oregon; to become a bank holding company by acquiring 98.64 percent of the voting shares of Liberty Savings Bank, Eugene, Oregon, as a result of the conversion of its subsidiary, Liberty Savings and Loan Association, Eugene, Oregon, to an Oregon state chartered savings bank to be called Liberty Savings Bank.

Board of Governors of the Federal Reserve System, September 20, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-22754 Filed 9-25-90; 8:45 am]

BILLING CODE 6210-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### Consumer Participation; Open Meeting

**AGENCY:** Food and Drug Administration HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the following district consumer exchange meeting: NEW ORLEANS DISTRICT OFFICE, chaired by Robert O. Bartz, District Director. The topics to be discussed are food labeling proposals.

**DATES:** Thursday, October 4, 1990, 1 p.m.

**ADDRESSES:** Handsboro Arts Center, 1028 Cowan Rd., Gulfport, MS 39507.

**FOR FURTHER INFORMATION CONTACT:** Eileen P. Angelico, Consumer Affairs

Officer, Food and Drug Administration, 4298 Elysian Fields Avenue, New Orleans, LA. 70122, 504-589-2420.

**SUPPLEMENTARY INFORMATION:** The purpose of this meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's district offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: September 21, 1990.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 90-22802 Filed 9-25-90; 8:45 am]

BILLING CODE 4160-01-M

### Health Resources and Services Administration

#### Program Announcement and Proposed Special Consideration for Grants for Geriatric Education Centers

The Health Resources and Services Administration (HRSA) announces the acceptance of applications for fiscal year (FY) 1991, Grants for Geriatric Education Centers under the authority of section 789(a) of the Public Health Service Act, as amended by Public Law 100-607. Applications will also be accepted under the authority of section 301 in the event that funds under this authority become available. Comments are being invited on the proposed special consideration stated below.

The Administration's budget request for fiscal year 1991 does not include funding for this program. Applicants should be advised that this program announcement is a contingency action being taken to ensure that should funds become available for this purpose, they can be awarded in a timely fashion consistent with the needs of the program as well as to provide for even distribution of funds throughout the fiscal year. This notice regarding applications does not reflect any change in this policy.

Section 789(a) of the PHS Act authorizes the award of grants to accredited health professions schools as defined by section 701(4), or programs for the training of physician assistants as defined by section 701(8), or schools of allied health as defined in section 701(10). Applicants conducting projects to be administered in other types of public or nonprofit private entities may be considered for geriatric education center grants under section 301 of the PHS Act. Applicants must be located in the United States, the Commonwealth of Puerto Rico, the Commonwealth of the

Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands (the Republic of Palau), the Republic of the Marshall Islands, or the Federated States of Micronesia.

Grants may be awarded to support the development of collaborative arrangements involving several health professions schools and health care facilities. These arrangements, called Geriatric Education Centers (GECs), are established to facilitate training of medical, dental, optometric, pharmacy, podiatric, nursing, clinical psychology, health administration and appropriate allied health and public health faculty, students, and practitioners in the diagnosis, treatment, and prevention of diseases and other health problems of the aged.

Projects supported under these grants may address any combination of the statutory purposes listed below:

- (a) Improve the training of health professionals in geriatrics;
- (b) Develop and disseminate curricula relating to the treatment of the health problems of elderly individuals;
- (c) Expand and strengthen instruction in methods of such treatment;
- (d) Support the training and retraining of faculty to provide such instruction;
- (e) Support continuing education of health professionals and allied health professionals who provide such treatment; and
- (f) Establish new affiliations with nursing homes, chronic and acute disease hospitals, ambulatory care centers, and senior centers in order to provide students with clinical training in geriatric medicine.

Grant supported projects may be designed to accomplish the statutory purposes in a variety of ways, emphasizing multidisciplinary, as well as discipline-specific, approaches to the development of geriatric education resources. For example:

- Health professions schools within a single academic health center, or a consortium of several educational institutions, may share their educational resources and expertise through a Geriatric Education Center to extend a broad range of multidisciplinary educational services outward to other institutions, faculty, facilities and practitioners within a geographic area defined by the applicant.

- Educational institutions that have limited geriatric education resources and which traditionally have had linkages to a geographic area where substantial geriatric education needs exist, may seek to establish a geriatric education center. Such a center could be designed to enhance and expand the capability of collaborating professional schools to provide geriatric education

resources in the geographic area in need.

- Projects may support the development of Geriatric Education Centers designed to focus on multidisciplinary geriatric education emphasizing high priority services and high risk groups among the elderly, minority aging, or other special concerns.

#### Review Criteria

The following criteria will be considered in the review of applications:

- (1) The degree to which the proposed project adequately provides for the project requirements described in 42 CFR 57.4004;
- (2) The extent to which the rationale and specific objectives of the project are based upon a needs assessment of the status of geriatrics training in the institutions to be assisted and/or the geographic area to be served;
- (3) The ability of the project to achieve the project objectives within the proposed geographic area;
- (4) The adequacy of educational facilities and clinical training settings to accomplish objectives;
- (5) The adequacy of organizational arrangements involving professional schools and other organizations necessary to carry out the project;
- (6) The adequacy of the qualifications and experience in geriatrics of the project director, staff and faculty;
- (7) The administrative and managerial ability of the applicant to carry out the proposed project in a cost-effective manner, and;
- (8) The potential of the project to continue on a self-sustaining basis.

The following mechanisms may be applied in determining the funding of approved applications:

- (1) Funding preference—funding of a specific category or group of approved applications ahead of other categories of groups of applications, such as competing continuations ahead of new projects.
- (2) Funding priorities—favorable adjustment of review scores when applications meet specified objective criteria.
- (3) Special Consideration—enhancement of priority scores by individual merit reviewers of approved applications which address special areas of concern. Special consideration will be given when the special area being addressed is a matter of subjective professional judgment and generally not amenable to the application of a funding priority.

#### Funding Preference and Funding Priorities for Fiscal Year 1991

The following funding preference and funding priorities will be used in FY 1991. This funding preference and these funding priorities were implemented in FY 1989 after public comment and are extended in FY 1991.

#### Funding Preference

In determining the order of funding of competing applications which have been recommended for approval, a funding preference will be given to approved applications for projects which will offer training involving four or more health professions, one of which must be allopathic or osteopathic medicine.

#### Funding Priorities

A funding priority will be given to:

1. Applications which identify minority faculty or scholars with expertise in minority aging who will have substantial roles in carrying out the project. (Only individuals already employed or recruited may be included.)
2. Applications which document formal linkages with predominantly minority educational institutions or health facilities for the purpose of carrying out specific aspects of the project. (Formal linkages may include subcontracts, clinical teaching affiliations, letters of understanding, etc.)
3. Applications proposing to provide for a high degree of areawide collaboration.

#### Proposed Special Consideration for Fiscal Year 1991

It is proposed to give special consideration to applications which provide didactic and clinical training experience concerning geriatric rehabilitation.

Considerable potential exists for improving the care of older persons as a result of closer cooperation between geriatrics and rehabilitation, areas of education and professional practice that do not ordinarily interact with one another despite common concerns and similar approaches to patient care (e.g., using multidisciplinary teams of health professionals for assessment, care planning, case management and treatment). Health professionals' ability to provide appropriate and effective care would be strengthened by integrating relevant advances in rehabilitation knowledge and skills into education and training programs for geriatric personnel.

Interested persons are invited to comment on the proposed special consideration. Normally, the comment period would be 60 days. However, due to the need to implement any changes for the fiscal year 1991 award cycle, this comment period has been reduced to 30 days. All comments received on or before October 26, 1990 will be considered before the final special consideration is established. No funds will be allocated or final selections made until a final notice is published stating whether the final special consideration will be applied.

Written comments should be addressed to: Director, Division of

Associated and Dental Health Professions, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, room 8-101, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Division of Associated and Dental Health Professions, Bureau of Health Professions, at the above address, weekdays (Federal Holidays excepted) between the hours of 8:30 a.m. and 5 p.m.

Questions concerning the programmatic aspects of grants should be directed to Chief, Geriatric Education Section, Division of Associated and Dental Health Professions, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, room 8-103, Rockville, Maryland 20857, Telephone: (301) 443-6887.

Requests for application materials and questions regarding grants policy should be directed to: Grants Management Office (D-31), Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, room 8C-26, Rockville, Maryland 20857, Telephone: (301) 443-6857.

Completed applications should be returned to the Grants Management office at the above address.

The standard application, form PHS 6025-1 HRSA Competing Training Grant Application, General Instructions and supplement for this program, have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB clearance number is 0915-0060.

The application deadline is December 10, 1990. Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date, or
2. Postmarked on or before the deadline and received in time for submission to the independent review group. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

Applications received after the deadline will be returned to the applicant.

This program is listed at 13.969 in the *Catalog of Federal Domestic Assistance*. It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

Dated: August 28, 1990

Robert G. Harmon,

Administrator.

[FR Doc. 90-22750 Filed 9-25-90; 8:45 am]

BILLING CODE 4160-15-M

### Program Announcement for Nurse Anesthetist Traineeship Grants

The Health Resources and Services Administration (HRSA) announces that applications for fiscal year (FY) 1991 Nurse Anesthetist Traineeship Grants will be accepted under the authority of section 831(a) of the Public Health Service Act, as amended. Applicants must also meet the requirements of the final regulations of 42 CFR part 57, subpart F.

The Administration's budget request for FY 1991 does not include funding for this program. Applicants should be advised that this program announcement is a contingency action being taken to ensure that should funds become available for this purpose, they can be awarded in a timely fashion consistent with the needs of the program as well as to provide for even distribution of funds throughout the fiscal year. This notice regarding applications does not reflect any change in this policy.

Section 831(a) of the Public Health Service Act, as amended, authorizes grants for traineeships to prepare licensed, registered nurses to become nurse anesthetists and for projects to develop and operate programs for the education of nurse anesthetists.

This announcement under section 831(a) is limited to traineeship assistance.

To be eligible to receive support, an applicant must be a public or private nonprofit institution located in a state which provides registered nurses with full-time nurse anesthetist training. The training program must be accredited by the Council on Accreditation of Nurse Anesthesia Educational Programs and must currently have full-time students who are registered nurses enrolled beyond the 12th month of study in the nurse anesthetist training program.

#### Review Criteria

To receive support, applicants must meet the requirements of final regulations in 42 CFR part 57, subpart F as specified below. The review of applications will take into consideration the following criteria:

- (a) The qualifications of the Program Director;
- (b) The number of full-time registered nurse students enrolled in the program who have completed 12 months of study; and

(c) The level of student support for nurse anesthetist training provided by the applicant.

In addition, the following mechanisms may be applied in determining the funding of approved applications.

1. Funding preferences—funding of a specific category or group of approved applications ahead of other categories or groups of applications, such as competing continuations ahead of new projects.

#### Funding Preference for Fiscal Year 1991

The Department notes that all eligible applications will be reviewed and given consideration for funding.

In determining the funding of applicants which have been recommended for approval, preference will be given to applications which satisfactorily demonstrate a commitment to increased enrollment and retention of minority students in their programs or show evidence of efforts to recruit minority students. This preference accords applicants an additional stipend amount.

This funding preference was implemented in 1989 after public comment and is being extended in FY 1991.

In determining the amount of the grant award, the Department will use the formula specified in § 57.506 of the governing regulations for this program. These regulations are included in the grant application kit.

The completed application must be submitted by November 1, 1990. Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date, or
2. Postmarked on or before the deadline and received in time for submission for review. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

Applications received after the deadline will be returned to the applicant.

For specific guidelines and information regarding this program contact: Division of Nursing, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 5C-26, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443-5763.

Requests for application materials, questions regarding grants policy and completed applications should be directed to: Grants Management Officer (A-22), Bureau of Health Professions, Health Resources and Services

Administration, Parklawn Building, room 8C-26, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443-6857.

The standard application from PHS 6025-1, HRSA Competing Training Grant Application, General Instructions and supplement for this program have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB clearance number is 0915-0060.

This program is listed at 13.124 in the *Catalog of Federal Domestic Assistance* and is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

Dated: August 27, 1990.

Robert G. Harmon,

Administrator.

[FR Doc. 90-22749 Filed 9-25-90; 8:45 am]

BILLING CODE 4160-15-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[ID-010-00-4410-02-2411]

#### Boise District Advisory Council; Meetings

**AGENCY:** Boise District Bureau of Land Management Meetings, Department of Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** The Boise District Advisory Council will meet October 10 to tour and discuss a proposed new county park facility near the Snake River Birds of Prey. The meeting is open to the public and a comment period will be held at 3 p.m.

**DATES:** The meeting will begin at 7:30 a.m. on Wednesday, October 10. A field tour to the proposed park site will be conducted from 7:30 a.m. to 11:30 a.m. An office meeting will be held from 1 p.m. to 5 p.m. in the district office conference room.

**ADDRESSES:** The Boise District Office is located at 3948 Development Avenue, Boise, Idaho, 83705.

**FOR FURTHER INFORMATION CONTACT:** Barry Rose, Boise District, BLM, 208-384-3393.

Dated: September 14, 1990.

J. David Brunner,

District Manager.

[FR Doc. 90-22718 Filed 9-25-90; 8:45 am]

BILLING CODE 4310-GG-M

**Fish and Wildlife Service****Notice of Receipt of Applications for Permits**

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S. 1531, *et seq.*):

PRT 750579

*Applicant:* The Peregrine Fund, Inc., Boise, ID.

The applicant requests a permit to import four wild-caught Harpy eagles (*Harpia harpyja*) from the Consejo Ecuatoriano Para La Estudio Y Conservacion De Las Aves, Quiro, Ecuador, for captive propagation purposes.

PRT 750578

*Applicant:* The Peregrine Fund, Inc., Boise, ID.

The applicant requests a permit to import four wild-caught Harpy eagles (*Harpia harpyja*) from the Guyana Zoo, Georgetown, Guyana, for captive propagation purposes.

PRT 752357

*Applicant:* Ringling Bros.-Barnum & Bailey Circus, Vienna, VA.

The applicant requests a permit to import four female and five male captive-bred tigers (*Panthera tigris*) from Clubb-Chipperfield Ltd., United Kingdom, for circus performances in the U.S. during which the applicant intends to educate the public with regard to the tigers' ecological role and conservation needs.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 a.m. to 4:15 p.m.) room 430, 4401 N. Fairfax Dr., Arlington, VA 22203, or by writing to the Director, U.S. Office of Management Authority, 4401 N. Fairfax Drive, room 433, Arlington, VA 22203.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Dated: September 21, 1990.

Karen Willson,

*Acting Chief, Branch of Permits,*

*U.S. Office of Management Authority.*

[FR Doc. 90-22784 Filed 9-25-90; 8:45 am]

BILLING CODE 4310-55-M

**Issuance of Permit for Marine Mammals**

On July 11, 1990, a notice was published in the *Federal Register* (Vol. 55 FR 133) that an application had been filed with the Fish and Wildlife Service by U.S. Fish and Wildlife Service, Alaska Fish and Wildlife Research Center (PRT# 750916) for a permit to allow take of sea otters (*Enhydra lutris*) for a study assessing physiological and genetic damage from chronic exposure to oil in the environment.

Notice is hereby given that on September 7, 1990, as authorized by the Marine Mammal Protection Act of 1972 (16 USC 1361-1407), the Fish and Wildlife Service issued a permit subject to certain conditions set forth therein.

The permit is available for public inspection during normal business hours at the Office of Management Authority, 4401 N. Fairfax Drive, Room 432, Arlington, VA 22203.

Dated: September 21, 1990.

Karen Willson,

*Acting Chief, Branch of Permits, Office of Management Authority.*

[FR Doc. 90-22785 Filed 9-25-90; 8:45 am]

BILLING CODE 4310-55-M

**National Park Service****Jimmy Carter National Historic Site Advisory Committee; Meetings**

**AGENCY:** Interior, National Park Service, Jimmy Carter National National Historic Site.

**ACTION:** Notice of advisory commission meeting.

**SUMMARY:** Notice is hereby given in accordance with the Federal Advisory Commission Act that a meeting of the Jimmy Carter National Historic Site Advisory Commission will be held at 1 p.m. at the following location and date.

**DATE:** November 8, 1990.

**ADDRESSES:** The University of Georgia, Agricultural Experiment Station, Meeting Room, Highway 280, Plains, Georgia 31780.

**FOR FURTHER INFORMATION CONTACT:**

Mr. Fred Boyles, Superintendent, Jimmy Carter National Historic Site, Route 1, Box 85, Andersonville, Georgia 31711.

**SUPPLEMENTARY INFORMATION:** The purpose of the Jimmy Carter National Historic Site Advisory Commission is to advise the Secretary of the Interior or his designee on achieving balanced and accurate interpretation of the Jimmy Carter National Historic Site.

The members of the Advisory Commission are as follows:

Professor Stephen Hochman, Professor James S. Young, Professor Donald B. Schewe, Dr. Henry King Stanford, Professor James David Barber, Director, National Park Service, Ex-Officio Member.

The matters to be discussed at this meeting include the status of park development and planning activities. This meeting will be open to the public. However, facilities and space for accommodating members of the public are limited. Any member of the public may file with the commission a written statement concerning the matters to be discussed. Written statements may also be submitted to the Superintendent at the address above. Minutes of the meeting will be available at Park Headquarters for public inspection approximately 4 weeks after the meeting.

Dated: September 17, 1990.

C.W. Ogle,

*Regional Director, Southeast Region.*

[FR Doc. 90-22764 Filed 9-25-90; 8:45 am]

BILLING CODE 4310-70-M

**INTERSTATE COMMERCE COMMISSION**

[Ex Parte No. 431 (Sub-No. 2)]

**Review of the General Purpose Costing System**

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Request for Comments and Replies.

**SUMMARY:** By decision in Ex Parte No. 431 (Sub-No. 2), (not printed), served January 11, 1990, the Commission sought comment on the scope and proposed schedule for review of its general purpose costing system. The review is being conducted in accordance with the Railroad Accounting Principles Board's recommendation that the Commission's general purpose costing system be reviewed not less than every three years. After considering the comments, the Commission has decided to expand the scope and time schedule of the proceeding. Comments will be taken on (1) aggregation of accounts; (2) treatment of data for merged railroads; (3) econometric and statistical issues, including, but not limited to, evaluation of the underlying regressions, treatment of data for railroads that are statistical outliers, and review and correction of the data base; (4) evidence of whether general purpose costs might be improved or validated by engineering studies or other non-regression data; and (5) the proper time horizon for

determining the extent to which capacity-related costs are fixed rather than variable.

**DATES:** Interim Progress Reports due: April 1, 1991.

*Initial Statements due:* August 14, 1991.

*Replies due:* December 16, 1991.

**FOR FURTHER INFORMATION CONTACT:**

William T. Bono (202) 275-7354

H. Jeff Warren (202) 275-7735

[TDD for hearing impaired: (202) 275-1721.]

**SUPPLEMENTARY INFORMATION:**

Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Office of the Secretary, Room 2215, Interstate Commerce Commission, Washington, DC 20423. Telephone: (202) 275-7428. [Assistance for the hearing impaired is available through TDD Services at (202) 275-1721.]

This action will not significantly affect the quality of the human environment or energy conservation.

**Authority:** 49 U.S.C. 10321, 10705(a), and 10709.

**Decided:** September 14, 1990.

By the Commission, Chairman Philbin, Vice Chairman Phillips, Commissioners Simmons, Lamboley, Emmett.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 90-22803 Filed 9-25-90; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-5; Sub-No. 361X]

**CSX Transportation, Inc.—  
Abandonment Exemption—in Orange  
County, IN**

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 1.74-mile line of railroad (known as the French Lick Branch) between mileposts 0.00 and 0.17, and between mileposts D-0.02 and D-1.59, at Orleans, Orange County, IN.

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 October 26, 1990 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,<sup>1</sup> formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),<sup>2</sup> and trail use/rail banking statements under 49 CFR 1152.29 must be filed by October 9, 1990.<sup>3</sup> Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by October 16, 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:

Charles M. Rosenberger, CSX Transportation, Inc., 500 Water Street, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by October 1, 1990. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275-

<sup>1</sup> A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

<sup>2</sup> See *Exempt. of Rail Abandonment—Offers of Fin. Assist.*, 4 I.C.C.2d 164 (1987).

<sup>3</sup> The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

**Decided:** September 13, 1990.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 90-22697 Filed 9-25-90; 8:45 am]

BILLING CODE 7035-01-M

**NATIONAL COMMISSION ON  
LIBRARIES AND INFORMATION  
SCIENCE (NCLIS)**

**White House Conference Advisory  
Committee; Meeting**

*Date and time:* Oct. 15th 1990 9 a.m. to 9 p.m.; Oct. 16th 1990 10:45 a.m. to 4 p.m.

*Place:* Dupont Plaza Hotel, 1500 New Hampshire Avenue, NW., Washington, DC 20036, Ph. 1 202 483-6000. White House Conference Advisory Committee (WHCAC) in Embassy room A. Subcommittee meeting rooms to be announced at the meeting.

*Status:* All meetings are Open.

*Matters to be Discussed:* White House Conference on Library and Information Services (WHCLIS). Advisory Committee meeting:

Oct. 15, 1990

—9-11:45 a.m.

—Presentation of plans for the White House Conference on Library and Information Services.

—11:45 a.m.—Noon

—Meeting of Subcommittee Chairs.

—Noon-1 p.m. (Working Lunch)

—National Conference Program Planning.

—1:15-2 p.m.

—Task Group Meetings.

—2-5 p.m.

—Subcommittee Meetings.

—5:10-7 p.m.

—Field Tour for WHCAC Members.

—7:30-9 p.m. (Working Dinner).

Oct. 16, 1990

—8:30-11 a.m.

—Field Tour for WHCAC Members.

—11 a.m.—12:30 p.m.

—WHCAC Chairman's Report.

—Presentation of FY 1991 Spending Plan for WHCLIS.

—12:30-2:30 p.m. (Working Lunch)

—WHCAC Subcommittee Reports.

—2:30-3 p.m.

—Public Comment Time.

—3-4 p.m.

- Future Meeting Dates.
- WHCLIST Update.
- Old and New Business.
- 4 p.m.
- Adjourn.

Persons appearing before, or submitting only written statements to the Advisory Committee, are asked to hand over to the Committee prior to presenting testimony, 80 copies of their prepared statement. This will insure that ample copies are available for the members of the Advisory Committee, the attending press and the observers.

To request further information or to make special arrangements for handicapped individuals, contact Mark Scully (1 202) 254-5100, no later than one week in advance of the meeting.

Dated: September 20, 1990.

Mary Alice Hedge Reszetar,  
Designated Federal Official for WHCAC.  
[FR Doc. 90-22733 Filed 9-25-90; 8:45 am]

BILLING CODE 7527-01-M

## NATIONAL SCIENCE FOUNDATION

### Advisory Committee for Computer and Computation Research; Meeting

The National Science Foundation announces the following meeting:

Name: advisory Committee for Computer and Computation Research.

Date: October 10-12, 1990.

Place: St. James Hotel, Boardroom, 950 24th St., NW., Washington, DC.

Type of Meeting: Closed—10/10/90-8:30-5 pm; Open—10/11/90-8:30 am-5 pm; 10/12/90-9 am-2:30 pm.

Contact Person: Richard A. DeMillo, Director, Division of Computer and Computation Research, room 304, National Science Foundation, 1800 G St., NW, Washington, DC 20550, telephone: (202) 357-9747, email: Rdemillo.note.nsf.gov. Anyone planning to attend the open portion of this meeting should notify Dr. DeMillo no later than October 5, 1990.

Summary Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To carry out the Committee of Visitors review of the Division and to provide advice and recommendations concerning support of Computer Research.

#### AGENDA:

October 10, 1990

Closed—8:30-5 pm; The Committee of Visitors will be reviewing the following Programs: Computer and Computation Theory, Numeric and Symbolic Computation, Computer Systems Architecture, Software Systems and Software Engineering which includes examination of proposals, reviewer comments, and other privileged material.

October 11, 1990

8:30-11 am—Welcome and Opening Remarks;

- 11 am-1:30 pm—Reports of the Oversight Committee;
- 1:30-3:30 pm—Reports of the Subcommittees, Software Research Issues, Symbolic Computation, Post Doctoral Awards;
- 3:30-5 pm—Reports on Special Projects, Research Agenda for Software Engineering, Software Artifact Research, National Computer Research Conference.

October 12, 1990

- 9-11:30 am—Educational Issues at NSF, View from the Foundation, View from CISE, Open Discussion;
- 11:30am-12—New Business, Discussion of New Advisory Committee Projects, Formation of New Subcommittees, Planning for Next Meeting;
- 12-1:30 pm—Working Lunch to plan report to CISE AD;
- 1:30-2:30 pm—Meeting with CISE AD. Reason for Closing: The COV review of proposal actions will include privileged intellectual property and personal information that could harm individuals if it were disclosed and predecisional intra-agency records not available by law. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act would improperly be disclosed.

Dated: September 20, 1990.

M. Rebecca Winkler,  
Committee Management Officer.  
[FR Doc. 90-22726 Filed 9-25-90; 8:45 am]  
BILLING CODE 7555-01-M

## NUCLEAR REGULATORY COMMISSION

### Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget Review

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of the Office of Management and Budget review of information collection.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

1. *Type of submission, new, revision, or extension:* New.
2. *The title of the information collection:* Information Notice, "Notification of Mishaps Involving Low-Level Radioactive Waste Forms Prepared for Disposal"
3. *The form number if applicable:* Not applicable.
4. *However often the collection is required:* Reports are made only when the licensee or waste processor

experiences a mishap that is reportable under the guidelines described in the Information Notice.

5. *Who will be required or asked to report:* Nuclear power reactor licensees, waste processors, and part 61 licensees.

6. *An estimate of the number of responses:* Approximately 40 responses are expected annually.

7. *An estimate of the total number of hours needed to complete the requirement of request:* 320 (8 hours per response).

8. *An indication of whether section 3504(h), Public Law 96-511 applies:* Not applicable.

9. *Abstract:* The Information Notice encourages voluntary reporting of waste form mishaps. This Information Notice is part of NRC's program to assure that Class B and C low-level radioactive waste forms meet 10 CFR § 61.56 requirements. The Information Notice encourages licensees and waste processors to notify NRC within 30 days after knowledge of the mishap.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document room, 2120 L Street, NW (Lower Level), Washington, DC

Comments and questions may be directed by mail to the OMB reviewer: Ronald Minisk, Paperwork Reduction Project, (3150-), Office of Information and Regulatory Affairs, NEOB-3019, Office of Management and Budget, Washington, DC 20503.

Comments may also be communicated by telephone at (202) 395-3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 492-8132.

Dated at Bethesda, Maryland, this 19th day of September 1990.

For the Nuclear Regulatory Commission,  
George H. Messenger,  
Designated Senior Official for Information Resources Management.

[FR Doc. 22768 Filed 9-25-90; 8:45 am]  
BILLING CODE 7590-01-M

[Docket No. 50-346]

### Toledo Edison Co. and The Cleveland Electric Illuminating Co., Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-3, issued to Toledo Edison Company and The Cleveland Electric Illuminating Company (the licensees), for operation of the Davis-Besse Nuclear Power

Station, Unit No. 1 located in Ottawa County, Ohio.

### Environmental Assessment

#### Identification of Proposed Action

The proposed amendment would revise the provisions in the Technical Specifications (TS's) relating to incorporation of ASME section III, 1971 Edition, code requirements for the Main Steam Safety Valves' (MSSV's) setpoints versus citing specific setpoints for each of the MSSVs in accordance with Toledo Edison Company's application dated March 4, 1988 and supplemented by letters dated May 4 and December 6, 1988. Specifically, the proposed amendment would:

(1) Revise the Technical Specification Basis 3/4.7.1.1 to reflect the ASME section III, 1971 Edition code requirements and how they are met;

(2) Revise Technical Specification 3.7.1.1 to incorporate the ASME section III, 1971 Edition code requirements by specifying

(a) A minimum of two OPERABLE safety valves per steam generator, at least one with a setpoint not greater than 1050 psig (+/- 1%), and

(b) A maximum setpoint of 1100 psig (+/- 1%) for any OPERABLE safety valve.

(3) Modify Technical Specification Table 4.7-1 to reflect: 2 lower capacity (583,574 lb/hr or approximately 5% rated capacity) MSSVs with lift setting at 1050 psig ( $\pm 1\%$ ); 7 higher capacity (845,759 lb/hr or approximately 7% rated capacity) MSSVs with lift setting at 1100 psig ( $\pm 1\%$ );

(4) Delete Technical Specification Table 4.7-1, "Main Steam Line Safety Valve Lift Settings";

(5) Remove the reference to Table 4.7-1 from the Technical Specification Surveillance Requirement 4.7.1.1;

(6) Revise Technical Specification 3.7.1.1 to specify that the High Flux Trip Setpoint is reduced per Equation 3.7-1;

(7) Delete Technical Specification Table 3.7-1, "Maximum Allowable High Flux Trip Setpoint with Inoperable Steam Line Safety Valves";

(8) Revise the Technical Specification Basis 3/4.7.1.1 to incorporate Equation 3.7-1 and its graphic representation for the Reduced High Flux Trip Setpoint.

Items (1), (2) and (3) have been amended through Amendment Numbers 117 (TAC No. 67394) dated August 24, 1988. Items (4) through (8) are addressed by the current amendment (TAC No. 68250).

#### The Need for the Proposed Action

The proposed changes are needed to

support greater flexibility in the requirements for valve set pressure and in valve replacement, while maintaining required overpressure protection for the steam generators and main steam system consistent with the requirements of ASME Boiler and Pressure Vessel Code, section III, 1971 Edition.

#### Environmental Impacts of the Proposed Action

The Davis-Besse MSSVs provide steam generator and main steam system overpressure protection following turbine trip from rated power coincident with a total loss of condenser heat sink. This overpressure protection is accomplished by assuring that the total relieving capacity of the MSSVs is at least as large as the steam produced during operation at rated thermal power, and that the valve lift settings are in accordance with the ASME Code. With the proper relieving capacity of the valves, the pressure will not exceed 110 percent of the design pressure for any system upset conditions. The proposed amendment would only incorporate the requirements of ASME Boiler and Pressure Vessel Code, section III, 1971 Edition into the ACTION statement for Limiting Condition for Operation (LCO) 3.7.1.1 in place of Technical Specification Table 4.7-1. The reduced High Flux Trip Setpoint, by using Equation 3.7-1, eliminates the unnecessary conservatism while maintaining the required level of main steam system overpressure protection and does not impact any analyzed events in chapter 15 of USAR. The integrated steam mass released through the MSSVs to the atmosphere is independent of this change and, therefore, previously postulated off-site doses due to the mass release are unaffected by these changes.

The Commission has evaluated the environmental impact of the proposed amendment and has determined that post-accident radiological releases would not be greater than previously determined and occupational radiation exposure is unaffected. Neither does the proposed amendment otherwise affect radiological plant effluents during normal operation. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed amendment.

With regard to potential nonradiological impacts, the proposed amendment involves changes to the Main Steam Safety Valve setpoints and the reduced High Flux Trip setpoint. It does not affect nonradiological plant effluents and has no other

environmental impact. Therefore, the commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the *Federal Register* on May 24, 1988 (53 FR 18631). No request for hearing or petition for leave to intervene was filed following this notice.

#### Alternatives to the Proposed Action

Since the Commission has concluded that the environmental effects of the proposed action are not significant, any alternative with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce the environmental impacts attributable to this facility and would result in the MSSV setpoints remaining as they are specifically cited presently in the Technical Specifications.

#### Alternative Use of Resources

This action does not involve the use of resources not previously considered in the Final Environmental Statement related to operation of the Davis-Besse facility.

#### Agencies and Persons Consulted

The Commission's staff reviewed the licensee's request and did not consult other agencies or persons.

#### Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed amendment. Based upon the foregoing environmental assessment, we concluded that the proposed 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 amendment dated March 4, 1988 and supplemental letters dated May 4 and December 6, 1988 which are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington DC, and at the University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Dated at Rockville, Maryland, this 5th day of September 1990.

For the Nuclear Regulatory Commission.  
**John N. Hannon,**  
*Director, Project Directorate III-3, Division of  
 Reactor Projects—III, IV, V and Special  
 Projects, Office of Nuclear Reactor  
 Regulation.*  
 [FR Doc. 90-22766 Filed 9-25-90; 8:45 am]  
 BILLING CODE 7590-01-M

[Docket Nos. 50-250 and 50-251]

**Florida Power and Light 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 License Nos. DPR-31 and DPR-41 issued to Florida Power and Light Company (the licensee) for operation of the Turkey Point Plant located in Dade County, Florida.

By letter dated July 2, 1990, as supplemented September 6, 1990, the licensee has proposed a number of design changes as part of its Emergency Power System (EPS) enhancement project. The proposed amendments would modify the electrical power systems, including the addition of two

emergency diesel generators, two additional battery chargers, an additional battery bank, and the associated support equipment and electrical distribution equipment such as motor control centers, load centers, and switchgear. The amendments would also modify the Technical Specifications (TS), primarily those concerning electric power supplies, so that they are applicable to the improved design. The proposed TS are consistent with Standard Technical Specifications (STS), where the Turkey Point design permits, which are in general use in the industry.

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 involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from

any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

In Attachment 1 of its July 2, 1990 amendment request, the licensee submitted its not significant hazards evaluation (NSHE) of the proposed changes, in the context of the proposed changes to TS, against the three standards of 10 CFR 50.92 cited above. The licensee has identified and characterized the changes (see Table 1) as belonging to five categories: (1) EPS enhancements, (2) administrative changes, (3) changes that are more restrictive, (4) changes that relax requirements, and (5) deletions of requirements.

The staff reviewed the licensee's NSHE provided in Attachment 1 of its July 2, 1990 license amendment proposal. Based on that review, the staff agrees with the licensee's conclusions that the proposed amendments involve no significant hazards consideration. The staff has selected examples of the proposed TS changes in each of the five categories of characterization (administrative, more restrictive, etc.) employed by the licensee, and they are discussed below. These examples are considered to be typical of the proposed changes. The staff's evaluation of no significant hazards is presented below.

TABLE I. CATEGORIZATION OF CHANGES TO THE TECH SPECS

Proposed TS No.	Licensed TS No. <sup>1</sup>	Type of change <sup>2</sup>	NSH <sup>3</sup> page reference
3.1.2.3	3.1.2.3	5	5-6
3.1.2.3, Action	3.1.2.3 Actions a-c	2,5	6-7
Table 3.3-3, Item 7b,c	Table 3.3-3, Item 7b,c	1	8
3.3.3.4, Action b,c	3.3.3.4 Action b,c	2	11
Table 3.3-6, Fire zone 25		1	9
Table 3.3-6, Fire zones 72-75	Table 3.3-6, Fire zones 72-75	1,2	9-10
Table 3.3-6, Fire zones 72,73	Table 3.3-6, Fire zones 72,73	2	10
	Table 3.3-6 footnote ***	5	10
Table 3.3-6, Fire zones 133-136, 138-141		1	9
3.5.2.a	3.5.2.a	1	12-13
3.5.2, Action c,d	3.5.2, Action c,d	1	13-15
3.5.2, Actions e,f		1	13-15
4.5.2.g.2	4.5.2.g.2	2	15
3.7.8.2.c	3.7.8.2.c	2	16-17
3.7.8.2.d	3.7.8.2.d	1	16
3.7.8.2.e		1	16
3.7.8.2, Action a	3.7.8.2, Action a	2	17
Table 3.7-5, HY26	Table 3.7-5, FH6	1	18-19
Table 3.7-5, HY18		1	18-19
Table 3.7-5, HY-	Table 3.7-5, FH-	2	19
Table 3.7-5, HY10,11	Table 3.7-5, FH10,11	2	19
3.8.1.1	3.8.1.1	1,2,3	20-22
3.8.1.1, Applicability	3.8.1.1, Applicability	2	23
3.8.1.1, Action a-f	3.8.1.1, Action a-f	2,3,4,5	23-30
4.8.1.1.1	4.8.1.1.1	2	31
4.8.1.1.2	4.8.1.1.2	1,2,3,4,5	32-39
4.8.1.1.3	4.8.1.1.3	3	39-40
	4.8.1.1.4	5	40
Table 4.8-1	Table 4.8-1	3	36-37
3.8.1.2.a	3.8.1.2.a	2	41-42
3.8.1.2.b	3.8.1.2.b,c	1,2,3	41-43
3.8.1.2, Applicability	3.8.1.2, Applicability	2	43

TABLE I. CATEGORIZATION OF CHANGES TO THE TECH SPECS—Continued

Proposed TS No.	Licensed TS No. <sup>1</sup>	Type of change <sup>2</sup>	NSH <sup>3</sup> page reference
3.8.1.2, Action.....	3.8.1.2, Action.....	2	44
4.8.1.2.....	4.8.1.2.....	2,3	45-46
3.8.2.1.a-d.....	3.8.2.1.a,b.....	1,2	47-50
3.8.2.1, Applicability.....	3.8.2.1, Applicability.....	2	50
3.8.2.1, Action b.....	3.8.2.1, Action a,b.....	1	51-55
3.8.2.1, Action a.....	3.8.2.1, Action b.....	1	51-55
	Table 3.8-1.....	1	51-55
4.8.2.1.a-f.....	4.8.2.1.a-g.....	1,2,3,4,5	55-60
Table 4.8-2.....	Table 4.8-2.....	2,5	56-57, 59-60
3.8.2.2.....	3.8.2.2.....	1,2	61-62
3.8.2.2, Applicability.....	3.8.2.2, Applicability.....	2	62
3.8.2.2, Action.....	3.8.2.2, Action.....	1,2	63-64
3.8.3.1.a-c.....	3.8.3.1.a-d.....	1,2,3,5	65-68
3.8.3.1, Applicability.....	3.8.3.1, Applicability.....	2	69
3.8.3.1, Actions a-d.....	3.8.3.1, Actions a-i.....	1,3,4	69-72
Table 3.8-1.....		1	69-70
Table 3.8-2.....		1	69-70
3.8.3.2.a-c.....	3.8.3.2.a.....	1,2,3	73-75
3.8.3.2, Applicability.....	3.8.3.2, Applicability.....	2	75-76
3.8.3.2, Action.....	3.8.3.2, Action.....	2	73-76

## Notes:

<sup>1</sup> Amendments 137 and 132, issued August 28, 1990.<sup>2</sup> Types of changes: 1—EPS Enhancements; 2—Administrative; 3—More restrictive; 4—Relaxations; 5—Deletion of selected requirements.<sup>3</sup> FPL proposed license amendment submittal dated July 2, 1990, Attachment 1, No Significant Hazards Determination.**Category 1—EPS Enhancement Changes**

EPS enhancement changes are changes to values and requirements resulting from the plant reconfiguration for reasons of design. These changes do not result in either relaxed or more restrictive requirements; rather, the technical requirements remain unchanged. Examples of these types of changes are described below.

*Example 1—Addition of Two Diesel Generators and Modification of Existing Electrical Distribution System*

The licensee has evaluated this change beginning on page 20 of its NSHE in the context of TS 3/4.8.1.1 (AC Sources—Operating), Limiting Condition for Operation. The licensee has addressed the three criteria of 10 CFR 50.92(c) and determined that they are satisfied. The licensee's evaluation follows; note that the evaluation refers to PTP (Plant Turkey Point), and to reference 1, which is a letter from K.N. Harris to U.S. NRC dated June 4, 1990, and designated L-90-196. Some other acronyms frequently used throughout the licensee's evaluations include: MCC (motor control center), LC (load center), LOOP (loss of offsite power), EDG (emergency diesel generator), LBLOCA (large break loss of coolant accident), and AOT (allowed outage time).

The EPS Enhancement Project at PTP adds two Class 1E EDGs and modifies the existing distribution system (for design details and a safety analysis of these modifications see Reference 1). As a result of these modifications each Unit requires three EDGs

(the two associated with the Unit and either one of the EDGs associated with the opposite Unit) to meet the single failure criterion and to mitigate an accident. Also, the fuel requirements for the new Unit 4 EDG fuel systems are added to the LCO.

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

As postulated, LOOP and LBLOCA require the start and operation of Engineered Safety Features (ESF) equipment. The enhanced system with load redistribution and addition of swing 4 kV switchgear, swing 460V LCs, and 480 V MCCs provides a greater degree of power source availability to power the required equipment. Required ESF loads are accommodated with the enhanced EPS configuration, and no single failure will prevent the enhanced EPS from performing its required safety function in the event of an accident on either unit. The LBLOCA analysis as presented in the FSAR remains bounding under the enhanced EPS configuration. The added fuel requirements for the new Unit 4 EDG fuel systems provide requirements which are commensurate with the requirements for the existing EDG fuel systems.

Since the EDGs are not initiators of accidents, there is no increase in the probability of an accident.

There is also no increase in the consequences of an accident previously evaluated. The enhanced EPS configuration provides an improved response to the existing FSAR limiting Design Basis Accident (DBA) by providing enhanced equipment availability on the accident unit with increased EDG loading margin.

2. Operation of the facility in accordance with the proposed amendment would not

create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed change introduces no basic changes in operation or new modes of operation. These changes have not resulted in new types of plant operating requirements given that the requirements for the new EDGs and the associated level of detail is commensurate with the requirements for the existing TS.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety. The addition of two new EDGs enhances the margin of safety by providing added onsite AC capacity and increased equipment availability.

The staff agrees with the licensee's conclusion that there are no significant hazards considerations, with the following comments. The changes reduce the probability and consequences of an accident because additional emergency power redundancy and capacity are provided to prevent an accident and to provide power to accident-mitigating systems. No new or different kind of accident will be created because the changes add more redundancy and capacity. Accidents resulting from a loss of power have been previously considered in the design and analyzed. Safety margins will be enhanced by the availability of added electrical power sources.

*Example 2—Addition of Battery Bank, Two Battery Chargers, and Associated Equipment*

The licensee has evaluated this change beginning on page 47 of its

NSHE in the context of TS 3/4.8.2.1 (DC Sources—Operating), Limiting Condition for Operation. The licensee has addressed the three criteria of 10 CFR 50.92(c) and determined that they are satisfied. The licensee's description of the changes, and portions of the licensee's lengthy evaluation follow; note that the evaluation refers to the RTS which are the Revised Technical Specifications issued by NRC as Amendments 137 and 132 for Units 3 and 4, respectively, on August 28, 1990.

The proposed change revises the specification to reflect the existence following the completion of the EPS Enhancement Project, of a spare 125-volt Battery Bank (D-52) and eight (8) dedicated (2 per battery) full capacity battery chargers (currently there are four (4) dedicated and two (2) swing battery chargers). The proposed change specifies which battery charger(s) can be supplying power to a required battery bank for the battery bank to be considered OPERABLE. In addition the proposed change adds the specific MCC which powers a specified battery charger for credit to be taken for a battery charger being OPERABLE. The proposed change also requires, via a new footnote, that each of the battery chargers used to satisfy this LCO be powered by a different MCC. It also, [sic] identifies the EDG(s) associated with each MCC required to be OPERABLE to supply emergency power (swing MCCs 3D and 4D require two EDGs 3A and 3B or 4A and 4B, respectively) with a clarifying footnote, identified by a "#" symbol, identifying that inoperability of the EDG(s) specified in the LCO does not constitute inoperability of the associated battery chargers or battery banks.

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated for the following reasons:

The number of D.C. electrical sources required to be OPERABLE following this amendment remains the same as in the RTS; only existence of a new full capacity 125-volt D.C. Battery Bank (D-52) has been added. The new "spare" battery bank OPERABILITY will be assured by the new battery bank undergoing the same surveillances as the existing battery banks \* \* \* The addition of this battery bank allows one battery bank to be taken out of service without the unit(s) entering into an ACTION statement.

With the enhanced EPS design two battery chargers are being added and the two existing "swing" chargers are being dedicated to a particular battery. Though the number of battery chargers required to be OPERABLE decreases from five (5) to four (4), each OPERABLE battery bank will be connected to an OPERABLE full capacity charger. The criteria used for the existing LCO and for the proposed LCO for the new design is identical \* \* \*.

This amendment adds additional requirements for equipment associated with an OPERABLE battery bank. The revised specification provides requirements as to

which MCC must be supplying power to a battery charger for it to be considered OPERABLE. The addition of this requirement assures that no single failure of an MCC concurrent with a LOOP can result in more than one battery bank without an OPERABLE charger.

Following the EPS Enhancement Project completion, each unit will require 3 EDGs to be OPERABLE to supply emergency power (both of its and one of the other unit's EDGs) \* \* \*. The addition of this requirement assures that no single failure of [an] EDG concurrent with a LOOP can result in more than one battery bank without an AC emergency power source \* \* \*.

The equipment involved in this change are not initiators of FSAR evaluated accidents and the proposed requirements will ensure that no single failures, as assumed in the FSAR analyses, will prevent the plant from mitigating the consequences of an accident as evaluated in the FSAR, thus there is no significant increase in the probability of the occurrence of an accident or significant increase in the consequences of previously analyzed accidents.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated. The added requirements are in accordance with the design details and safety analysis as presented in Reference 1, and assure that no single failure concurrent with a LOOP can result in the loss of more than one D.C. electrical system. As discussed in this safety evaluation, a Failure Modes and Effects Analysis has been performed and no new accidents are created. The proposed change introduced no basic changes in operation or new modes of operation.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety \* \* \*. The number of required OPERABLE D.C. electrical systems remains the same between the proposed requirements and the RTS.

The PTP D.C. system requires 3 of 4 D.C. busses (and associated chargers) to be operable to perform its accident functions. RTS (existing system) require chargers 3B, 4A and 4S to be OPERABLE (at all times) and 2 of 3 chargers 3A, 3S and 4B to be OPERABLE for the plant to not be in an ACTION statement (Note: Table 3.8.1 matrix of the RTS shows these conditions) \* \* \*. (o)perator action is still required to align the swing charger 3S to either the 4A or 3B D.C. bus so that 3 D.C. busses are energized via the chargers \* \* \*.

For the new system, the proposed TS require a select 4 of 8 chargers to be OPERABLE. The new design of the Enhanced EPS, eliminates the \* \* \* condition where failure of the 3A or 4B battery/bus results in the condition of two D.C. busses being without a battery charger \* \* \*.

Thus, the new design does not rely on (o)perator action and its reliability is \* \* \* greater than the existing when the minimum equipment required by the LCO is satisfied \* \* \*.

The staff agrees with the licensee's conclusion that there are no significant

hazards considerations, with the following comments. The addition of one more battery bank and two battery chargers provides increased reliability of D.C. power supplies at the plant. Because D.C. power supplies provide power for equipment to prevent and mitigate accidents, there is no increase in the probability or consequences of an accident; rather, the probability of an accident is expected to be reduced. The consequences of an accident will not be increased and, depending on the accident scenario, the consequences could be reduced because of the added D.C. power capability. No new or different kind of accident is created because the changes add more safety equipment of a type that already exists at the plant. The added reliability of D.C. power supplies will enhance safety margins.

The staff further concludes that, throughout the amendment request, where EPS enhancement changes are proposed, there are no significant hazards considerations.

#### Category 2—Administrative Changes

The proposed administrative changes to the TS include editorial changes, reformatting, and changes for consistency.

Examples of administrative changes are evaluated by the licensee beginning on page 21 of its NSHE in the context of TS 3/4.8.1.1 (A.C. Sources—Operating), Limiting Condition for Operation. The licensee has addressed the three criteria of 10 CFR 50.92(c) and determined that they are satisfied. The licensee's evaluation follows.

The LCO has been reformatted (items b and c) to enhance consistency with the STS by combining all requirements to assure EDG OPERABILITY in one LCO (new 3.8.1.1b). A new associated footnote was added to this LCO to ensure that if one or more of the four EDG's is out-of-service that compliances with Technical Specifications 3.5.2 and 3.8.2.1 is reviewed. This administrative change also includes the consolidation of the EDG support requirements by adding the MCCs required to power each EDG's auxiliaries. Also, the rating of the startup transformers was deleted to enhance consistency with the STS and since this information was not pertinent to the LCO.

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated. The reformatting including the new associated footnote is intended to make the TS easier to use for plant operations personnel. The addition of the MCC requirements with this LCO consolidates the OPERABILITY requirements of the EDGs. The consolidation of the EDG

OPERABILITY requirements into one item improves the TS organization.

The transformer rating is FSAR design data that is not required by the reactor operators or other personnel by whom the TS are used. There are only two startup transformers at PTP and the removal of the nameplate rating will not affect identification of the startup transformers.

The above changes have not resulted in any new plant operating requirements. No accident initiating events are affected. These administrative changes do not affect the probability of the occurrence or the consequences of an accident.

2. Based on the above discussions it can also be concluded that operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated. No new types of equipment are added by this change. The proposed change introduces no basic changes in operation or new modes of operation. The changes are administrative only.

3. Based on the above discussion it can also be concluded that operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety. The changes only enhance the TS by deleting unnecessary information, consolidating requirements, and providing an additional reminder note resulting in improved TS organization and clarity.

The staff agrees with the licensee's evaluation and conclusion that there are no significant hazards considerations. The staff further concludes that there are no significant hazards considerations associated with administrative changes throughout the amendment request.

#### Category 3—Requirements Which are More Restrictive

Examples of proposed changes in requirements which are more restrictive than those currently licensed are described below. These examples include changes to frequency of verifying operability and changes in surveillance requirements.

##### Example 1—Verification of Startup Transformer Operability

Technical Specification 3/4.8.1 (pages 3/4 8-1 and 8-2 of Attachment 2 of the July 2, 1990 amendment request) describes proposed requirements for operability of A.C. power sources. For example, the present TS 3/4 8.1 (License Amendment 137 and 132, issued August 28, 1990) requires that, if one of two startup transformers, an associated circuit or a required EDG is inoperable, the remaining startup transformer(s) be demonstrated operable within 24 hours. The licensee proposes increasing the frequency of verification from 24 to 8 hours for the operable startup

transformers. This proposed time limit is consistent with the STS.

In the licensee's no significant hazards evaluation, Attachment 1 of the July 2, 1990 amendment request, pages 25 and 26, the licensee evaluated more restrictive changes, including startup transformer operability verification frequency in accordance with the three standards of 10 CFR 50.92 and concluded that the changes do not involve a significant hazards consideration. The licensee's evaluation follows.

The frequency of verification of OPERABILITY of the OPERABLE startup transformers as required by ACTIONS "a", "b" and existing "d" and "e", has been increased from once every 24 hours to once every eight hours. The allowable time to reduce power to less than or equal to 30% in ACTION "a" has been reduced from 30 hours to 24 hours. If power is not reduced to less than or equal to 30% within 24 hours, the associated unit must be shut down within the next 54 hours if the startup transformer remains inoperable. This provision is incorporated into ACTIONS "a" and the new "e". The existing TS allows continued operation at a maximum of 30% reactor power for 30 days before requiring shutdown. Also in ACTIONS "b" and new "f", the number of hours for reaching hot shutdown has been reduced from twelve hours to six hours.

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated. The increase in the surveillance of the startup transformer(s) is more restrictive than the existing requirements. This change will provide added assurance that the OPERABLE startup transformer(s) is (are) available to perform its (their) function, if needed. The reduction in the time for reducing power on the loss of a startup transformer will result in the plant being in a low power, stable condition sooner than required in the existing TS. Because these requirements are more restrictive than the existing requirements, the probability of an accident and its consequences are reduced. The reduction in the time allowed to reach hot shutdown from twelve hours to six hours is a direct result of the elimination of the dual unit shutdown requirement (see discussion below on deletions). This change makes this time period consistent with the rest of the TS when only a single unit shutdown is required and is more restrictive than before.

The requirement to restore an inoperable startup transformer within 72 hours following loss of an associated startup transformer with no compensatory ACTIONS (i.e., reduction of reactor power to less than or equal to 30%) reduces the AOT from 30 days to 72 hours. This new AOT for the startup transformers is consistent with the STS and NRC guidelines. This AOT change reduces the likelihood of an accident (LOOP) being initiated with the reactor at power. Therefore, this proposed change would reduce the

probability of a previously evaluated accident.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any previously evaluated. The proposed change introduces no basic changes in operation or new modes of operation.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety. The margin of safety would be enhanced because the plant operators would take compensatory ACTIONS sooner and additional assurance of equipment OPERABILITY would be provided. Also, the startup transformers are not required for mitigation of a design basis accident. While offsite power, via the startup transformer, is normally utilized during plant shutdown, PTP has the capability of maintaining stable conditions assuming a reaction trip with no offsite power available.

The staff adds the following clarification of the first paragraph of the licensee's above evaluation. In ACTION "a," if power is not reduced to less than or equal to 30% within 24 hours, the associated unit must be in HOT STANDBY (Mode 3), as opposed to shutdown, within 54 hours and COLD SHUTDOWN within the following 30 hours. Also, in the last paragraph of item 1, above, the licensee has referred to LOOP (loss of offsite power) as an accident. The staff does not consider LOOP, by itself, to be an accident.

The staff agrees with the licensee's conclusion that more frequent verification of transformer operability is a more restrictive requirement, and that the three criteria of 10 CFR 50.92 are satisfied and there are no significant hazards considerations.

##### Example 2—Verification of Diesel Generator Operability

Technical Specification 4.8.1.1.2 (pages 3/4 8-4 through 8-6 of Attachment 2 of the July 2, 1990 amendment request) adds requirements to verify the inventory, quality, and availability of EDG lubricating oil in storage, as well as verifying certain other EDG test and operability requirements. For example, the licensee added a requirement to check lubricating oil in storage because the Unit 3 EDGs require the addition of lubricating oil after 3 days of operation. Verifying the inventory, quality, and availability of lubricating oil in storage provides assurance that an EDG can operate for a minimum of 7 days as required.

In the licensee's no significant hazards evaluation, Attachment 1 of the July 2, 1990 amendment request, pages 36 and 37, the licensee evaluated more

restrictive changes to section 4.8.1.1.2 of the Technical Specifications in accordance with the three standards of 10 CFR 50.92 and concluded that the changes do not involve a significant hazards consideration. The licensee's evaluation follows.

The following new restrictions are proposed: Surveillance 4.8.1.1.2a.3) requires verification of lubricating oil inventory in storage. Surveillance 4.8.1.1.2a.5 requires verification [of] automatic transfer of fuel from the day tank to the skid-mounted tank on Unit 3. Surveillance 4.8.1.1.2c through f are added in their entirety to add requirements concerning the EDG fuel oil. These requirements include, at least once per 31 days, checking for and removing accumulated water from the fuel oil storage and day tanks (Units 3 & 4) and the skid-mounted fuel tanks (Unit 3). Also, at least once per 31 days obtaining a sample from the fuel oil storage tank and verifying that the total particulate contamination is less than 10mg/liter when checked in accordance with the applicable industry standard. In addition, requirements are included to test new fuel oil in accordance with the applicable industry standards for items such as appearance, flash point, viscosity, and API Gravity. These requirements replace the current requirement to at least once per 92 days verify a sample of fuel oil is within acceptable limits for viscosity, water and sediment (4.8.1.1.2b in the RTS). In Surveillance 4.8.1.1.2a.4), 2d.1)a, 2d.4), and 2e, the voltage tolerance of  $\pm 624$  volts is reduced to  $\pm 420$  volts. Table 4.8-1, "DIESEL GENERATOR TEST SCHEDULE," is modified to add testing frequency requirements associated with the number of failures in the last 100 valid tests. This included deleting the word "valid" in the footnotes for Table 4.8.1. Also, the word "prior" before "NRC" in the first footnote of Table 4.8-1 is deleted. These Table 4.8-1 changes enhance conformance to the STS. In Surveillance Requirement 4.8.1.1.2g.7 (4.8.1.1.2d.5 in the RTS), the test duration is extended from 8 hours to 24 hours of EDG operation (this extension provides enhanced consistency with the STS). Surveillance Requirement 4.8.1.1.2g.10 verifies that a Safety Injection signal overrides an EDG operating in the test mode. Surveillance Requirement 4.8.1.1.2g.12 verifies OPERABILITY of the automatic load sequence timer. Surveillance Requirement 4.8.1.1.2g.13 verifies proper operation of the EDG lockout relay. Finally, Surveillance Requirement 4.8.1.1.2i specifies a pressure test of the Unit 4 (only) diesel fuel oil system designed to ASME Section III, Subsection ND. This surveillance requirement also specifies a drain-down and cleaning of each EDG fuel oil storage tank to ensure a reliable source of high quality fuel.

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated. The additional surveillance will have no impact on the probability of an accident since EDGs are not initiators of FSAR analyzed Design Basis Accidents (DBAs). Extending the duration of EDG operation during testing, and adding the

additional surveillance requirements to verify lube oil storage inventory, verify Unit 3 automatic fuel transfer to the skid mounted tank, and checking and analyzing diesel fuel oil serve to provide increased confidence that the EDGs will function as designed. The tightening of the tolerance allowed for the voltage provided by the EDG is more restrictive and will provide added assurance that the equipment powered by the EDGs can function as designed. The addition of testing frequency requirements associated with the number of failures in the last 100 valid tests provides increased confidence of EDG OPERABILITY by requiring an increased testing frequency due to the total number of failures in the last 100 valid tests instead of just the last 20. The required tests to ensure that a Safety Injection signal overrides the EDG test mode circuitry; the automatic load sequence time operates per design; and the EDG lockout relay prevents EDG starts, all verify that the control circuitry of the EDGs operate properly. This provides greater confidence that the EDGs will operate, as designed, to power required accident loads. Finally, the new Unit 4 EDG fuel oil system pressure test verifies the integrity of this required system and reduces the probability of EDG failure due to fuel starvation during a design accident. Thus, there will be no increase in accident consequences.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed change introduces no basic changes in operation or new modes of operation.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety. The proposed change would enhance the margin of safety by reducing the possibility of an EDG failure due to contaminated fuel or fuel starvation, ensuring an adequate supply of lube oil for an extended EDG run, ensuring proper operation of the EDG control circuits, ensuring a voltage well within the design tolerance of the required electrical equipment, providing increased confidence of EDG reliability by requiring increased EDG testing due to the total number of failures in the last 100 valid tests, and by lengthening the EDG run test from 8 to 24 hours which provides added assurance the EDG will function as designed.

The staff agrees with the licensee's conclusion that there are no significant hazards considerations associated with these added and more restrictive requirements. The added requirements improve surveillance and alert operators to problems sooner. Therefore, the three criteria of 10 CFR 50.92 are met. Furthermore, throughout the amendment request where additional or more restrictive requirements are imposed, the staff concludes there are no significant hazards considerations.

#### Category 4—Changes that Relax Requirements

Relaxations are changes which result

in reduced requirements, but not a significant reduction in safety. Examples of relaxations are described below.

#### Example 1—Testing of Diesel Generators

The licensee has proposed a change to Technical Specifications 3.8.1.1. b and c (pages 3/4 8-2 and 3/4 8-3 of Attachment 2 of the July 2, 1990 amendment request) whereby if an EDG is intentionally made inoperable due to pre-planned maintenance or testing, special testing of the remaining EDGs is not required. In Attachment 1 of the amendment request, pages 26 and 27, the licensee evaluated the proposed changes against the three standards of 10 CFR 50.92 and concluded there are no significant hazards considerations. The licensee's evaluation is reproduced below.

In ACTIONS "b" and "c" an exception to the requirement to demonstrate the OPERABILITY of the remaining required EDGs is added for the case when the EDG became inoperable because of preplanned preventative maintenance or testing.

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated. Consistent with the STS and current NRC guidance, testing of the redundant (i.e., remaining required EDGs) EDGs are to be performed after any failure or any problem which renders the EDG inoperable. The purpose of this testing is to demonstrate that the redundant EDGs have not been degraded by a similar problem. When an EDG is intentionally taken out of service, the above concern does not exist. Therefore, it is acceptable to provide an exemption to this testing when an EDG is taken out of service for preplanned preventive maintenance or testing. Reducing the number of unnecessary EDG tests is in accordance with Generic Letter 84-15 and current NRC guidance. Since the EDGs are not initiators of FSAR analyzed accidents and this change serves to enhance EDG reliability, there is no increase in the probability or consequences of a previously analyzed accident.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated. The change only affects the number of times an EDG OPERABILITY demonstration may be performed. The proposed change introduces no basic changes in operation or new modes of operation.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety. This change serves to enhance EDG reliability by reducing the number of unnecessary EDG tests which minimizes EDG wear.

The staff agrees with the licensee's evaluation and concludes that the three criteria of 10 CFR 50.92 are satisfied and

that there are no significant hazards considerations.

*Example 2—Battery Pilot Cell Surveillance*

The licensee has proposed relaxing the surveillance interval for the station battery pilot cell specific gravity surveillance (TS 4.8.2.1.a, page 3/4 8-14 of Attachment 2 of the July 2, 1990 amendment request) from once per 24 hours to once per 7 days. The proposed surveillance interval is consistent with the STS. In Attachment 1 of the amendment request, pages 58 and 59, the licensee evaluated this proposed change against the three standards of 10 CFR 50.92 and concluded there are no significant hazards considerations. The licensee's evaluation is reproduced below.

The required surveillance (4.8.2.1a) frequency for verifying the pilot cell specific gravity for each 125 volt battery bank is reduced from once per 24 hours to once per 7 days. The revised surveillance frequency conforms to the requirements of the STS.

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated. Since PTP received its operating license in the early 1970's, industry experience on nuclear safety-related 125 volt battery banks, as concluded in IEEE 450, has determined that a rapid drop in pilot cell specific gravity during a 7-day period is highly unlikely. For this reason, the NRC has specified a 7-day surveillance frequency for 125 volt battery bank pilot cell specific gravity in the STS. The 24-hour surveillance requirement is inconsistent with present NRC guidelines.

Since IEEE 450 has determined that a 7-day surveillance frequency is acceptable for pilot cell specific gravity, it is concluded that this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated. No new types of equipment are added by this change. The proposed change introduces no basic changes in operation or new modes of operation.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety. Based on the above discussion, IEEE 450 and NRC guidance indicates that a 7-day surveillance frequency versus a 24-hour surveillance frequency does not significantly reduce the margin of safety.

The staff agrees with the licensee's evaluation and conclusions. The staff also notes that in footnote 1 of Table 4.8-2 of the proposed TS (page 3/4 8-16 of Attachment 2 of the July 2, 1990 amendment request), the failure of a Category A parameter, such as pilot cell

specific gravity, to be within the TS limits is not sufficient to indicate an inoperable battery.

The staff concludes that the three criteria of 10 CFR 50.92 have been met and there are no significant hazards considerations.

*Example 3—Diesel Generator Testing*

In another example, described on pages 32-35 of Attachment 1 of the July 2 amendment request, the licensee has provided a lengthy and detailed evaluation of certain EPS enhancement changes and administrative changes related to testing of the EDGs. Among these changes, the test loading for the Unit 3 EDGs has been relaxed from 250kw to permit a test load band of 2300-2500kw. A new higher test load band is specified for the two new EDG's of Unit 4. In addition, the proposed test procedure permits warming the EDGs with gradual loading instead of cold, fast test starts. The technical basis for these relaxations was described in more detail in the staff's Generic Letter 84-15. Basically, it was to reduce stress and wear on the engine that accompanies cold, fast test starts, and which could lower the reliability of the EDGs. The staff agrees with the licensee's evaluation and conclusions regarding these changes, but would characterize the changes as relaxations rather than EPS enhancements or administrative changes.

Throughout the proposed TS, where relaxations have been proposed by the licensee, the staff concludes that the proposed changes involve no significant hazards considerations.

**Category 5—Deletions**

The licensee has identified TS requirements that are to be deleted. Generally, these deletions are a natural result of the design changes associated with the Emergency Power System upgrade. In a few cases the deletions are made to complete the conversion to STS, which are based on significantly more operating experience than were the original plant custom TS. Examples of deletions are described below.

*Example 1—Operability Requirement for Cranking Diesel Generators*

The licensed Technical Specifications (TS 3/4.8.1, pages 3/4 8-1 through 3/4 8-7 of Amendments 137 and 132 issued August 28, 1990) require that, with one startup transformer inoperable or one startup transformer and one EDG inoperable, two cranking diesel generators be demonstrated operable. This requirement is intended to provide an additional non-safety grade source of power to assist in the safe shutdown of

the unit without its associated startup transformer, if required. Implementation of the EPS enhancement project will add two safety-grade EDGs to the plant with capability for cross-connect between units, replacing the need to have two cranking EDGs operable as backup to the safety EDGs or startup transformer. The EPS design eliminates this requirement with better design based on safety-grade EDGs.

In Attachment 1 of the July 2, 1990 amendment request, pages 27 through 30 and on page 40, the licensee presented a lengthy and detailed evaluation of this change against the three standards of 10 CFR 50.92 and determined there is no significant hazards consideration associated with this change. The staff's evaluation is provided below.

In the current design, Turkey Point has two safety-grade EDGs, with any two out of five non-safety cranking diesels available as backup. In the proposed design, the plant will have four safety-grade EDGs with the non-safety cranking diesels available as backup. The two additional safety EDGs will have a complete set of TS, and thus replace the cranking diesels with higher capability and more reliable equipment. The cranking diesels will be maintained and available as a backup power source. In addition, a requirement for surveillance of the cranking diesels every 18 months is imposed on page 3/4 7-11 of the licensed TS. However, it is no longer necessary for the TS to require a demonstration of operability of the cranking diesels when a safety EDG and/or startup transformer is inoperable.

The deletion of this requirement is more than compensated for by the two additional safety EDGs which are required to be operable as described in the proposed TS.

The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated because deletion of the requirement to demonstrate operability of cranking diesel generators is more than compensated for by the new requirement to demonstrate operability of the additional safety EDGs, as stated in LCO 3.8.1.1.b and in ACTION b of proposed TS 3.8.1.1 on pages 3/4 8-1 and 8-2 of Attachment 2 of the July 2, 1990 amendment request. The proposed change does not create the possibility of a new or different kind of accident because the cranking diesels will still be maintained and available and because no change in potential accident initiators has occurred. The addition of two safety-grade EDGs helps to make the plant safer and provide

added protection. The proposed change does not involve a significant reduction in a margin of safety because the added safety EDGs provide additional safety margin. In addition, the cranking diesels will still be available.

Therefore, the staff concludes that there are no significant hazards considerations associated with deleting the TS requirement to demonstrate operability of the cranking diesels when a safety EDG and/or startup transformer is inoperable.

#### *Example 2—Surveillance of D.C. Power Sources*

The licensee proposes to delete certain DC power surveillances as described on pages 59 and 60 of Attachment 1 of the July 2, 1990 amendment request. The licensee's description of the proposed changes and no significant hazards evaluation follows.

Surveillances 4.8.2.1c and e have been deleted. Surveillances 4.8.2.1c required rotating the pilot cell and checking water level every 31 days. This surveillance requirement is a maintenance activity only and does not verify battery OPERABILITY. Surveillance 4.8.2.1e required performance of a battery charger visual inspection quarterly. This surveillance requirement is a preventive maintenance activity and does not verify battery charger OPERABILITY. Also, the requirement to verify a battery equalizing charge is started, found in Notes 1 and 2 of Table 4.8-2, has been deleted.

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated. Surveillances 4.8.2.1c and e are maintenance activities only. NRC guidance indicates that the above deleted surveillance requirements are not required to verify OPERABILITY of this equipment. The latest STS do not contain these surveillance requirements. Instead, Surveillance 4.8.2.1a contains a requirement to verify pilot cell electrolyte level weekly. Also, the requirement in Table 4.8-2, Notes 1 and 2, to start an equalizing charge when a battery's cell does not comply with the category A and B limits of the table, is not included in STS. An equalizing charge will be applied, as needed.

Therefore, based on the above discussion, the probability or consequences of a previously evaluated accident is not significantly increased.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or a different kind of accident from any accident previously evaluated. No new types of equipment are added by this change. The proposed change introduces no basic changes in operation or new modes of operation. They only delete extraneous surveillance requirements that are not contained in the STS.

3. Operation of the facility in accordance with the proposed amendment would not

involve a significant reduction in a margin of safety. The deleted surveillance requirements (4.8.2.1c and e) are preventive maintenance items only. Failure to perform Surveillance 4.8.2.1c will have no effect on the margin of safety because Surveillance 4.8.2.1a, which is performed more frequently than Surveillance 4.8.2.1c (weekly versus monthly), verifies redundant pilot cell requirements. The Surveillance 4.8.2.1e deletion does not significantly affect the margin of safety because its requirement inspection of the battery chargers does not determine if this equipment is OPERABLE or not. Finally, deletion of the requirement to verify that an equalizing charge is started in Notes 1 and 2 of Table 4.8-2 has no effect on the margin of safety, because the OPERABILITY requirements of the batteries are determined by the battery parameter limits of Table 4.8-2. An equalizing charge will be applied as needed, to conform with the OPERABILITY requirements.

The staff notes that comprehensive surveillance requirements of D.C. power sources are provided in the proposed TS on pages 3/4 8-14 through 8-18 of Attachment 2 of the July 2, 1990 amendment request. In particular, requirements for important battery parameters are shown in Table 4.8-2 on page 3/4 8-16. The staff agrees with the licensee's evaluation and conclusions and concludes that the three criteria of 10 CFR 50.92 have been met and there are no significant hazards considerations involved in deleting the surveillance requirements described above.

The staff also concludes that, throughout the amendment request, where deletions are proposed, there are no significant hazards considerations involved.

For all the reasons given above, including those given (above) by the licensee, the staff agrees with the licensee's determination, and therefore proposes to determine that the amendments do not involve a significant hazard 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 filings of requests for hearing and petitions for leave to intervene is discussed below.

By October 26, 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 petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room located at the Environmental and Urban Affairs Library, Florida International University, Miami, Florida 33199. 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 party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been

admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the request for amendment involves no significant hazards consideration, the Commission may issue the amendments and make it 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 amendment.

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 Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Herbert N. Berkow: (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 Harold F. Reis, Esquire, Newman and Holtzer, P.C., 1615 L Street, NW., Washington, DC 20036, 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 amendments dated July 2, 1990, as supplemented September 6, 1990, which is available for public inspection at the Commission's Public Document Room,

the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room located at Environmental and Urban Affairs Library, Florida International University, Miami, Florida 33199.

Dated at Rockville, Maryland, this 20th day of September 1990.

For the Nuclear Regulatory Commission.  
Gordon E. Edison, Sr.,  
Project Manager, Project Directorate II-2,  
Division of Reactor Projects—I/II, Office of  
Nuclear Reactor Regulation.

[FR Doc. 90-22769 Filed 9-25-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-397]

### Washington Public Power Supply System; Withdrawal of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted a request by the Washington Public Power Supply System (WPPSS) (the licensee) to withdraw its April 18, 1990 application for an amendment to Facility Operating License No. NPF-21, issued to the licensee for operation of the WPPSS Nuclear Project No. 2, located in Benton County, Washington. Notice of Consideration of Issuance of this amendment was published in the **Federal Register** on May 30, 1990 (55 FR 21982).

The purpose of the licensee's amendment request was to revise the Technical Specifications (TS) to remove the requirements of 3.0.4 from the specifications related to accident monitoring instrumentation.

Subsequently, the licensee informed the staff that the amendment is no longer requested. Therefore, the amendment application is considered to be withdrawn by the licensee.

For further details with respect to this action, see (1) The application for amendment dated April 18, 1990, and (2) the staff's letter dated September 5, 1990.

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the Richland Public Library, 955 Northgate Street, Richland, Washington 99352.

Dated at Rockville, Maryland, this 5th day of September, 1990.

For the Nuclear Regulatory Commission.  
 Patricia L. Eng,  
 Project Manager, Project Directorate V,  
 Division of Reactor Projects—III, IV, V and  
 Special Projects, Office of Nuclear Reactor  
 Regulation.

[FR Doc. 90-22767 Filed 9-25-90; 8:45 am]

BILLING CODE 7590-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-28451; File Nos. 600-19  
 and 600-22]

### Self-Regulatory Organizations; MBS Clearing Corporation; Notice of Filing of Amended Application for Full Clearing Agency Registration and a Request for Extension of Temporary Registration as a Clearing Agency

September 18, 1990.

Notice is hereby given that on August 22, 1990, MBS Clearing Corporation ("MBSCC") filed with the Securities and Exchange Commission ("Commission") pursuant to section 19(a) of the Securities and Exchange Act of 1934 ("Act"), an amended form CA-1 as an application for full registration as a clearing agency under section 17A of the Act. On September 13, 1990, MBSCC's also filed a request for extension of its registration as a clearing agency under section 17A of the Act for a period of one year.<sup>1</sup>

On February 2, 1987, the Commission granted the application of MBSCC for registration as a clearing agency, pursuant to sections 17A and 19(a) of the Act, and Rule 17Ab2-1(c) thereunder, for a period of 18 months.<sup>2</sup> At that time, the Commission granted MBSCC an exemption from compliance with section 17A(b)(3)(C) of the Act.<sup>3</sup> By letter dated July 18, 1989, MBSCC withdrew its request for an exemption from compliance with section 17A(b)(3)(C) of the Act. On August 2, 1988, and July 31, 1989, the Commission extended MBSCC's registration as a clearing agency through September 28, 1990.<sup>4</sup>

<sup>1</sup> See letter from Jeff Lewis, Associate Counsel, MBSCC, to Jonathan Kallman, Assistant Director, Division of Market Regulation, Commission, dated September 13, 1990.

<sup>2</sup> See Securities and Exchange Act Release No. 24046 (February 2, 1987) 52 FR 4218.

<sup>3</sup> Section 17A(b)(3)(C) requires that MBSCC's rules assure fair representation of its shareholders (or members) in the selection of its directors and administration of its affairs.

<sup>4</sup> See Securities and Exchange Act Release Nos. 25957 and 27079 (August 2, 1988 and July 31, 1989) 53 FR 29537 and 54 FR 32412.

MBSCC provides clearance and settlement services for members in processing transactions in mortgage-backed securities. Among other things, MBSCC provides trade-for-trade and net settlement accounting facilities for transactions in Government National Mortgage Association pass-through securities.

Interested persons are invited to submit written data, views and arguments concerning the foregoing within 30 days of the date of publication of this notice in the Federal Register. Such written data, views and arguments will be considered by the Commission in granting registration or instituting proceedings to determine whether registration should be denied in accordance with section 19(a)(1) of the Act. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, 450 Fifth St., NW., Washington, DC 20549. Copies of the application and all written comments will be available for inspection at the Commission's Public Reference room, 450 Fifth Street, NW., Washington, DC 20549. All submissions should refer to file numbers 600-19 and 600-22 and should be submitted by October 17, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-22730 Filed 9-25-90; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-28445; File No. SR-  
 MBSCC-90-02]

### Self-Regulatory Organizations; Notice of Proposed Rule Change by MBS Clearing Corporation Concerning Settlement Balance Order Market Differential Payments

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that MBS Clearing Corporation ("MBSCC") filed with the Securities and Exchange Commission the proposed rule change on March 5, 1990, and an amendment to the proposed rule change on August 21, 1990, as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

MBSCC proposes to: (i) Require the earlier payment of a participant's settlement balance order market differential ("SBOMD") amounts; (ii) revise the form of letter of credit eligible for deposit in the participant's fund, and, (iii) impose additional fines for a participant's failure to make timely payments of SBOMD amounts.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

##### (A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to further clarify and enhance MBSCC's rules regarding a participant's failure to make timely payments of SBOMD amounts.

Under its rules, MBSCC calculates and collects SBMOD payments (generally, the difference between the contract value of a transaction and the SBO trade price). MBSCC collects SBOMD amounts from participants with a payment obligation to MBSCC and makes corresponding payments in federal funds to those participants with a receive obligation from MBSCC.

It may be possible that MBSCC may be unable to immediately fund corresponding payments to a receiving participant when a paying participant fails to make timely payments on its SBOMD. Even though a defaulting paying participant has sufficient collateral on deposit with MBSCC (in the form of cash, government securities and letters of credit from MBSCC approved banks), MBSCC may not be able to realize or liquidate the collateral by the appropriate federal funds cut-off time.

MBSCC proposes several changes which are designed to significantly reduce any real or perceived liquidity concerns caused by participant defaults

in SBOMD's. The first change revises MBSCC's form letter of credit to make it clear that an issuing bank will honor drafts in accordance with MBSCC's instructions by 4:30 p.m. on the day of presentation. MBSCC is, therefore, assured, to a significantly greater degree, that the issuing bank will not delay in making funds available, notwithstanding any contrary provisions in the uniform commercial code.

A second change involves the acceleration by one business day the date that participants are required to make SBOMD payments. Participants will now be required to pay MBSCC on the day before the settlement date, rather than on settlement date. However, MBSCC will continue to distribute SBOMD payments to receiving participants on settlement date.

The earlier payment requirement will enable MBSCC to liquidate a defaulting participant's collateral on deposit or secure alternative financing, thereby significantly reducing any potential disruptions in payments to corresponding participants. In the unlikely event (and as a last resort) that MBSCC must reduce corresponding payments to receiving participants due to its inability to fund the full amount of payment obligations, MBSCC will be to provide such participants with earlier notice of potential payment reductions. Non-defaulting participants are, therefore, afforded one additional business day to obtain any necessary financing.

MBSCC will invest all SBOMD payments received overnight. Investment income, less handling costs, will be rebated to paying participants. Under MBSCC's current rules, MBSCC may invest cash in, among other investments, U.S. government securities, certificates of deposit or cash funds, in accordance with an investment policy approved by the Board of Directors.

Finally, MBSCC proposes to impose new penalty fees on those participants who fail to pay SBOMD obligations on the required date. Under the new penalty fee, participants who fail to pay the SBOMD by the close of the business day will be subject to a penalty fee of 300 basis points over the cost of funds, with a \$1,000 minimum fee. Participants will also continue to remain obligated to reimburse MBSCC for the cost of overnight funds financing, separate from the penalty fee.

MBSCC believes the proposed rule change is consistent with section 17A of the Act because it enhances MBSCC's ability to safeguard the funds and securities for which it is responsible.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

MBSCC does not believe that any burdens will be placed on competition as a result of the proposed rule change.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

Comments were formally solicited from participants via bulletins provided to participants. No written comments have been received. However, the proposed rule change received the unanimous support of MBSCC's risk management and new products/services committees.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to file number SR-MBSCC-90-02 and should be submitted by October 17, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 17, 1990.

Jonathan G. Katz,  
Secretary.

[FR Doc. 90-22786 Filed 9-25-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-28447; File No. SR-NASD-90-1]

**Self-Regulatory Organizations; Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Reconfirmation and Pricing Services**

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on January 4, 1990, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change for interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The proposed rule change amends the NASD's Uniform Practice Code (the "CODE"). The proposed rule change adds a new section to mandate in certain cases participation in confirmation and pricing services.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in section (A), (B), and (C) below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The purpose of the proposed rule change to section 69 of the Code is to require NASD members that are participants in a registered clearing agency for purposes of clearing over-the-counter transactions to participate in

fail reconfirmation and pricing services that are offered by the registered clearing agency of which they are a member. The NASD Board of Governors approved the proposed amendment to the recommendation of the Association's Uniform Practice Committee. In June of 1987, the National Securities Clearing Corporation ("NSCC") offered to its participants a new fail reconfirmation and pricing service ("RECAPS") which allowed participants to reconfirm open aged fails, reprice such fails to the current market and, where possible, net the confirmed and repriced fails. To date, NSCC is the only clearing corporation with this service and is considering expanding this service to interface with other clearing corporations. When first offered, this voluntary service was limited to municipal bonds. It subsequently has been expanded to include all over-the-counter equity securities. Aged fails in these eligible securities may be submitted even though the original settlement occurred "exclearing". The RECAPS service establishes new settlement dates for transactions which in combination with the mark-to-the-market aspect of the service will alleviate potential capital charges pursuant to the uniform net capital rule as they apply to aged fails. The NASD believes that required participation by NASD members which are participants in a registered clearing corporation offering services of this nature will be of an overall benefit to the clearance and settlement process and will assist in compliance with SEC rules 17a-13 (quarterly audits) and 15c3-3 (possession or control).

The proposed rule change to section 69 of the Code would facilitate utilization of this type of a repricing service by providing for the cancellation of buy-in notices which are pending during a RECAPS processing cycle and would prohibit the entry of a new notice of buy-in until the first business day after the last RECAPS settlement date. This procedure will provide added protection for members against potential liability or losses associated with an unnecessary buy-in execution.

The NASD has adopted the proposed rule change pursuant to sections 15A(b)(2) and 15A(b)(6) under the Act. In pertinent part, section 15A(b)(2) requires that the Association enforce compliance by its members with the provisions of the Act, the rules and regulations thereunder, and section 15A(b)(6) mandates that the rules of a national securities association be designed to " \* \* \* foster cooperation

and coordination with persons engaged in regulating, clearing, settling and facilitating transactions in securities \* \* \*." The NASD believes that the proposed rule change is consistent with these objectives.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The NASD does not believe that the proposed rule change imposes any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were solicited in NASD Notice to Members 89-4. A total of seven comments were received. Five commentators strongly endorsed the adoption of a mandatory RECAPS rule; one commentator, while expressing no opinion, requested clearing corporation charges for the service and the details associated with the submission of data; and one commentator, while also expressing no opinion, sought clarification of the benefits of the service and cost information. The NASD obtained information regarding the costs and procedures for such services from NSCC and forwarded it on to the commentators. The NASD notes that registered clearing agencies are subject to the requirements of section 17A of the Act and that under that section the rules of such registered clearing agencies must provide for the "equitable allocation of reasonable dues, fees and other charges among its participants," and "not impose any burden on competition not necessary or appropriate in furtherance of the purposes of" the Act. Registered clearing agency rules are subject to filing and approval of the SEC under section 19(b) of the Act.

The NASD further notes that several of the comment letters expressed their support for the proposal because of the significant benefits that can be derived through the use of such services, such as the immediate identification of potential fail problems and a reduction in a firm's market exposure without requiring additional staffing or salary expense. The NASD believes that mandatory participation in RECAPS will result in significant reductions in aged fail contracts and buy-ins and their associated operational costs and attendant capital charges. The NASD, therefore, adopted the proposed rule change.

One commentator noted that current nonparticipants in RECAPS may need time to comply with the mandatory requirement. The NASD has requested a 60- to 90-day period for effectiveness after Commission approval, so as to have the rule coincide with the quarterly RECAPS cycle and believes that this period of time should be adequate.

#### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

- A. By order approve such proposed rule change, or
- B. Institute proceedings to determine whether the proposed rule change should be disapproved.

#### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by October 17, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority 17 CFR 200.30-3(a)(12).

Dated: September 17, 1990.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 90-22727 Filed 9-25-90; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-28452; File No. SR-NYSE-90-40]

**Self-Regulatory Organizations; Filing of Proposed Rule Change by New York Stock Exchange, Inc., Relating to Rules 116.40, 123A.43 and 13 Regarding Procedures for Handling Market-on-Close Orders on Expiration Fridays**

Pursuant to section 19(b)(1) of the securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 7, 1990, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The proposed rule change seeks to modify current NYSE procedures for handling and executing market-on-close ("MOC") orders<sup>1</sup> on expiration Fridays<sup>2</sup> as provided in Exchange Rule 116.40 by allowing for partial executions of MOC orders with the approval of a Floor Governor when significant imbalances occur. The proposal would also amend NYSE Rule 123A.43 and 13 to conform the language of these rules with the proposed amendments to NYSE Rule 116.40.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

<sup>1</sup> Pursuant to current NYSE Rule 13, an MOC order is defined as a market order which is to be executed in its entirety at the closing price, on the Exchange, of the stock named in the order, and if not so executed, is to be treated as cancelled.

<sup>2</sup> "Expiration Friday" is the one Friday per month on which stock index futures, stock index options and options on stock index futures (collectively, "derivative instruments") expire.

**A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

**1. Purpose**

The purpose of the proposed rule change to NYSE Rules 116.40, 123A.43 and 13 is to allow for partial executions of MOC orders where significant imbalances exist which can contribute to, or exacerbate, excess market volatility at the close on expiration Fridays.<sup>3</sup> Currently NYSE Rule 116.40 requires specialists to execute MOC orders in their entirety unless trading in the stock has been halted,<sup>4</sup> or the order contains a restriction, such as the instruction that the order be executed on a "minus" tick, which renders the order non-executable if the closing transaction is on a "plus" tick.<sup>5</sup>

The Exchange is concerned that imbalances of MOC orders on expiration Fridays which must be executed (unless trading is halted or a tick condition cannot be met) may result in significant price swings at the close, which add to investor concerns about excess market volatility and the orderliness of the Exchange market.

On expiration Friday, July 20, 1990, cancellations or reductions of MOC orders entered prior to 3 p.m., and the entry in large size of offsetting MOC orders, reversed previously published buy-side imbalances in the 52 pilot stocks, placing significant selling pressure on these stocks, without a corresponding opportunity to attract contra-side buying interest. The resulting sharp decline in the DJIA (35

<sup>3</sup> The current procedures for handling and executing MOC orders on monthly expiration Fridays originally were approved by the Commission for a one year pilot program beginning in November, 1988. The pilot program subsequently has been extended through October 31, 1990. (See Securities Exchange Act Releases No. 26293 (November 17, 1988), 53 FR 47599 and 26408 (December 29, 1988), 54 FR 343 (approving File No. SR-NYSE-88-37); and Securities Exchange Act Release No. 27448 (November 16, 1989) 54 FR 46343 (noticing and granting accelerated approval to File No. SR-NYSE-89-38). The expiration Friday procedures apply to 52 pilot stocks on a list consisting of the 50 highest-weighted Standard & Poor's ("S&P") 500 Index stocks, based on market values, and any of the 20 Major Market Index ("MMI") stocks not among the 50 highest-weighted stocks.

<sup>4</sup> For example, trading may be halted to allow for the dissemination of material information about a security (a regulatory, or news pending, trading halt) or because of a sudden influx of orders for a security (an order imbalance trading halt). Trading also may be halted when the Dow Jones Industrial Average (a service mark of Dow Jones & Company, Inc.) ("DJIA") reaches a value 250 or more points below its closing value on the previous trading day. See NYSE Rule 80B.

<sup>5</sup> A "minus" tick (or downtick) refers to a sale price lower than the last "regular way" sale of the security. A "plus" tick (or uptick) is the reverse.

points during the last hour of trading) adds to investor perceptions that the markets have become unduly volatile, particularly on expiration days.

Under the proposed rule change, the specialist would be permitted to give partial execution to the MOC orders he is holding where the depth of the contra side interest is not sufficient for all such orders to be executed in their entirety. The specialist would be permitted, with the prior approval of a Floor Governor, to give partial executions of MOC orders by assigning 10 shares in turn to each MOC order on the imbalance side of the market up to the total number of shares of the imbalance to be filled. Where the number of shares to be executed against the imbalance is not sufficient to permit the assignment of 100 shares to each MOC order on the imbalance side, the specialist would assign 100 shares to such orders based on their order of receipt. The unexecuted portion of any MOC order will be deemed to be cancelled. The proposed amendments would be applicable to MOC orders only on expiration Fridays.<sup>6</sup>

While the proposed rule change can be expected to help minimize excess market volatility on the close, the Exchange continues to believe that the settlement of derivative index products based on the opening price on the Exchange provides a more orderly means of ensuring that an appropriate equilibrium is reached as to buying and selling interest. Exchange opening procedures provide for dissemination of price indications where a substantial price change is anticipated. These procedures allow for a minimum of 15 minutes between a first indication and stock's opening, with re-indications as appropriate, and ensure that a sudden influx of orders on one side of the market will not have an immediate, sudden effect on a stock's price, as may occur during the compressed time period at the close of the trading day on expiration Friday.

At the present time there are a total of six derivative instrument products whose settlement is based on the NYSE opening price: one version of the Chicago Board Options Exchange's ("CBOE") S&P 500 option contract ("NSX"); the Chicago Mercantile

<sup>6</sup> The auxiliary closing procedures on Expiration Fridays for the pilot stocks are described in detail in an Information Memo distributed to the NYSE membership each month. Generally, the current procedures preclude (1) Entry of any MOC orders relating to the liquidation of any positions that relate to a trading strategy involving any derivative instrument after 3 p.m. and (2) entry of other MOC orders after the imbalance publication unless they offset the imbalance.

Exchange's ("CME") S&P 500 index futures contract and the options of that index future contract (except as noted below); and three contracts traded on the New York Futures Exchange related to the NYSE Composite Index. The following derivative instruments base their settlement value on the closing NYSE price on expiration Fridays: One version of the CBOE S&P 500 options contract ("SPX") and the S&P 100 options contract ("OEX"); the CME's options on the S&P 500 contract futures contract (non-quarterly); the American Stock Exchange's XMI option contract and the options contract on its Institutional Index ("XII"); the CBOT MMI index futures contract and options thereon; the Kansas City Board of Trade Value Line Futures contract; the Philadelphia Stock Exchange's options contract on the Value Line Index, options contract on the Utility Index, options contract on Over-the-Counter ("OTC") Stock Index ("XOC"), and the Philadelphia Board of Trade's futures contract on the XOC (inactive).

The Exchange's opening procedures have proven to be very effective in minimizing any excess volatility that may be associated with the expiration of those derivative index products whose settlement value is based on the NYSE opening price. The Exchange is continuing to urge that the settlement value of *all* derivative index products be based on the NYSE opening price.

## 2. Statutory Basis

The basis under the Act for this proposed rule change is section 6(b)(5) which requires that the rules of the Exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The proposed rule change will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were solicited or received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such other period (i)

As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-90-40 and should be submitted by October 17, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 19, 1990.

Margaret H. McFarland,

*Deputy Secretary.*

[FR Doc. 90-22728 Filed 9-25-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-28446; File No. SR-OCC-90-05]

## Self-Regulatory Organizations; the Options Clearing Corporation; Filing of Proposed Rule Change Relating to Acceptance of Options Transactions

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that the Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, on March 30, 1990, and amended the proposed rule change on August 7, 1990. The Commission is publishing this notice to

solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would require OCC to accept all options transactions that are executed and matched and are reported to OCC on a timely basis by the responsible market.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

#### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The purpose of this rule change is to codify OCC's existing policy of accepting all options transactions that are reported to OCC on a timely basis by the responsible market, whether or not the purchasing clearing member meets its premium settlement obligations.

Under its current By-Laws, OCC has discretion, either by a general rule or resolution adopted by its board of directors ("Board") or by action of its officers with respect to specific transactions, to reject any or all opening and closing purchase transactions effected in an account in the event OCC fails to receive payments at or before the settlement time of all premiums owing in that account. However, OCC has never in its history exercised that right, and its policy of accepting all duly reported trades is reflected in its prospectus.<sup>1</sup>

This rule change would implement one of the recommendations made by a special subcommittee (hereinafter referred to as the "Subcommittee") of the margin committee of OCC's Board. After reviewing this issue, the

<sup>1</sup> See page 5 of OCC's prospectus dated April 21, 1989. A new preliminary prospectus reflecting this proposed rule change was filed with OCC's Registration Statement on Form S-20 on or about March 28, 1990.

Subcommittee concluded that an options trade should be considered cleared when executed and matched and that any losses resulting from options trades with an insolvent clearing member should be borne by the industry as a whole, via OCC. Accordingly, the Subcommittee recommended that this rule change, as amended, be filed to codify OCC's policy and to resolve any uncertainty that investors may have with respect to the finality of trades.

The Subcommittee's recommendation applied only to options (which were the only products then cleared by OCC), and the proposed rule change is similarly limited. Under the proposal, OCC would retain the right to reject transactions in market baskets for nonpayment of premiums. The premiums for those products would vastly exceed option premiums on a per-contract basis. If a clearing member failed to make settlement with OCC after purchasing a substantial number of market baskets, OCC might not have sufficient liquidity to effect timely settlement with other clearing members,<sup>2</sup> and any failure by OCC to effect timely settlement could set off a chain reaction of defaults and have other destabilizing effects. Although OCC's policy will be to accept trades in market baskets whenever possible notwithstanding nonpayment of premiums, OCC believes that it would be imprudent to obligate itself to accept all such trades regardless of the circumstances.

The proposed rule change is consistent with the purposes and requirements of section 17A of the Securities Exchange Act of 1934 because it would further the public interest by removing any uncertainty that the public may have with respect to the finality of options trades.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

OCC does not believe that the proposed rule change would impose any burden on competition.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments were not and are not intended to be solicited by OCC with respect to the proposed rule change and none have been received by OCC.

<sup>2</sup> OCC is obligated to pay those Clearing Members that have net "collects" within one hour after collecting from those Clearing Members that have net "pays."

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the *Federal Register* or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to file number SR-OCC-90-05 and should be submitted by October 17, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 17, 1990.

Margaret H. McFarland,  
Deputy Secretary.

[FR Doc. 90-22729 Filed 9-25-90; 8:45 am]

BILLING CODE 8010-01-M

### SMALL BUSINESS ADMINISTRATION

[License No. 02/02-0005]

#### The Franklin Corporation SBIC; Notice of Surrender of License

Notice is hereby given that the Franklin Corporation SBIC, 767 Fifth Avenue, New York, New York 10153 has surrendered its license to operate as a

small business investment company under the Small Business Investment Act of 1958, as amended (The Act). The Franklin Corporation SBIC was licensed by the Small Business Administration on September 17, 1959.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender was accepted on September 7, 1990, and, accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies).

Dated: September 17, 1990.

Bernard Kulik,

Associate Administrator for Investment.

[FR Doc. 90-22737 Filed 9-25-90; 8:45 am]

BILLING CODE 8025-01-M

### Approval of a Small Business Defense Production Pool; Flomega Associates

AGENCY: Small Business Administration.  
ACTION: Notice.

**SUMMARY:** Notice is hereby given that in accordance with the Defense Production Act of 1950, 64 Stat. 708, as amended, and section 11 of the Small Business Act, 15 U.S.C. 640, the Small Business Administration (SBA) has approved an application for a Small Business Defense Production Pool submitted by the Flomega Associates, Cornwall, Pennsylvania. The Flomega pool was approved as required by section 11 of the Small Business Act with the advice and consent of the Attorney General and the Chairman of the Federal Trade Commission. Pursuant to the Small Business Act and 13 CFR 125.7, this notice contains summaries of the purpose, qualifications, and proposed activities of Flomega and an identification of individual pool members.

**DATES:** Flomega Associates was authorized to enter into contracts with the Federal Government effective June 11, 1990.

**FOR FURTHER INFORMATION CONTACT:** Roy Rodgers, Director, Office of Prime Contracts, Office of Procurement Assistance, room 600, 1441 L Street NW., Washington, DC 20416. Telephone (202) 653-6826.

**SUPPLEMENTARY INFORMATION:** Defense Production Pools involve the voluntary pooling of small business concerns. The pooling of the resources and capabilities of small firms increases their productive and research and development capabilities. These pools contribute to

the national defense effort by obtaining and performing, as a group, contracts for the production of articles, equipment, supplies and materials, and furnishing of services necessary for military and related defense purposes. The small firms gain some of the advantages of "big business" under the protection of a granted exemption from the Federal antitrust laws and the Federal Trade Commission Act. This enables them to carry out larger, more complex defense contracts; undertake and utilize applied research; undertake new product development; and exploit patents.

Certain conditions are necessary for Government approval of a pool: (1) All proposed member concerns must qualify as "small businesses" under the size standards of the SBA; (2) A defense production pool must limit its activities to the production of products necessary for military and related defense purposes; (3) New members must be admitted upon equitable terms, subject to the approval of the SBA Administrator; (4) Member companies must be permitted to withdraw, if they desire to do so, upon fulfilling their current and outstanding commitments. The SBA Administrator must be notified of each withdrawal from membership; and (5) Each member must be permitted to solicit and perform work independently of the pool.

The Flomega Associates Pool has fulfilled all the foregoing requirements and have executed a Small Business Defense Production Pool Agreement. The agreement states that the Pool desires to combine their distinct capabilities for the purpose of obtaining and performing as a group, contracts for the production of products needed for the defense program of the United States. Specifically, the primary purpose of the Pool is to provide design and engineering services and to manufacture specialty valves and other specially machined articles or components required for the defense program.

The formation of said pool has been approved by the Attorney General with concurrence of the Chairman of the Federal Trade Commission. The activities of this approved pool are, therefore, immune from prosecution under antitrust laws and the Federal Trade Commission Act only insofar as the operations of the pool and the participation of its members in the operations are held within the strict limits of the voluntary program approved by the Government as stated in the pool agreement. Approval of this pool in no way constitutes Government sponsorship of these businesses, their combination, or the purpose they seek to

achieve. The approval means only that the Government has authorized the pool to carry on its proposed program exempt from certain provisions of the antitrust laws and the Federal Trade Commission.

The pool members of the Flomega Associates are: Mr. Herman L. Paul, Jr., President, Flomega Industries, Inc., Box 345, Rexmont Road, Cornwall, Pennsylvania 17018, Telephone No. (717) 273-5836, and Mr. Charles L. Lantz, Jr., Executive Vice President, Brenner Machine Company, P.O. Box 193, Cornwall, Pennsylvania 17018, Telephone No. (717) 274-3411.

This notice is published pursuant to section 11(b) of the Small Business Act, as amended.

Dated: September 19, 1990.

Susan Engeleiter,  
Administrator.

[FR Doc. 90-22738 Filed 9-25-90; 8:45 am]  
BILLING CODE 8025-01-M

## DEPARTMENT OF STATE

[Public Notice 1269]

### Shipping Coordinating Committee, Subcommittee on Safety of Life at sea; Working Group on Stability and Load Lines and on Fishing Vessels Safety; Meeting

The Working Group on Stability and Load Lines and on Fishing Vessels Safety of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting on October 11, 1990 at 1 p.m. in room 6319 at Coast Guard Headquarters, 2100 Second Street SW.; Washington, DC.

The purpose of this Working Group meeting is to prepare for the 35th Session of the International Maritime Organization Subcommittee on Stability and Load Lines and on Fishing Vessels Safety (SLF), which is scheduled for February 4 to 8, 1991. Items of discussion will include the following: Subdivision and damage stability of dry cargo ships, including Ro-Ro ships less than 100 meters; the new Code of Intact Stability; subdivision and damage stability standards for passenger ships; basic principles for future revisions to the 1966 Load Line Convention; safety of fishing vessels, including discussions on external forces caused by fishing gear and development of protocol to the 1977 Torremolinos Convention; stability, load line, and tonnage aspects of open-top container ships; livestock carriers; fitting of topside tank non-return valves; hull cracking in large ships; review of the stability requirements for dynamically

supported craft; adequacy of IMO instruments to prevent and mitigate marine pollution incidents; role of the human elements in marine casualties; the Work Program of SLF 35; and review of reporting requirements on Codes and Assembly resolutions related to the work of the Subcommittee.

Members of the public may attend this meeting up to the seating capacity of the room.

For further information contact Mr. Cojeen or LCDR Gilbert at (202) 267-2988, U.S. Coast Guard Headquarters (G-MTH-3/13), 2100 Second Street SW., Washington, DC 20593-0001.

Dated: September 13, 1990.

Thomas J. Wajda,

Chairman, Shipping Coordinating Committee.

[FR Doc. 90-22790 Filed 9-25-90; 8:45 am]

BILLING CODE 4710-07-M

## TENNESSEE VALLEY AUTHORITY

### Paperwork Reduction Act of 1980, as amended by Public Law 99-591; Information Collection Under Review by the Office of Management and Budget (OMB)

AGENCY: Tennessee Valley Authority.

ACTION: Information Collection Under Review by the Office of Management and Budget (OMB).

**SUMMARY:** The Tennessee Valley Authority (TVA) has sent to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), as amended by Public Law 99-591.

Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Agency Clearance Officer whose name, address, and telephone number appear below. Questions or comments should be directed to the Agency Clearance Officer and also to the Desk Officer for the Tennessee Valley Authority, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; Telephone: (202) 395-3084.

Agency Clearance Officer: Mark R. Winter, Tennessee Valley Authority, Edney Building 4W 13B, Chattanooga, TN 37402; (615) 751-2523.

Type of Request: Regular submission.

Title of Information Collection: Employment Applications.

Frequency of Use: On occasion.

Type of Affected Public: Individuals, Small Businesses or Organizations  
Affected: No.

*Federal Budget Functional Category Code: 999.*

*Estimated Number of Annual Responses: 59,350.*

*Estimated Total Annual Burden Hours: 29,675.*

*Estimated Average Burden Hours Per Response: .5.*

**Need For and Use of Information:** Applications for employment are needed to collect information on qualifications, suitability for employment, and eligibility for veterans preference. The information is used to make comparative appraisals and to assist in selections. The affected public consists of individuals who apply for TVA employment.

**Louis S. Grande,**

*Vice President, Information Services, Senior Agency Official.*

[FR Doc. 90-22761 Filed 9-25-90; 8:45 am]

BILLING CODE 8120-01-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

[Summary Notice No. PE-90-39]

#### Petitions for Exemption, Summary of Petitions Received; Dispositions of Petitions Issued

**AGENCY:** Federal Aviation Administration (FAA), DOT

**ACTION:** Notice of petitions for exemption received and of dispositions of prior petitions.

**SUMMARY:** Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

**DATES:** Comments on petitions received must identify the petition docket number involved and must be received on or before October 16, 1990.

**ADDRESSES:** Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. \_\_\_\_\_, 800

Independence Avenue, SW.,  
Washington, DC 20591.

#### FOR FURTHER INFORMATION CONTACT:

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on September 19, 1990.

**Denise Donohue Hall,**

*Manager, Program Management Staff, Office of the Chief Counsel.*

#### Petitions for Exemption

*Docket No.: 26048.*

*Petitioner: National Test Pilot School.*

*Sections of the FAR affected: 14 CFR 21.191.*

*Description of relief sought:* To allow petitioner to train its test pilots and flight test engineers in experimental aircraft owned and operated by the petitioner.

*Docket No.: 26255.*

*Petitioner: Air Transport International, Inc.*

*Sections of the FAR affected: 14 CFR 121.613, 121.623, and 121.625.*

*Description of relief sought:* To allow petitioner to release a flight to an airport at which the weather forecast includes an "occasionally," a "briefly," an "intermittently," or a "chance of" condition that does not meet the flight release requirements of the regulations.

#### Dispositions of Petitions

*Docket No.: 26079.*

*Petitioner: Tempelhof Airways USA, Inc.*

*Sections of the FAR affected: 14 CFR 135.117 (a)(4) and (a)(8).*

*Description of relief sought:* To allow petitioner to use graphic passenger briefing cards instead of oral briefings to describe the opening of passenger entry doors and emergency exits and the location and use of fire extinguishers.

Denial, September 13, 1990. Exemption No. 5235.

[FR Doc. 90-22746 Filed 9-25-90; 8:45 am]

BILLING CODE 4910-13-M

#### Radio Technical Commission for Aeronautics (RTCA); Special Committee 168—Lithium Batteries; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., Appendix I), notice is hereby given for the First meeting of RTCA Special Committee 168 on Lithium Batteries held October 25-26, 1990, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005, Commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Introductory Remarks; (2) Review and approve Terms of Reference, RTCA Paper No. 252-90/SC168-1; (3) Discuss Facts Bearing on the Problem; (4) Develop Initial Work Program and a plan for Accomplishment. Items to consider are: (a) serial by battery type; (b) serial by topic (safety, testing, etc.); (c) battery-type working groups; (d) topic working groups; and (e) schedule; (5) Plan and activities for next meeting; (6) Assignment of Tasks; (7) Other Business; (8) Date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on September 18, 1990.

**Geoffrey R. McIntyre,**

*Designated Officer.*

[FR Doc. 90-22742 Filed 9-25-90; 8:45 am]

BILLING CODE 4910-13-M

## DEPARTMENT OF THE TREASURY

### Customs Service

[T.D. 90-77]

#### Approval of Chamberlain and Associates as a Commercial Gauger

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

**ACTION:** Notice of approval of Chamberlain and Associates as a commercial gauger.

**SUMMARY:** Chamberlain and Associates of Deer Park, Texas recently applied to

Customs for approval to gauge imported petroleum, petroleum products, organic chemicals and vegetable and animal oils under § 51.13 of the Customs Regulations (19 CFR 151.13). Customs has determined that Chamberlain and Associates meets all of the requirements for approval as a commercial gauger.

Therefore, in accordance with § 151.13(f) of the Customs Regulations, Chamberlain and Associates, 1417 Roosevelt, P.O. Box 752, Deer Park, Texas 77536 is approved to gauge the products named above in all Customs districts.

**EFFECTIVE DATE:** September 16, 1990.

**FOR FURTHER INFORMATION CONTACT:**

Ira S. Reese, Special Assistant For Commercial and Tariff Affairs, Office of Laboratories and Scientific Services, U.S. Customs Service, 1301 Constitution Ave. NW, Washington, DC 20229 (202-566-2446).

Dated: September 19, 1990.

**John B. O'Loughlin,**  
*Director, Office of Laboratories, and Scientific Services.*

[FR Doc. 90-22731 Filed 9-25-90; 8:45 am]

BILLING CODE 4820-02-M

### Fiscal Service

#### Federal Tax Deposit Fee Elimination

**AGENCY:** Financial Management Service, Fiscal Service, Treasury.

**ACTION:** Notice of intent.

**SUMMARY:** Notice is hereby given that if sequestration occurs, the Department of

the Treasury plans to eliminate the fees paid to Treasury Tax and Loan (TT&L) depositaries in the note option Class A and remittance option Class 2 categories, and to all depositaries in the Minority Bank Deposit Program regardless of classification.

Depositaries in the note option Class A and remittance option Class 2 categories and all depositaries participating in the Minority Bank Deposit Program will not be paid fees for Federal Tax Deposit (FTD) payments processed during the October reporting cycle, which begins October 4, 1990. Treasury will continue to review its policy on FTD fees and, at the beginning of Fiscal Year 1991 will determine the feasibility of resuming fee payments to these depositaries during the Fiscal Year.

**DATES:** Comments must be received by October 12, 1990.

**ADDRESS:** Comments may be mailed to the Treasury Programs Branch, Financial Management Service, U.S. Department of the Treasury, room 420, Liberty Center, 401 14th Street, SW., Washington, DC 20227.

**FOR FURTHER INFORMATION CONTACT:** Elaine Fleishell on (202) 287-0590.

**SUPPLEMENTARY INFORMATION:**

Announcement of Treasury's intent to terminate the fees for depositaries in the note option Class B and Class C and remittance option Class 1 categories, effective October 4, 1990, was published in the Federal Register on August 6, 1990. If sequestration occurs, Treasury will expand the termination of FTD fees

to include all other depositaries. All depositaries will be paid fees in October for FTDs processed during the September reporting cycle.

Reasons for Treasury's policy concerning the elimination of FTD fee payments include: First, budgetary constraints and the prospect of additional budget cuts to be effective in Fiscal Year 1991 have required Treasury to review the current FTD fee structure. Second, depositaries that choose to participate in the FTD/TT&L Program may earn interest on the overnight use of funds deposited as Federal tax payments.

Treasury procedural instructions found in the "Treasury Financial Manual" on paying fees to financial institutions for processing FTD payments and maintaining Treasury Tax and Loan accounts will be revised to reflect this change. The "Treasury Financial Manual" may be obtained from any Federal Reserve Bank.

Future notice of any subsequent changes in the fees paid to depositaries for processing FTD payments will be provided to the affected financial institutions through the Federal Reserve Banks. Distribution of the revised "Treasury Financial Manual" to the Federal Reserve Banks and TT&L depositaries will be coordinated with the elimination of the fees.

**W.E. Douglas,**

*Commissioner.*

[FR Doc. 90-22747 Filed 9-25-90; 8:45 am]

BILLING CODE 4810-35-M

# Sunshine Act Meetings

Federal Register

Vol. 55, No. 187

Wednesday, September 26, 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 ENERGY REGULATORY COMMISSION

### Notice

(September 19, 1990)

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-49), 5 U.S.C. 552B:

**DATE AND TIME:** September 26, 1990, 10:00 a.m.

**PLACE:** 825 North Capitol Street NE., Room 9306, Washington, DC 20426.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** Agenda.

\* Note.—Items listed on the agenda may be deleted without further notice.

### CONTACT PERSON FOR MORE

**INFORMATION:** Lois D. Cashell, Secretary, Telephone (202) 208-0400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

**Consent Agenda—Hydro 923rd Meeting—September 26, 1990, Regular Meeting (10:00 a.m.)**

CAH-1.

Project No. 9711-001, Inghams Corporation

CAH-2.

Project No. 9712-001, Beardslee Corporation

CAH-3.

Project No. 10533-001, Franklin Hydro, Inc.

CAH-4.

Project No. 10923-001, Town of Westernport, Maryland

Project No. 10921-000, Jennings Randolph Hydro Associates

CAH-5.

Project No. 10655-004, Manter Corporation

CAH-6.

Project Nos. 10635-001 and 10813-000, Town of Summersville, West Virginia

CAH-7.

Project Nos. 663-003 and 004, Puerto Rico Electric Power Authority

CAH-8.

Project No. 10869-001, Robert A. Davis III and Michael P. O'Brien

CAH-9.

Docket No. UL87-8-001, Upper Peninsula Power Company

CAH-10.

Docket No. UL89-31-001, City of Crystal Falls, Michigan

CAH-11.

Docket No. UL88-30-001, David Zinkie

CAH-12.

Docket No. E-7319-001, Wolverine Power Company

### Consent Agenda—Electric

CAE-1.

Docket No. ER90-535-000, Madison Gas and Electric Company

CAE-2.

Docket No. ER90-544-000, Northern States Power Company (Wisconsin)

CAE-3.

Docket Nos. ER90-525-000 and ER90-526-000, New England Power Company

CAE-4.

Docket Nos. ER90-349-000 and ER90-406-000, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin)

CAE-5.

Docket No. ER90-527-000, Northern States Power Company (Minnesota)

CAE-6.

Docket No. ER90-355-000 Pacific Gas & Electric Company

Docket No. EL89-34-000, Northern California Power Agency v. Pacific Gas & Electric Company

CAE-7.

Docket No. ER90-395-001, Northeast Utilities Service Company

CAE-8.

Docket Nos. EL89-11-001 and ER90-312-001, Vermont Yankee Nuclear Power Corporation

CAE-9.

Docket Nos. ER88-630-006, ER88-631-006 and ER89-38-006, (Phase I and II), New England Power Company

CAE-10.

Docket No. ER76-205-008, Southern California Edison Company

CAE-11.

Docket No. ER90-349-001, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin)

CAE-12.

Docket No. EL90-24-000, Seminole Electric Cooperative, Inc. v. Florida Power & Light Company

CAE-13.

Docket No. EL89-33-000, Green Mountain Power Corporation

CAE-14.

Docket Nos. EL89-50-000, EL89-51-000, ER90-63-000, ER90-96-000 and ER90-195-000, Southwestern Public Service Company

CAE-15.

Docket No. RM84-9-000, Calculation of Cash Working Capital Allowance for Electric Utilities

CAE-16.

Docket No. RM87-26-003, Filing Fees Under the Independent Offices Appropriation Act of 1972

### Consent Agenda—Gas and Oil

CAG-1.

Omitted

CAG-2.

Docket No. RP90-179-000, Transcontinental Gas Pipe Line Corporation

CAG-3.

Docket No. RP90-168-000, Trailblazer Pipeline Company

CAG-4.

Docket No. RP90-178-000, Panhandle Eastern Pipe Line Company

CAG-5.

Docket Nos. RP90-173-000, TM90-13-20-000 and TF90-3-20-000, Algonquin Gas Transmission Company

CAG-6.

Docket Nos. TQ91-1-7-000, 001 and TM91-1-7-000, Southern Natural Gas Company

CAG-7.

Omitted

CAG-8.

Docket Nos. TM91-2-33-000 and 001, El Paso Natural Gas Company

CAG-9.

Docket Nos. TQ91-1-9-000 and TM91-1-9-000, Tennessee Gas Pipeline Company

CAG-10.

Docket Nos. TM91-1-55-000 and 001, Questar Pipeline Company

CAG-11.

Docket No. TM91-2-28-000, Panhandle Eastern Pipe Line Company

CAG-12.

Docket No. TM91-3-28-000, Panhandle Eastern Pipe Line Company

CAG-13.

Docket Nos. TQ91-1-59-000 and TM91-1-59-000, Northern Natural Gas Company

CAG-14.

Docket Nos. TQ91-1-1-000 and TM91-1-1-000, Alabama-Tennessee Natural Gas Company

CAG-15.

Docket No. TM91-2-30-000, Trunkline Gas Company

CAG-16.

Docket Nos. TA91-1-32-000 and RP90-166-000, Colorado Interstate Gas Company

CAG-17.

Docket No. TM90-14-17-001, Texas Eastern Transmission Corporation

CAG-18.

Docket No. TM90-13-21-000, Columbia Gas Transmission Corporation

CAG-19.

Docket No. TA91-1-35-000, West Texas Gas, Inc.

CAG-20.

Docket Nos. TQ90-13-4-000 and TM90-9-4-000, Granite State Gas Transmission, Inc.

CAG-21.

Docket No. TQ90-8-63-000, Carnegie Natural Gas Company

- CAG-22.  
Docket Nos. TA89-1-21-002, TM89-2-21-002, TA90-1-21-001 and TM90-8-21-001, Columbia Gas Transmission Corporation
- CAG-23.  
Docket No. RP90-138-00, Florida Gas Transmission Company
- CAG-24.  
Docket No. RP90-163-000, MIGC, Inc.
- CAG-25.  
Docket Nos. RP90-185-000 and RP89-248-000, Mississippi River Transmission Corporation
- CAG-26.  
Docket No. CP82-487-032 (Phase II), Williston Basin Interstate Pipeline Company
- CAG-27.  
Docket No. RP90-130-000, Northern Natural Gas Company
- CAG-28.  
Docket No. TA90-1-49-002, Williston Basin Interstate Pipeline Company
- CAG-29.  
Docket No. TM90-5-18-001, Texas Gas Transmission Corporation
- CAG-30.  
Docket No. RP90-137-002, Williston Basin Interstate Pipeline Company
- CAG-31.  
Docket Nos. RP85-194-009 and RP86-49-002, Panhandle Eastern Pipe Line Company
- CAG-32.  
Docket Nos. RP82-58-027, RP82-105-010 and RP88-262-009, Panhandle Eastern Pipe Line Company
- CAG-33.  
Docket Nos. RP90-139-003, RP89-224-002 and RP89-203-005, Southern Natural Gas Company
- CAG-34.  
Docket Nos. RP88-88-007 and RP88-262-008, Panhandle Eastern Pipe Line Company
- CAG-35.  
Docket Nos. RP86-10-010 and CP86-110-002, Williston Basin Interstate Pipeline Company
- CAG-36.  
Docket Nos. CP86-578-031, CP89-1740-005 and RP90-147-001, Northwest Pipeline Corporation
- CAG-37.  
Docket Nos. TQ90-1-9-001 and TM90-1-9-001, Tennessee Gas Pipeline Company
- CAG-38.  
Docket Nos. RP90-104-002 and RP88-115-012, Texas Gas Transmission Corporation
- CAG-39.  
Omitted
- CAG-40.  
Docket No. RP89-185-001, Panhandle Eastern Pipe Line Company
- CAG-41.  
Docket No. RP89-35-008, Midwestern Gas Transmission Company
- CAG-42.  
Docket No. RP90-83-004, CNL Transmission Corporation
- CAG-43.  
Docket Nos. RP90-4-004 and RP89-48-009, Transwestern Pipeline Company
- CAG-44.  
Docket Nos. RP90-1-000 and 001, Nycotex Gas Transport
- CAG-45.  
Docket Nos. RP89-251-000, 001, 002, 003, 004, 005, 006, 007, TA90-1-1-000, 001 and 003, Alabama-Tennessee Gas Company
- CAG-46.  
Docket No. RP90-52-000, Texas Gas Transmission Corporation
- CAG-47.  
Docket No. RM87-3-000, Annual Charges Under the Omnibus Budget Reconciliation Act of 1986
- Docket Nos. TM91-1-20-000 and RP90-180-000, Algonquin Gas Transmission Corporation
- Docket No. TM91-1-48-000, ANR Pipeline Company
- Docket No. TM91-1-91-000, ANR Storage Company
- Docket No. TM91-1-61-000, Bayou Interstate Pipeline System
- Docket No. TM91-1-86-000, Black Marlin Pipeline Company
- Docket No. TM91-1-83-000, Blue Dolphin Pipe Line Company
- Docket No. TM90-1-67-000, Canyon Creek Compression Company
- Docket No. TM91-1-63-000, Carnegie Natural Gas Company
- Docket No. TM91-1-22-000, CNL Transmission Corporation
- Docket No. TM91-1-32-000, Colorado Interstate Gas Company
- Docket Nos. TM91-1-21-000 and RP90-177-000, Columbia Gas Transmission Corporation
- Docket Nos. TM91-1-70-000 and RP90-176-000, Columbia Gulf Transmission Company
- Docket No. TM91-1-23-000, Eastern Shore Natural Gas Company
- Docket No. TM91-1-24-000, Equitrans, Inc.
- Docket No. TM91-1-34-000, Florida Gas Transmission Company
- Docket No. TM91-1-77-000, High Island Offshore Company
- Docket No. TM91-1-65-00, Jupiter Energy Corporation
- Docket No. TM91-1-53-000, K N Energy, Inc.
- Docket No. TM91-1-46-000, Kentucky West Virginia Gas Company
- Docket No. TM91-1-71-000, Michigan Consolidated Gas Company
- Docket No. TM91-1-15-000, Mid Louisiana Gas Company
- Docket No. TM91-1-47-000, MIGC, Inc.
- Docket No. TM91-1-25-000, Mississippi River Transmission Corporation
- Docket No. TM91-1-103-000, Moraine Pipeline Company
- Docket No. TM91-1-26-000, Natural Gas Pipeline Company of America
- Docket No. TM91-1-27-000, North Penn. Gas Company
- Docket No. TM91-1-78-000, Overthrust Pipeline Company
- Docket Nos. TM91-1-73-000 and 001, Ozark Gas Transmission System
- Docket No. TM91-1-64-000, Pacific Interstate Offshore Company
- Docket No. TM91-1-41-000, Palute Pipeline Company
- Docket Nos. TM91-1-28-000, and RP90-182-000, Panhandle Eastern Pipe Line Company
- Docket No. TM91-1-72-000, Pelican Interstate Gas System
- Docket No. TM91-1-79-000, Sabine Pipe Line Company
- Docket No. TM81-1-6-000, Sea Robin Pipeline Company
- Docket No. TM91-1-69-000, Stingray Pipeline Company
- Docket No. TM91-1-66-000, Superior Offshore Pipeline Company
- Docket No. TM91-1-80-000, Tarpon Transmission Company
- Docket Nos. TM91-1-17-000 and RP90-181-000, Texas Eastern Transmission Corporation
- Docket Nos. TM91-1-18-000 and RP90-163-000, Texas Gas Transmission Corporation
- Docket No. TM91-1-90-000, Texas Sea Rim Pipeline, Inc.
- Docket No. TM91-1-68-000, Trailblazer Pipeline Company
- Docket No. TM91-2-29-000, Transcontinental Pipeline Company
- Docket No. TM91-1-42-000, Transwestern Pipeline Company
- Docket Nos. TM91-1-30-000 and RP90-175-000, Trunkline Gas Company
- Docket No. TM91-1-74-000, U-T Offshore Company
- Docket No. TM91-1-11-000, United Gas Pipeline Company
- Docket No. TM91-1-56-000, Valero Interstate Transmission Corporation
- Docket No. TM91-1-82-000, Viking Gas Transmission Corporation
- Docket No. TM91-1-43-000, Williams Natural Gas Company
- Docket No. TM91-1-49-000, Williston Basin Interstate Pipeline Company
- Docket No. TM91-1-76-000, Wyoming Interstate Company Ltd.
- CAG-48.  
Docket No. CP87-10-002, Union Texas Products Corporation
- CAG-49.  
Docket No. SA90-3-001, Wainoco Oil and Gas Company
- CAG-50.  
Docket No. RM90-14-001, Interim Revisions to Regulations Governing Construction of Facilities Pursuant to NGPA Section 311 and Replacement of Facilities
- CAG-51.  
Docket No. RM90-13-001, Interim Revisions to Regulations Governing Transportation under Section 311 of the Natural Gas Policy Act of 1978 and Blanket Transportation Certificates
- CAG-52.  
Docket No. RM90-13-000, Interim Revisions to Regulations Governing Transportation under Section 311 of the Natural Gas Policy Act of 1978 and Blanket Transportation Certificates
- CAG-53.  
Docket No. CP90-643-001, Algonquin Gas Transmission Company
- CAG-54.  
Docket No. CP89-2067-001, Southern Natural Gas Company
- CAG-55.  
Omitted
- CAG-58.  
Docket No. CP89-1343-001, Northwest Pipeline Corporation

- CAG-57.  
Docket No. CP89-333-001, Tennessee Gas Pipeline Company
- CAG-58.  
Docket Nos. CP89-281-002 and CP89-817-001, Panhandle Eastern Pipe Line Company
- CAG-59.  
Docket No. CP88-166-000, MIGC, Inc.
- CAG-60.  
Docket Nos. CP89-1742-000 and CP89-1743-000, Lone Star Gas Company, a Division of ENSERCH
- CAG-61.  
Docket No. CP90-772-000, Northwest Pipeline Corporation
- CAG-62.  
Docket No. CP90-387-000, Texas Gas Transmission Corporation
- CAG-63.  
Docket No. CP90-889-000, Transcontinental Gas Pipe Line Corporation
- CAG-64.  
Docket Nos. CP89-1223-000 and 001, Delta Pipeline Company
- CAG-65.  
Omitted
- CAG-66.  
Docket No. CP89-896-000, El Paso Natural Gas Company
- CAG-67.  
Docket No. CP90-2099-000, Colorado Interstate Gas Company
- CAG-68.  
Docket No. CP70-69-002, Northern Natural Gas Company, Division of Enron Corp. and Northern Natural Gas Company
- CAG-69.  
Docket Nos. RP88-44-000, RP85-58-017, RP88-202-000, RP89-57-000, CP88-700-000, RP88-184-000, RP89-132-000, RP90-81-000, TM90-3-33-000, CP88-434-000, RP88-185-000, CP88-203-000, CP88-270-000, TA85-1-33-000, TA88-1-33-000, TA88-3-33-000, TQ89-1-33-000, TM89-1-33-000, CP88-244-000, CP89-483-000, CP89-1722-000, CP90-1034-000, CP90-1084-000, CP90-1269-000, CP90-1281-000, CP90-1600-000, CP89-896-000, CP89-1540-000 and CP88-433-000, El Paso Natural Gas Company
- Docket No. CP87-290-000, El Paso Production Company
- Docket No. CP87-553-000, El Paso Natural Gas Company
- Docket No. CI88-605-000, People of the State California v. El Paso Natural Gas Company and Odessa Natural Gasoline Company
- Docket No. CP87-44-000, Pacific Gas and Electric Company and Southern California Gas Company
- CAG-70.  
Docket No. RP90-102-001, 003, 004 and 005, Tarpon Transmission Company
- CAG-71.  
Docket Nos. CP88-712-003 and CP90-189-001, Texas Eastern Transmission Corporation
- CAG-72.  
Docket No. CP90-2222-000, United Gas Pipe Line Company
- CAG-73.  
Docket No. RP90-174-000, Transwestern Pipeline Company

**Hydro Agenda**

- H-1.  
Project No. 1417-017, Central Nebraska Public Power and Irrigation District. Project No. 1835-036, Nebraska Public Power District. Order on rehearing of stay order.
- H-2.  
Project Nos. 588-004 and 2883-006, James River Inc. II. Order on petitions for declaratory order.

**Electric Agenda**

- E-1.  
Docket No. EC90-16-000, Kansas City Power & Light Company. Order on request for authorization and approval of a merger.

**Oil and Gas Agenda**

**I. Pipeline Rate Matters**

- PR-1.  
Omitted
- PR-2.  
Docket No. RP90-120-000, Gas Research Institute. Order on GRI's 1991-1995 RD plan and 1991 R&D program.

**II. Producer Matters**

- PF-1.  
Reserved

**III. Pipeline Certificate Matters**

- PC-1.  
Docket No. CP89-2107-000, Arkla Energy Resources, Inc.  
Docket No. CP89-5-002, CNG Transmission Corporation  
Docket No. CP88-332-014, El Paso Natural Gas Company  
Docket No. CP88-546-004, Equitrans, Inc.  
Docket No. CP89-1179-001, Kentucky-West Virginia Gas Company  
Docket No. CP88-312-006, Natural Gas Company of America  
Docket No. CP88-2-010, Northern Natural Gas Company  
Docket No. CP89-834-003, Panhandle Eastern Pipe Line Company  
Docket No. CP88-473-004, Southern Natural Gas Company  
Docket No. CP89-759-001, Transcontinental Gas Pipe Line Corporation  
Docket No. CP88-99-012, Transwestern Pipeline Company  
Docket No. CP90-235-001, Williams Natural Gas Company. Report on Interruptible Sales Service technical conference and order regarding changes in existing ISS certificates.

Lois D. Cashell,

Secretary.

[FR Doc. 90-22929, Filed 9-24-90; 3:54 pm]

BILLING CODE 6717-01-M

**FEDERAL DEPOSIT INSURANCE CORPORATION**

Notice of a Matter To Be Added for 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 a review of the Corporation's June 30,

1990 financial results will be added to the agenda for consideration at the open meeting of the Board of Directors of the Federal Deposit Insurance Corporation scheduled to be held at approximately 8:30 a.m. on Thursday, September 27, 1990, in the Board Room on the sixth floor of the FDIC Building located at 550-17th Street NW., Washington, DC.

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: September 21, 1990.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 90-22636 Filed 9-24-90; 10:28 am]

BILLING CODE 6714-01-M

**FEDERAL RESERVE SYSTEM**

**TIME AND DATE:** 12:00 Noon, Monday, October 1, 1990.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Proposed 1991 Federal Reserve System personnel matters: (A) Reserve Bank officer salary structure adjustments; and (B) Board officer and employee salary structure adjustments and merit programs.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

**CONTACT PERSON FOR MORE INFORMATION:**

Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You can call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: September 21, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-22829 Filed 9-21-90; 4:26 pm]

BILLING CODE 6210-01-M

**INTERNATIONAL TRADE COMMISSION**

[USITC SE-90-23]

**TIME AND DATE:** Thursday, October 4, 1990 at 10:30 a.m.

**PLACE:** Room 101, 500 E Street, SW., Washington, DC 20436.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:**

1. Agenda
2. Minutes
3. Ratifications
4. Petitions and Complaints
5. Inv. No. 731-TA-445 (F) (Industrial Nitrocellulose from Yugoslavia—briefing and vote.
6. Inv. Nos. 701-TA-304 and 731-TA-470-472 (P) (Silicon Metal from Argentina, Brazil, & The People's Republic of China)—briefing and vote.
7. FY 92 Budget Request
8. Any items left over from previous agenda

**CONTACT PERSON FOR MORE**

**INFORMATION:** Kenneth R. Mason, Secretary, (202) 252-1000.  
Dated: September 18, 1990.

Kenneth R. Mason,  
Secretary.

[FR Doc. 90-22835 Filed 9-24-90; 10:28 am]

BILLING CODE 7020-02-M

**INTERSTATE COMMERCE COMMISSION**

Commission Voting Conference

**TIME AND DATE:** 10:00 a.m., Tuesday, October 2, 1990.

**PLACE:** Hearing Room A, Interstate Commerce Commission, 12th & Constitution Avenue NW., Washington, DC 20423.

**STATUS:** The purpose of the conference is for the Commission to discuss among themselves, and to vote on, the agenda items. Although the conference is open for the public observation, no public participation is permitted.

**MATTERS TO BE DISCUSSED:**

Finance Docket No. 31700, *Canadian Pacific Ltd.—Purchase & Trackage Rights—Delaware & Hudson*

Finance Docket No. 31393, *Brandywine Valley Railroad Company—Purchase—CSX Transportation, Inc., Lines in Florida* and Finance Docket No. 31393 (Sub-No. 1), *Brandywine Valley Railroad Company—Purchase—CSX Transportation, Inc., Lines in Florida, Petition for Review of an Arbitral Award*

Ex Parte No. 346 (Sub-No. 2A), *Rail General Exemption Authority—Miscellaneous Manufactured Commodities*

Docket No. AB-12 (Sub-No. 12AX), *Southern Pacific Transportation Company—Abandonment Exemption—In Mineral County, NY*

Ex Parte No. 346 (Sub-No. 19B), *Boxcar Car Hire and Car Service—Exemption—Bangor and Aroostook Railroad Company*

**CONTACT PERSON FOR MORE**

**INFORMATION:** A. Dennis Watson, Office of External Affairs, Telephone: (202) 275-7252, TDD: (202) 275-1721.

Sidney L. Strickland, Jr.,  
Secretary.

[FR Doc. 90-22888 Filed 9-24-90; 3:38 pm]

BILLING CODE 7035-01-M

**NUCLEAR REGULATORY COMMISSION**

**DATE:** Weeks of September 24, October 1, 8, and 15, 1990.

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Open and Closed.

**MATTERS TO BE CONSIDERED:**

**Week of September 24**

*Wednesday, September 26*

2:00 p.m.

Periodic Briefing on the Status of Browns Ferry 2 (Public Meeting)

3:30 p.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

*Friday, September 28*

2:00 p.m.

Briefing on Studies of Cancer in Populations Near Nuclear Facilities Including Three Mile Island (Public Meeting)

**Week of October 1—Tentative**

*Monday, October 1*

2:00 p.m.

Briefing on Conformity of Guidance on Low Level Waste Disposal Facilities with Requirements of 10 CFR Part 61 (Public Meeting)

*Tuesday, October 2*

1:00 p.m.

Affirmation/Discussion and Vote (Public Meeting)

a. Petitions to Intervene and Requests for Hearing in Shoreham Operating License Amendment Proceeding (postponed from September 21).

**Week of October 8—Tentative**

There are no Commission meetings scheduled for the Week of October 8.

**Week of October 15—Tentative**

*Monday, October 15*

10:00 a.m.

Briefing on Regulatory Impact Survey Recommendations (Public Meeting)

2:00 p.m.

Briefing on Decoupling Siting Requirements from Future Designs and Update of Source Term Matters (Public Meeting)

*Wednesday, October 17*

11:30 a.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

**Note.**—Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

**TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING):** (301) 492-0292.

**CONTACT PERSON FOR MORE INFORMATION:** William Hill (301) 492-1661.

Dated: September 20, 1990.

William M. Hill, Jr.,

Office of the Secretary.

[FR Doc. 90-22830 Filed 9-21-90; 4:26 pm]

BILLING CODE 7580-01-M

**SECURITIES AND EXCHANGE COMMISSION**

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meeting during the week of September 24, 1990.

A closed meeting will be held on Tuesday, September 25, 1990, at 2:30 p.m.

The Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Schapiro, a duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, September 25, 1990, at 2:30 p.m., will be:

Institution of injunctive actions.

Institution of administrative proceedings of an enforcement nature.

Settlement of injunctive actions.

Settlement of administrative proceedings of an enforcement nature.

Report of investigation.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Barbara Green at (202) 272-2000.

Dated: September 20, 1990.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-22876 Filed 9-24-90; 12:03 pm]

BILLING CODE 8010-01-M

# Corrections

Federal Register

Vol. 55, No. 187

Wednesday, September 28, 1990

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF COMMERCE

### Bureau of Export Administration

#### Action Affecting Export Privileges; Harold Bennett

##### Correction

In notice document 90-22150 beginning on page 38574, in the issue of Wednesday, September 19, 1990, make the following correction:

On page 38574, in the second column, in the 22nd line from the bottom, "Harold Bennett, 26" should read "Harold Bennett, 25".

BILLING CODE 1505-01-D

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Parts 611 and 663

[Docket No. 900941-0241]

RIN 0648-AC43

#### Pacific Coast Groundfish Fishery

##### Correction

In proposed rule document 90-21831 beginning on page 38105 in the issue of Monday, September 17, 1990, make the following correction:

On page 38105, in the second column, under the DATES caption, in the second line "November 1, 1990" should read "October 26, 1990".

BILLING CODE 1505-01-D

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Parts 611, 672, and 675

[Docket No. 900244-0234]

RIN 0648-AC80

#### Foreign Fishing; Groundfish of the Gulf of Alaska; Bering Sea and Aleutian Islands

##### Correction

In proposed rule document 90-21668 beginning on page 37907 in the issue of Friday, September 14, 1990, make the following correction:

On page 37907, in the first column, under the DATES caption, "October 29, 1990" should read "October 28, 1990."

BILLING CODE 1505-01-D

## FEDERAL COMMUNICATIONS COMMISSION

### Applications; Caprock Educational Broadcasting Foundation, et al

##### Correction

In notice document 90-20520 beginning on page 35461, in the issue of Thursday, August 30, 1990, make the following correction:

On page 35461, in the second column, under the heading III, in the third column of the table, in the first line, "90-263" should read "90-362".

BILLING CODE 1505-01-D

## FEDERAL ELECTION COMMISSION

### 11 CFR Parts 107, 114 and 9008

[Notice 1990-12]

#### Presidential Election Campaign Fund and Federal Financing of Presidential Nominating Conventions

##### Correction

In proposed rule document 90-19719 beginning on page 34267 in the issue of Wednesday, August 22, 1990, make the following corrections:

1. On page 34268, in the first column, in the fourth paragraph, in the 18th line "expense" should read "expenses".

2. On page 34269, in the second column, in the first full paragraph, in the

second line from the end "state" should read "stale".

3. On the same page, in the third column, in first full paragraph in the fourth line "implement" should read "implements"; and in the third line from the end, insert "a" after "for".

4. On page 34270 in the first column, in the first full paragraph, in the 10th line, insert "in" after "addressed".

5. On the same page, in the same column in the second full paragraph, in the third and second lines from the end, the words "may" and "particular" were misspelled, respectively.

6. On the same page, in the second column, in the first full paragraph, on the ninth line, "used" should read "uses"; and in the second line from the end, "received" should read "receive".

#### § 9008.3 [Corrected]

7. On page 34272, in § 9008.3(b)(2)(i), in the second column, on the third line, insert "of" after "as"; and in the seventh line, "the" should read "that".

#### § 9008.6 [Corrected]

8. On page 34273, in the first column, in § 9008.6(d), in the fourth line, "agreement" was misspelled.

#### § 9008.7 [Corrected]

9. On the same page, in the second column, in § 9008.7(a)(4)(iv), on the first line "or" should read "of".

#### § 9008.7 [Corrected]

10. On the same page, in § 9008.7(b)(3), in the third column, on the second line from the bottom "parents" should read "parts".

#### § 9008.8 [Corrected]

11. On page 34274, in the first column, in § 9008.8(a)(3), in the seventh line "2" should read "(2)".

#### § 9008.8 [Corrected]

12. On the same page, in § 9008.8(b)(2), in the same column, in the sixth line from the end "corporation" should read "corporations".

#### § 9008.9 [Corrected]

13. On the same page, in the second column, in the heading for § 9008.9(a)(1), "Reduction" should read "Reductions".

#### § 9008.9 [Corrected]

14. On the same page, in § 9008.9(a)(2), in the second column, in the last line, "business" should read "businesses".

**§ 9008.12 [Corrected]**

15. On page 34277, in § 9008.12, in the first column, the paragraphs designated (3) and (e) should be designated as (e) and (f), respectively.

**§ 9008.14 [Corrected]**

16. On the same page, in the second column, in § 9008.14(a)(1)(i), in the first line, "30" should be "20".

**§ 9008.14 [Corrected]**

17. On the same page, in the same column, in the heading of § 9008.14(b) "failure" was misspelled.

**§ 9008.15 [Corrected]**

18. On page 34278, in the first column, in § 9008.15(c), on the ninth line, "an" should read "any".

**§ 9008.50 [Corrected]**

19. On the same page, in the second column, in § 9008.50, in the 12th line, "expenditures" was misspelled.

**§ 9008.51 [Corrected]**

20. On the same page, in the third column, in § 9008.51(b)(3), in the first line "receipt" should read "receipts".

**§ 9008.51 [Corrected]**

21. On the same page, in the same column, in § 9008.51(c)(1), in the seventh line "or" should read "of".

**§ 9008.53 [Corrected]**

22. On page 34279, in the second column, in § 9008.50, in the section heading, and in the heading of paragraph (a), "corporation" should read "corporations".

**§ 9008.53 [Corrected]**

23. On the same page, in the same column, in § 9008.53(a)(2)(i), in the fifth line delete the comma.

BILLING CODE 1505-01-D

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT****Office of the Assistant Secretary for Housing-Federal Housing Commissioner****24 CFR Parts 201, 203, and 234**

[Docket No. N-90-3136; FR-2864-N-01]

**Mortgage Insurance; Changes to the Maximum Mortgage Limits for Single Family Residences, Condominiums and Manufactured Homes and Lots***Correction*

In rule document 90-21401 beginning on page 37462, in the issue of Wednesday, September 12, 1990, make the following correction:

On page 37464, in the first column, under **Region IV— HUD Field Office — Louisville Office**, in the second line, "Oldham County, Bullet County," should have appeared on the first line after "Shelby County".

BILLING CODE 1505-01-D

**DEPARTMENT OF THE INTERIOR****Bureau of Land Management****43 CFR Public Land Order 6797**

[WY-930-00-4214-10; WYW 109115]

**Withdrawal of Public Mineral Estate for Whiskey Mountain Bighorn Sheep Winter Range; Wyoming***Correction*

In rule document 90-21742 appearing on page 37878, in the issue of Friday, September 14, 1990, make the following corrections:

1. On page 37878, in the first column, the Public Land Order should read as set forth above.

2. On the same page, in the second column, in the land description, under **Sixth Principal Meridian**, in the 13th line, "T. 41 N.," should read "T. 40 N.,".

BILLING CODE 1505-01-D

**NATIONAL SCIENCE FOUNDATION****Systematic Biology Advisory Panel Meeting***Correction*

In notice document 90-21639 appearing on page 37988, in the issue of Friday, September 14, 1990, make the following correction:

On page 37988, in the second column, in the file line at the end of the document, "FR Doc. 90-21634" should read "FR Doc. 90-21639".

BILLING CODE 1505-01-D

**DEPARTMENT OF THE TREASURY****Customs Service****19 CFR Part 192**

[T.D. 90-71]

**Exportation of Self-Propelled Vehicles***Correction*

In rule document 90-21513 beginning on page 37707 in the issue of Thursday, September 13, 1990, make the following correction:

On page 37708, in the first column, in the second paragraph, in the ninth line from the end, "landing" should read "lading".

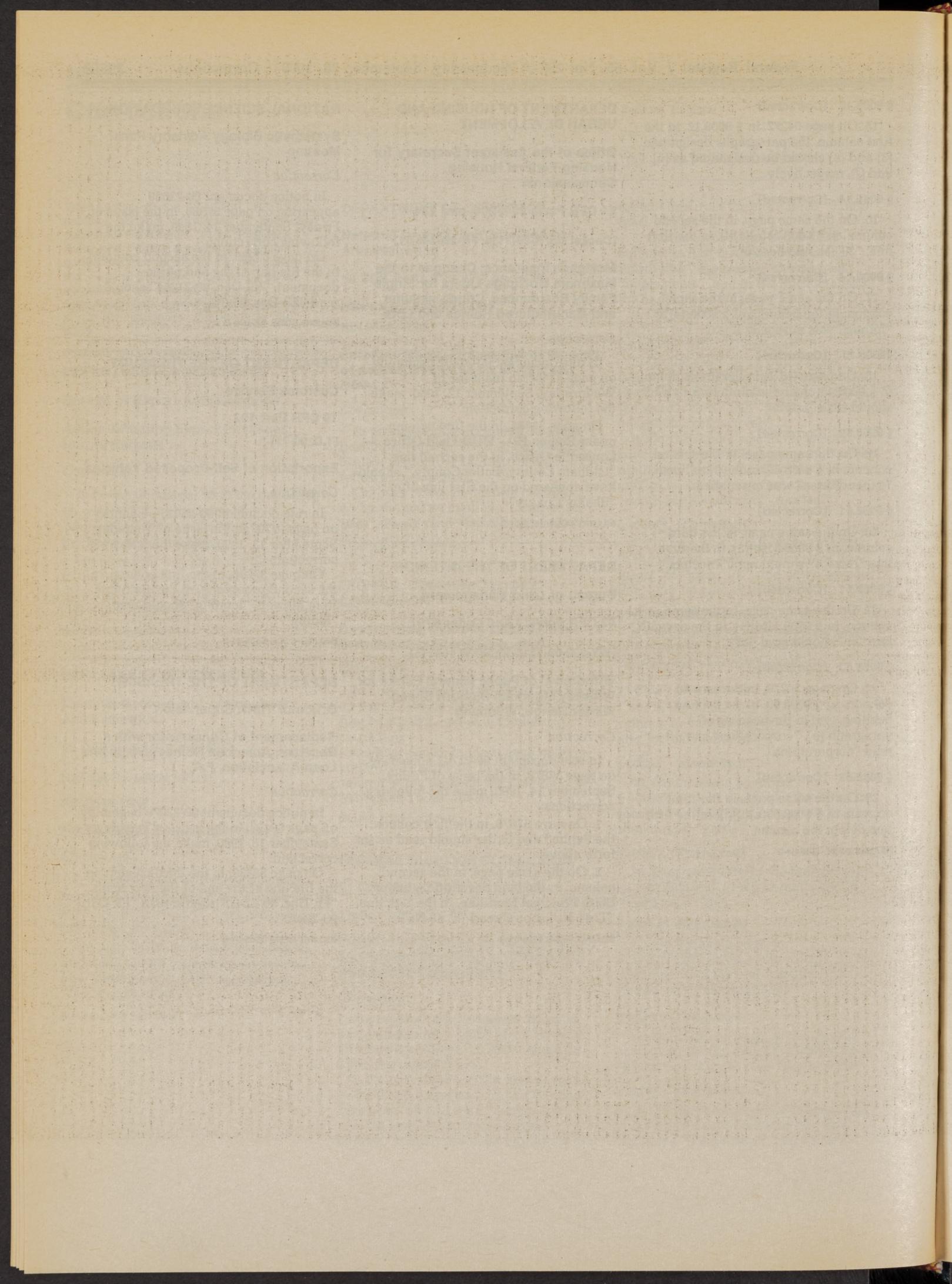
BILLING CODE 1505-01-D

**DEPARTMENT OF THE TREASURY****Office of Thrift Supervision****Replacement of Conservator with a Receiver; American Home Savings and Loan Association, F.A.***Correction*

In notice document 90-22070 beginning on page 38433, in the issue of Tuesday, September 18, 1990, make the following correction:

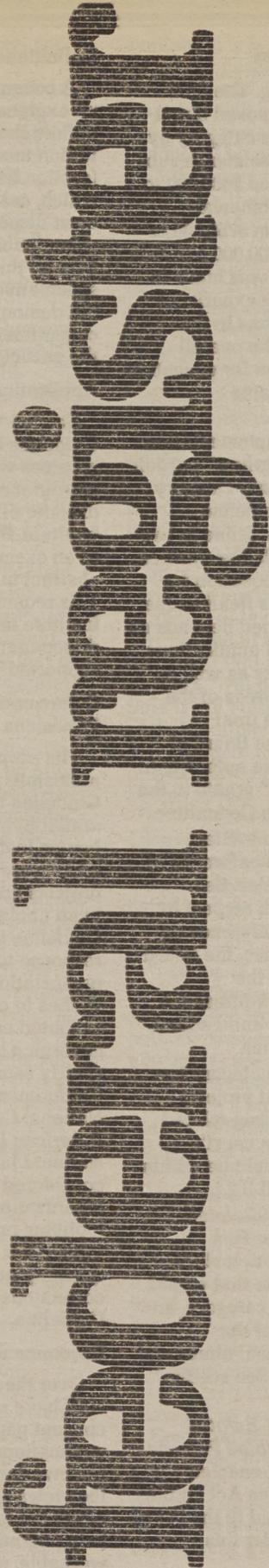
On page 38433, in the third column, in the file line at the end of the document, "FR Doc. 90-22-90" should read "FR Doc. 90-22070".

BILLING CODE 1505-01-D



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Wednesday  
September 26, 1990



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Part II

**State Justice  
Institute**

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Grant Guideline; Notice

## STATE JUSTICE INSTITUTE

### Grant Guideline

**AGENCY:** State Justice Institute.

**ACTION:** Final Grant Guideline.

**SUMMARY:** This Guideline sets forth the administrative, programmatic, and financial requirements attendant to Fiscal Year 1991 State Justice Institute grants, cooperative agreements, and contracts.

**EFFECTIVE DATE:** September 26, 1990.

**FOR FURTHER INFORMATION CONTACT:** David I. Tevelin, Executive Director, or Richard Van Duizend, Deputy Director, State Justice Institute, 120 S. Fairfax St., Alexandria, Virginia 22314.

**SUPPLEMENTARY INFORMATION:** Pursuant to the State Justice Institute Act, 42 U.S.C. 10701, et seq., as amended, the Institute is authorized to award grants, cooperative agreements, and contracts to State and local courts, nonprofit organizations, and others for the purpose of improving the administration of justice in the State courts of the United States. Approximately \$10-12 million is expected to be available for award in FY 1991.

### FY 1991 Funding Schedule

With two exceptions noted immediately below, the FY 1991 concept paper deadline is December 3, 1990. Papers must be postmarked or bear other evidence of submission by that date. The Board of Directors will meet on March 7-10, 1991 to invite formal applications based on the most promising concept papers. Applications will be due May 14, 1991 and awards approved by the Board at its July 25-28, 1991 meeting.

The exceptions to this schedule are proposals to follow up on the "Future and the Courts" Conference held this past May in San Antonio under the joint sponsorship of the Institute and the American Judicature Society (see section II.B.2.d.), and proposals to sponsor a National Conference on State-Federal Judicial Issues (see section II.B.2.b.iv.(b)). As stated in the proposed Guideline, the submission deadline for concept papers in these two areas only is October 10, 1990. Grants to support projects in these areas will be awarded at the Board's March 7-10, 1991 meeting.

### Changes in the Final Guideline

On August 6, 1990, the Institute published its proposed FY 1991 Grant Guideline in the *Federal Register* for public comment. 55 FR 32038. The changes made in the final Guideline are set forth below:

### Special Interest Categories

*Education and Training.* The final Guideline revises the proposed target funding allocations in this category by reducing the Technical Assistance sub-category from the proposed \$600,000 to \$100,000 and raising the Renewal Funding sub-category from \$750,000 to \$1,250,000. The shift of \$500,000 between these two sub-categories was made in light of last year's funding experience and anticipated applications in the affected subcategories. The overall \$3,350,000 target allocation for education and training projects remains unchanged.

With respect to the "Implementation of In-State Education Programs" portion of the "State Initiatives" sub-category (II.B.2.b.i.(b)), the final Guideline modifies the proposed Guideline in two ways. First, the final Guideline clarifies that the \$250,000 target allocation for implementation projects is flexible; the exact amount to be awarded depends on the number and quality of applications submitted for such projects as well as those submitted in other areas of the Guideline. In addition, the final Guideline explains that the Board of Directors has delegated the authority to approve "implementation" grants to the Board's Judicial Education Committee.

The final Guideline also invites proposals for a National Conference of State Supreme Court Justices. See Section II.B.2.b.iv.(d). With respect to the proposed National Conference on State-Federal Judicial Issues, the Board wishes to make clear that the conference is designed to address the interests of both the State and Federal courts in a balanced manner.

*Substance Abuse.* This category has been revised to clarify that projects addressing the impact of drug-related cases on other aspects of a court's caseload or operations would be within the category. See section II.B.2.j.

*Responding to the Court-Related Needs of Victims of Crime.* This category has been revised to include, among the types of projects that would be within the scope of the category, an examination of the effect of the relationship between spousal abuse and child abuse on the courts. See section II.B.2.k.

*Responding to the Court-Related Needs of Elderly and Disabled Persons.* The impact of the recently-enacted Americans With Disabilities Act on the State courts has been added to the list of possible project topics under this category.

### Definitions

A comment was received requesting an explanation of the change in the definition of "match" clarifying that tuition income does not constitute match (section III.C.). In order to be considered match, cash or in-kind contributions must demonstrate the grantee's commitment to the project. Tuition fails to meet this test because of its speculative nature and because it does not demonstrate the grantee's commitment to the project, but rather the participants'.

### Application Requirements

Section VII.C.6. of the proposed Guideline has been amended to require grantees whose projects produce wordprocessed products to submit a diskette of the text in ASCII to the Institute. For non-text products, a copy of an executive summary or a brief abstract in ASCII must be submitted. This requirement will greatly assist the Institute in its ability to efficiently disseminate information about grant-supported projects.

### Enforcement of Statutory Anti-Lobbying Provisions

The proposed Grant Guideline added provisions to sections VII. and X. of the Guideline that would implement the anti-lobbying provisions of the State Justice Institute Act, 42 USC 10706(a)(1), and assure that Institute-supported projects are designed and implemented in an unbiased manner. The final Guideline is unchanged in this regard. In response to the comments of two organizations, however, the Board wishes to clarify that organizationally affiliated entities that have different governing bodies or are otherwise clearly separate organizations, e.g., the Conference of Chief Justices and the National Center for State Courts, or the American Bar Association and the National Judicial College, would not be considered parts of the same organization for the purposes of the anti-lobbying provisions of the Guideline.

No other changes (except typographical and grammatical corrections) have been made in the final Guideline.

### Recommendations to Grantwriters

Over the past three years, Institute staff have reviewed approximately 1,100 concept papers and over 400 applications. On the basis of those reviews, inquiries from applicants, and the views of the Board, the Institute offers the following recommendations to help potential applicants present workable, understandable proposals

that can meet the funding criteria set forth in this Guideline.

The Institute suggests that applicants make certain that they address the questions and issues set forth below when preparing a concept paper or application. Concept papers and applications should, however, be presented in the formats specified in sections VI. and VII. of the Guideline, respectively.

1. *What is the subject or problem you wish to address?*

Describe the subject or problem and how it affects the courts and the public. Discuss how your approach will improve the situation or advance the state of the art or knowledge, and explain why it is the most appropriate approach to take. When statistics or research findings are cited to support a statement or position, the source of the citation should be referenced in a footnote.

2. *What do you want to do?* Explain the goal(s) of the project in simple, straightforward terms. To the greatest extent possible, an applicant should avoid a specialized vocabulary that is not readily understood by the general public. Technical jargon does not enhance a paper.

3. *How will you do it?* Describe the methodology carefully so that what you propose to do and how you would do it is clear. All proposed tasks should be set forth so that a reviewer can see a logical progression of tasks and relate those tasks directly to the accomplishment of the project's goal(s). When in doubt about whether to provide a more detailed explanation or to assume a particular level of knowledge or expertise on the part of the reviewers, err on the side of caution and provide the additional information. A description of project tasks will also help identify necessary budget items. All staff positions and project costs should relate directly to the tasks described. The Institute encourages concept paper applicants to attach letters of cooperation and support from the courts and related agencies that will be involved in or directly affected by the proposed project.

4. *How will you know it works?* Every project design must include an evaluation component to determine whether the proposed training, procedure, service, or technology accomplished the objectives it was designed to meet. Concept papers and applications should describe the criteria that will be used to evaluate the project's effectiveness and identify program elements which will require further modification. The description in the application should include how the

evaluation will be conducted, when it will occur during the project period, who will conduct it, and what specific measures will be used. In most instances, the evaluation should be conducted by persons not connected with the implementation of the procedure, training, service, or technique, or the administration of the project.

The Institute has also prepared a more thorough list of recommendations to grantwriters regarding the development of project evaluation plans. Those recommendations are available from the Institute upon request.

5. *How will others find out about it?* Every project design must include a plan to disseminate the results of the training, research, or demonstration beyond the jurisdictions and individuals directly affected by the project. The plan should identify the specific methods which will be used to inform the field about the project, such as the publication of law review or journal articles, presentations at appropriate conferences, or the distribution of key materials. A statement that a report or research findings "will be made available to" the field is not sufficient. The specific means of distribution or dissemination should be identified. Reproduction and dissemination costs are allowable budget items.

6. *What are the specific costs involved?* The budget in both concept papers and applications should be clearly presented. Major budget categories such as personnel, benefits, travel, supplies, equipment, and indirect costs should be clearly identified.

7. *What, if any, match is being offered?* Courts and other units of State and local government (not including publicly supported institutions of higher education) are required by the State Justice Institute Act, as amended, to contribute a match (cash, non-cash, or both) of not less than 50 percent of the grant funds requested from the Institute. All other applicants are also encouraged to provide a matching contribution to assist in meeting the costs of a project. The match requirement works as follows: if, for example, the total cost of a project is anticipated to be \$150,000, a State or local court or executive branch agency may request up to \$100,000 from the Institute to implement the project. The remaining \$50,000 (50% of the \$100,000 requested from SJI) must be provided as match.

Cash match includes funds directly contributed to the project by the applicant, or by other public or private sources. Non-cash match refers to in-kind contributions by the applicant, or other public or private sources. When

match is offered, the nature of the match (cash or in-kind) should be explained and, at the application stage, the tasks and line items for which costs will be covered wholly or in part by match should be specified.

8. *Which of the two budget forms should be used?* Section VII.A.3. of the SJI Grant Guideline encourages use of the spreadsheet format of Form C1 if the funding request exceeds \$100,000. Form C1 also works well for projects with discrete tasks, no matter what the dollar value of the project. Form C, the tabular format, is preferred for projects lacking a number of discrete tasks, or for projects requiring less than \$100,000 of Institute funding. Generally, applicants should use the form that best lends itself to representing most accurately the budget estimates for the project.

9. *How much detail should be included in the budget narrative?* The budget narrative of an application should provide the basis for computing all project-related costs, as indicated in section VII.D. of the SJI Grant Guideline. To avoid common shortcomings of application budget narratives, the following information should be included:

- Personnel estimates that accurately provide the amount of time to be spent by personnel involved with the project and the total associated costs, including current salaries for the designated personnel (e.g., Project Director, 50% for one year, annual salary of \$30,000=\$15,000). If salary costs are computed using an hourly or daily rate, the annual salary and number of hours or days in a work-year should be shown.
- Estimates for supplies and expenses supported by a complete description of the supplies to be used, nature and extent of printing to be done, anticipated telephone charges, and other common expenditures, with the basis for computing the estimates included (e.g., 100 reports  $\times$  75 pages each  $\times$  .05/page = \$375.00).

Supply and expense estimates offered simply as "based on experience" are not sufficient.

In order to expedite Institute review of the budget, applicants should make a final comparison of the amounts listed in the budget narrative with those listed on the budget form. In the rush to complete all parts of the application on time, there may be many last-minute changes; unfortunately, when there are discrepancies between the budget narrative and the budget form or the amount listed on the application cover sheet, it is not possible for the Institute to verify the amount of the request. A final check of the numbers on the form

against those in the narrative will preclude such confusion.

10. *What travel regulations apply to the budget estimates?* Transportation costs and per diem rates must comply with the policies of the applicant organization, and a copy of the applicant's travel policy should be submitted as an appendix to the application. If the applicant does not have a travel policy established in writing, then travel rates must be consistent with those established by the Institute or the Federal Government (a copy of the Institute's travel policy is available upon request). The budget narrative should state which regulations are in force for the project and should include the number of persons traveling, the number of trips to be taken, and the length of stay. The estimated costs of travel, lodging, and other subsistence should be listed separately. When combined, the subtotals for these categories should equal the estimate listed on the budget form.

11. *May grant funds be used to purchase equipment?* Grant funds may be used to purchase or lease only that equipment which is essential to accomplishing the objectives of the project. The budget narrative must list such equipment and explain why the equipment is necessary. Written prior approval of the Institute is required when the amount of automatic data processing equipment to be purchased or leased exceeds \$10,000, or the software to be purchased exceeds \$3,000.

12. *To what extent may indirect costs be included in the budget estimates?* It is the policy of the Institute that all costs should be budgeted directly; however, if an applicant has an indirect cost rate that has been approved by a Federal agency within the last two years, an indirect cost recovery estimate may be included in the budget. A copy of the approved rate agreement should be submitted as an appendix to the application. If an applicant does not have an approved rate agreement, an indirect cost rate proposal should be prepared in accordance with section XLH.3 of the Grant Guideline, based on the applicant's audited financial statements for the prior fiscal year (applicants lacking an audit must budget all project costs directly). If an indirect cost rate proposal is to be submitted, the budget should reflect estimates based on that proposal. Obviously, this requires that the proposal be completed for the applicant's use at the time of application so that the appropriate estimates may be included; however, grantees have until three months after the project start

date to submit the indirect cost proposal to the Institute for approval.

13. *Does the budget truly reflect all costs required to complete the project?* After preparing the program narrative portion of the application, applicants may find it helpful to list all the major tasks or activities required by the proposed project, including the preparation of products, and note the individual expenses, including personnel time, related to each. This will help to ensure that, for all tasks described in the application (e.g., development of a videotape, research site visits, distribution of a final report), the related costs appear in the budget and are explained correctly in the budget narrative.

#### State Justice Institute Grant Guideline

The following Grant Guideline is accordingly adopted by the State Justice Institute for Fiscal Year 1991:

#### State Justice Institute Grant Guideline Table of Contents

##### Summary

- I. Background
- II. Scope of the Program
- III. Definitions
- IV. Eligibility for Award
- V. Types of Projects and Amounts of Awards
- VI. Concept Paper Submission Requirements for New Projects
- VII. Application Requirements for New Projects
- VIII. Application Review Procedures
- IX. Renewal Funding Procedures and Requirements
- X. Compliance Requirements
- XI. Financial Requirements
- XII. Grant Adjustments

##### Appendix—List of State Contacts Regarding Administration of Institute Grants to State and Local Courts

##### Summary

This Guideline sets forth the programmatic, financial, and administrative requirements of grants, cooperative agreements, and contracts awarded by the State Justice Institute. The Institute, a private, nonprofit corporation established by an Act of Congress, is authorized to award grants, cooperative agreements and contracts to improve the administration and quality of justice in the State courts.

Grants may be awarded to State and local courts and their agencies; national nonprofit organizations controlled by, operating in conjunction with, and serving the judicial branch of State governments; national nonprofit organizations for the education and training of judges and support personnel of the judicial branch of State governments; other nonprofit organizations with expertise in judicial

administration; institutions of higher education; individuals, partnerships, firms, or corporations; and private agencies with expertise in judicial administration if the objectives of the funded program can be better served by such an entity. Funds may also be awarded to Federal, State or local agencies and institutions other than courts for services that cannot be provided for adequately through nongovernmental arrangements.

It is anticipated that approximately \$10–12 million will be available for grants, contracts, and cooperative agreements from FY 1991 appropriations. The Institute may also provide financial assistance in the form of interagency agreements with other grantors. The Institute will consider applications for funding support that address any of the areas specified in its enabling legislation; however, the Board of Directors of the Institute has designated certain program categories as being of special interest.

The Institute has established one round of competition for FY 1991 funds. The concept paper submission deadline for all but two funding categories is December 3, 1990. Concept papers concerning the proposed National Conference on State/Federal Judicial Issues and concept papers proposing projects to follow-up on the Future and the Courts Conference must be mailed by October 10, 1990. This Guideline applies to all concept papers and formal applications submitted for FY 1991 funding.

The awards made by the State Justice Institute are governed by the requirements of this Guideline and the authority conferred by Public Law 98–620, title II, 42 U.S.C. 10701, *et seq.*, as amended.

#### I. Background

The State Justice Institute ("Institute") was established by Public Law 98–620 to improve the administration of justice in the State courts in the United States. Incorporated in the State of Virginia as a private, nonprofit corporation, the Institute is charged, by statute, with the responsibility to:

- A. Direct a national program of financial assistance designed to assure that each citizen of the United States is provided ready access to a fair and effective system of justice;
- B. Foster coordination and cooperation with the Federal judiciary;
- C. Promote recognition of the importance of the separation of powers doctrine to an independent judiciary; and

D. Encourage education for judges and support personnel of State court systems through national and State organizations, including universities.

To accomplish these broad objectives, the Institute is authorized to provide funds to State courts, national organizations which support and are supported by State courts, national judicial education organizations, and other organizations that can assist in improving the quality of justice in the State courts.

The Institute is supervised by an eleven-member Board of Directors appointed by the President, by and with the consent of the Senate. The Board is statutorily composed of six judges, a State court administrator, and four members of the public, no more than two of whom can be of the same political party.

The Institute's program budget for Fiscal Year 1991 is expected to be approximately \$10-12 million. Through the award of grants, contracts, and cooperative agreements, the Institute is authorized to perform the following activities:

1. Support research, demonstrations, special projects, technical assistance, and training to improve the administration of justice in the State courts;
2. Provide for the preparation, publication, and dissemination of information regarding State judicial systems;
3. Participate in joint projects with Federal agencies and other private grantors;
4. Evaluate or provide for the evaluation of programs and projects funded by the Institute to determine their impact upon the quality of criminal, civil, and juvenile justice and the extent to which they have contributed to improving the quality of justice in the State courts;
5. Encourage and assist in furthering judicial education;
6. Encourage, assist, and serve in a consulting capacity to State and local justice system agencies in the development, maintenance, and coordination of criminal, civil, and juvenile justice programs and services; and
7. Be responsible for the certification of national programs that are intended to aid and improve State judicial systems.

## II. Scope of the Program

During FY 1991, the Institute will consider applications for funding support that address any of the areas specified in its enabling legislation. The Board, however, has designated certain

program categories as being of "special interest." See section II.B.

### A. Authorized Program Areas

The State Justice Institute Act authorizes the Institute to fund projects addressing one or more of the following program areas:

1. Assistance to State and local court systems in establishing appropriate procedures for the selection and removal of judges and other court personnel and in determining appropriate levels of compensation;
2. Education and training programs for judges and other court personnel for the performance of their general duties and for specialized functions, and national and regional conferences and seminars for the dissemination of information on new developments and innovative techniques;
3. Research on alternative means for using judicial and nonjudicial personnel in court decisionmaking activities, implementation of demonstration programs to test such innovative approaches, and evaluations of their effectiveness;
4. Studies of the appropriateness and efficacy of court organizations and financing structures in particular States, and support to States to implement plans for improved court organization and financing;
5. Support for State court planning and budgeting staffs and the provision of technical assistance in resource allocation and service forecasting techniques;
6. Studies of the adequacy of court management systems in State and local courts, and implementation and evaluation of innovative responses to records management, data processing, court personnel management, reporting and transcription of court proceedings, and juror utilization and management;
7. Collection and compilation of statistical data and other information on the work of the courts and on the work of other agencies which relate to and affect the work of courts;
8. Studies of the causes of trial and appellate court delay in resolving cases, and establishing and evaluating experimental programs for reducing case processing time;
9. Development and testing of methods for measuring the performance of judges and courts and experiments in the use of such measures to improve the functioning of judges and the courts;
10. Studies of court rules and procedures, discovery devices, and evidentiary standards to identify problems with the operation of such rules, procedures, devices, and standards; and the development of

alternative approaches to better reconcile the requirements of due process with the need for swift and certain justice, and testing of the utility of those alternative approaches;

11. Studies of the outcomes of cases in selected areas to identify instances in which the substance of justice meted out by the courts diverges from public expectations of fairness, consistency, or equity; and the development, testing and evaluation of alternative approaches to resolving cases in such problem areas;

12. Support for programs to increase court responsiveness to the needs of citizens through citizen education, improvement of court treatment of witnesses, victims, and jurors, and development of procedures for obtaining and using measures of public satisfaction with court processes to improve court performance;

13. Testing and evaluating experimental approaches to provide increased citizen access to justice, including processes which reduce the cost of litigating common grievances and alternative techniques and mechanisms for resolving disputes between citizens; and

14. Other programs, consistent with the purposes of the Act, as may be deemed appropriate by the Institute, including projects dealing with the relationship between Federal and State court systems in areas where there is concurrent State-Federal jurisdiction and where Federal courts, directly or indirectly, review State court proceedings.

Funds will not be made available for the ordinary, routine operation of court systems in any of these areas.

### B. Special Interest Program Categories

#### 1. General Description

The Institute is interested in funding both innovative programs and programs of proven merit that can be replicated in other jurisdictions. Although applications in any of the statutory program areas are eligible for funding in FY 1991, the Institute is especially interested in funding those projects that:

- a. Formulate new procedures and techniques, or creatively enhance existing arrangements to improve the courts;
- b. Address aspects of the State judicial systems that are in special need of serious attention;
- c. Have national significance in terms of their impact or replicability in that they develop products, services and techniques that may be used in other States;

d. Create and disseminate products that effectively transfer the information and ideas developed to relevant audiences in State and local judicial systems or provide technical assistance to facilitate the adaptation of effective programs and procedures in other State and local jurisdictions.

A project will be identified as a "Special Interest" project if it meets the four criteria set forth above and (1) it falls within the scope of the "special interest" program areas designated below, or (2) information coming to the attention of the Institute from the State courts, their affiliated organizations, the research literature, or other sources demonstrates that the project responds to another special need or interest of the State courts.

Concept papers and applications which address a "Special Interest" category will be accorded a preference in the rating process. (See the selection criteria listed in sections VI.B., "Concept Paper Submission Requirements for New Projects," and VIII.B., "Application Review Procedures.")

## 2. Specific Categories

The Board has designated the areas set forth below as "Special Interest" program categories. The order of listing does not imply any ordering of priorities among the categories.

a. *Courts and the Community.* This category includes research, demonstration, and evaluation projects to enhance communication and understanding between courts and the communities they serve. Examples of the issues that may be addressed include: the innovative use of community volunteers to enhance court operations and services; innovative programs that improve access to justice, other than those that provide legal representation; innovative methods of fairly and effectively handling cases involving pro se litigants; methods for improving the court system's responsiveness to public needs and expectations; innovative methods or materials for schools or citizens' groups to improve public understanding of the courts; and other innovative approaches to enhancing public understanding of the purpose and operations of the judicial system and the system's responsiveness to its citizenry.

The category also includes projects designed to examine or enhance relations between the courts and the media. Such projects might address the use of orders limiting access to courtrooms and sealing settlement agreements and dispositional orders, and the effect of such orders on public perceptions of the fairness of the court process.

b. *Education and Training for Judges and Other Key Court Personnel.* The Board of Directors anticipates allocating approximately \$3,350,000 for judicial education projects in FY 1991. Of this amount, it is expected that up to \$2,100,000 will provide support to projects which the Institute has not funded previously, and up to \$1,250,000 will provide renewal funding for judicial education programs of proven merit under Section IX of the Guideline. The exact amount to be awarded in each subcategory listed below will depend on the number and quality of the applications submitted in both this Special Interest category and other areas of the Guideline. The Board anticipates allocating the \$2,100,000 available for new awards in Fiscal Year 1991 as follows:

i. State Initiatives.....	\$750,000
ii. National/Regional Training Programs .....	750,000
iii. Technical Assistance .....	100,000
iv. Conferences.....	500,000
Total.....	2,100,000

i. *State Initiatives.* This category includes support for training projects developed or endorsed by a State's courts for the benefit of judges and other court personnel in that State. Funding of these initiatives does not include support for training programs conducted by national providers of judicial education unless such a program is designed specifically for a particular State and has the express support of the State Chief Justice, State Court Administrator, or State Judicial Educator. The types of programs to be supported within this category should be defined by individual State need but may include:

(a) *Development of In-State Education Programs:*

- The development of State-determined standards for judicial education;
- The preparation of State plans for judicial education, including model plans for career-long education of the judiciary (e.g., new judge training and orientation followed by continuing education and career development);
- Seed money for the creation of an ongoing State-based entity for planning, developing, and administering judicial education programs;
- The development of a pre-bench orientation program and other training for new judges;
- The development of benchbooks and other educational materials; and
- Seed money for innovative continuing education and career development

programs, including training which brings teams of judges, court managers and other court personnel together to address topics of mutual interest and concern.

(b) *Implementation of In-State Education Programs.* The Board proposes to reserve \$250,000 of the \$750,000 allocated for State Initiatives to provide support for in-State implementation of model curricula and/or model training previously developed with SJI support. The exact amount to be awarded for implementation grants will depend on the number and quality of the applications submitted in this area and other areas of the Guideline. Implementation projects may include in-State replication or State-specific modification of a model training program, model curriculum, or course module developed with SJI funds by any other State or any national organization; adaptation of a curriculum or a portion of a curriculum developed for a national or regional conference; or adaptation of curriculum for use as part of a State judicial conference or State training program for judges and other court personnel. Only State or local courts may apply for in-State implementation funding.

Grants to support in-State implementation of training programs previously developed with SJI funds are limited to no more than \$20,000 each and will be awarded on the basis of criteria including: the need for outside funding; the certainty of implementation; and expressions of interest by the judges and/or court personnel (e.g., the State judicial educator, State Court Administrator or individual court manager) who would be directly involved in or affected by the project. The Institute will also consider such factors as diversity of subject matter and geographic diversity in making implementation awards. In lieu of concept papers and formal applications, applicants for in-State implementation grants may submit a detailed letter outlining the proposed project and addressing the three criteria listed above, at any time. The Board of Directors has delegated its authority to approve these grants to its Judicial Education Committee. Applicants seeking other types of funding must comply with the requirements for concept papers and applications set forth in Sections VI and VII or the requirements for renewal applications set forth in Section IX.

ii. *National and Regional Training Programs.* This category includes support for national or regional training programs developed by any provider,

e.g., national organizations, State courts, universities, or public interest groups. Within this category, priority will be given to training projects which address issues of major concern to the State judiciary and other court personnel.

Programs to be supported may include:

- Training programs or seminars on topics of interest and concern that transcend State lines;
- Multi-State or regional training programs sponsored by national organizations, State courts or universities; and
- Specialized training programs for State trial and appellate court judges, State and local court managers, or other court personnel.

iii. *Technical Assistance.* Unlike the preceding categories which support direct training, "Technical Assistance" refers to services necessary for the development of effective educational projects for judges and other court personnel. Projects in this category should focus on the needs of the States, and applicants should demonstrate clearly their ability to work effectively with State judicial educators.

Within this category, priority will be given to the support of projects focused on State-to-State, State-to-national, and national-to-State transfer of ideas and information. Support and assistance to be provided by such projects may include:

- Development of educational curricula and support materials;
- Training faculty in adult education theory and practice;
- Consultation on planning, developing and administering State judicial education programs;
- Coordination and exchange of information among judicial education providers;
- Collection and dissemination of information about exemplary adult and continuing judicial education programs;
- Development of improved methods of evaluating court education programs; and
- On-site assistance in any of the areas listed above.

iv. *Conferences.* This category includes support for regional or national conferences on topics of major concern to the State judiciary and court personnel.

The Institute intends to support the planning and presentation of three conferences addressing the following three topics: The Impact of Substance Abuse Cases on the State Courts; State-Federal Judicial Issues; and The Improvement of the Adversary System.

(a) *The Impact of Substance Abuse Cases on the State Courts.* The Board of

Directors is specifically interested in receiving proposals from national organizations, universities, courts, and others to conduct a major national conference focusing on the impact of substance abuse cases on the State courts. The envisioned conference should be planned in collaboration with judges, court administrators, experts in the field of substance abuse, prosecutors and representatives from the criminal defense bar, treatment programs and human services agencies. It should provide the judiciary and other court personnel with basic information on substance abuse; the management of drug-related cases in criminal, civil, domestic relations, and juvenile dockets; effective treatment programs for individuals who abuse alcohol and other drugs; and sentencing alternatives. The Board specifically invites comments regarding the specific issues that should be addressed at the proposed conference, in addition to or instead of those listed below.

1. How is substance abuse defined and what are the various theoretical contexts for understanding the characteristics and different stages of substance abuse?

2. How can substance abuse be effectively diagnosed and treated? What diagnostic tools exist to help court personnel detect and assess substance abuse? Are new tools needed? What kinds of treatment programs exist, how do they differ, and do new program models need to be developed?

3. What are the "special issues" court personnel must understand and address with regard to substance abuse, for example:

- the relationship between AIDS and substance abuse;
- the appropriate response courts can make to problems resulting from the increasing number of infants born with impairments resulting from maternal drug and alcohol abuse;
- the relationship between substance abuse, child abuse and family violence; and
- the cumulative effect of substance abuse throughout succeeding generations.

4. What do judges need to know to make informed treatment and dispositional decisions? What are appropriate "sentencing alternatives" for adjudicated substance abusers and in what circumstances should they be used? What are the difference in the motivations of drug users, drug sellers who also use drugs, and non-user drug distributors and how should these difference be reflected in sentencing? What are the public's expectations of

the nature and effect of sentences in cases involving substance abuse and the illegal distribution of controlled substances?

5. What can or should judges do when the community does not have a sufficient number of treatment programs to which to refer substance abusers?

6. How are court dockets, both criminal and civil, impacted as a result of the increasing volume of substance abuse-related cases? How can a high volume of substance abuse-related cases best be managed fairly and expeditiously by the courts?

7. What resources already exist to help further educate judges and other court personnel on substance abuse, its causes, and its treatment.

(b) *National Conference on State-Federal Judicial Issues.* This conference, which will be considered by the Institute on an accelerated timetable, will focus on issues relating to the relationship between the State and Federal courts. Specifically, the Board expects the Conference to address the following topics, among others:

- the impact of possible revisions in habeas corpus procedures on the State and Federal judicial systems;
- coordination between State and Federal courts in the handling of mass tort litigation;
- reallocation of judicial business between the State courts, such as the recommendations made by the Federal Courts Study Committee, i.e., more drug case prosecutions in State courts and changes in Federal diversity of citizenship jurisdiction;
- the frequency, outcomes, and effect of Federal courts certifying questions of law for State Supreme Courts;
- the roles of local State-Federal Judicial Councils and a National State-Federal Judicial Council; and
- an exploration of the desirability and feasibility of better ways to share information between the State and Federal courts systems and to coordinate State and Federal judicial planning efforts.

The Board contemplates co-sponsoring the Conference with the Federal Judicial Center. In order to convene this important conference as soon as possible, the Board has approved an accelerated schedule for the consideration of concept papers and applications proposing the conference. Concept papers must be submitted no later than October 10, 1990. The Board will consider the concept papers and invite formal applications at its November 29–December 2, 1990 meeting. The applications will be considered at

the Board's meeting on March 7-10, 1991.

(c) *The Improvement of the Adversary System.* There have been a number of conferences and symposia addressing alternative dispute resolution procedures and their relationship to the courts. The Institute is now interested in supporting a conference that would examine the adversary system itself, including its strengths, its weaknesses, and what steps can be taken to improve both the system and the public's perception of the system.

Among the many topics that could be addressed at such a conference are: the types of cases for which the adversary process may be the most appropriate and the least appropriate; the role of the jury and the use of special or blue-ribbon juries; simplifying the pretrial process, including voir dire; the best way of presenting and adjudicating technically complex cases; methods for reducing trial length and expediting the trial process; the education of trial counsel and litigants about settlement techniques and methods for determining the value of their cases; the use and impact of Rule 11 and other sanctions; and improving access to the adversary process for poor and middle-income litigants. The conference should involve the participation of judges, attorneys, court managers, legal scholars, researchers, business leaders, citizen organizations, dispute resolution specialists, and media representatives.

(d) *State Supreme Court Justices Conference.* In light of the lack of opportunity for all members of the Supreme Courts of each of the States to meet together and discuss issues of common concern, the Institute invites proposals to sponsor an educational conference where State Supreme Court justices, legal scholars, and other participants would exchange information about:

- developing trends in civil, criminal, domestic relations, juvenile, and mental health law;
- emerging doctrines and principles in State constitutional law and the appropriate use of independent State grounds;
- problems and solutions in the relationship between State Supreme courts and the Federal court system;
- appellate procedures and case management techniques;
- the application of technology to assist the appellate process; and
- other developments in substantive law and judicial administration.

All court education programs should assure that faculty understand and apply adult education techniques and

teaching methods; provide opportunities for structured interaction among participants; develop tangible products and materials for use by the faculty, participants and other judicial educators; employ a process for the recruitment of qualified and effective faculty; and develop sound methods for evaluating the impact of the training.

c. *Alternative Dispute Resolution (ADR).* This category covers the evaluation of new and existing dispute resolution procedures and programs that have a substantial likelihood of resolving mass tort and multi-party cases, matters involving domestic violence, and other court cases in a more fair, expeditious, and less expensive manner than traditional court processing, with special emphasis on the effect of such programs on the quality of justice, litigant and court costs, court workload, and case processing. The Institute also is interested in continuing to explore the appropriate uses of ADR, the proper relationship between ADR and the courts; the nature and effect of settlement practices; and the ethical issues that face judicial officers who are involved in settlement activities.

In previous funding cycles, grants have been awarded to support development and evaluation of: juvenile offender-victim mediation; divorce mediation; court-annexed arbitration of civil cases; court-annexed mediation of civil, criminal, and domestic relations cases; medical malpractice mediation; appellate mediation; alternatives to adjudication in child abuse and neglect cases; early neutral evaluation of motor vehicle cases; the impact of private judging on the State courts; evaluations of multi-door courthouse programs; and civil settlement processes.

Additional SJI-supported ADR projects include: technical assistance to courts interested in implementing or expanding multi-door courthouse programs; development of standards for court-annexed mediation programs; examination of the philosophy, purpose, and evolution of ADR programs; testing of a referral-based mediation program; the retention and productivity of volunteer community mediators; the applicability of various dispute resolution procedures to different cultural groups; an examination of whether mediation of matters involving domestic violence is safe and appropriate; and a national directory of ADR programs.

d. *The Future and the Courts.* The mission of the "Future and the Courts" Conference convened by SJI and the American Judicature Society in San Antonio in May, 1990 was to "formulate visions of the American judicial system

over the next 30 years and beyond, establish goals for the long-term needs of the State courts, and identify an agenda for planning, action and research to achieve those goals." The Board has developed a list of Conference follow-up activities that would enable those at the Conference and others to begin to act on the agenda developed at the Conference in their own jurisdictions.

In order to expedite those activities, and preserve the momentum of the Conference, the Board has approved an accelerated schedule for Conference follow-up projects. Concept papers proposing such projects will be due October 10, 1990. The Board will review the concept papers at its November 29-December 2, 1990 meeting and invite applications that will be considered at the Board's meeting on March 7-10, 1991.

The Board will consider projects proposing:

(1) State futures commissions, conferences, and educational programs exposing judges and court staff to futures thinking and the trends that might impact their courts. *State futures commissions will be supported only if they are significantly different in approach and structure from futures commissions previously supported by the Institute in Arizona, Colorado, Massachusetts, Utah, and Virginia;*

(2) Development, implementation, and evaluation of institutionalized long-term planning efforts in individual States and local jurisdictions, e.g., the inclusion of environmental scanning and long-term futures planning as components of the courts' routine planning process;

(3) Conferences to bring together people from States that have engaged in futures efforts, States that are just beginning those efforts, and States that are just starting to think about them, in order to exchange experiences and identify major problem areas and solutions;

(4) Symposia dedicated to certain specific topics that could result in recommendations for future research, planning, training, and action;

(5) Development of informational materials and curricula to enable judges and court personnel to become more familiar with, and apply futures thinking and planning principles; and

(6) Establishment of an ongoing clearinghouse and technical assistance resource center for State and national futures efforts.

e. *Improving Communication and Coordination Among Courts.* This category includes the development, implementation and evaluation of

innovative procedural, administrative, technological, and organizational methods to improve communication and coordination among State courts and between State and Federal courts hearing related cases. Among the circumstances in which such improved communication and coordination are particularly needed, are:

- Mass tort litigation;
- Instances in which a litigant in a State civil, criminal or domestic relations case is subject to a Federal bankruptcy proceeding;
- Instances in which a defendant has charges pending in both State and Federal court or in more than one State court;
- Post conviction challenges in capital cases; and
- Instances in which multiple cases are pending involving members of a single family (e.g., divorce, domestic violence, child support, and child custody proceedings).

f. *Application of Technology.* This category includes the testing of innovative applications of technology to improve the operation of court management systems and judicial practices at both the trial and appellate court levels.

The Board seeks to support local experiments with promising but untested applications of technology in the courts that include a structured evaluation of the impact of the technology in terms of costs, benefits, and staff workload. In this context, "untested" refers to applications of technology that are not used widely by the courts or that include a unique element to enhance their usefulness to the courts. (See paragraph XLH.2.b. regarding the limits on the use of grant funds to purchase equipment and software.)

In previous funding cycles, grants have been awarded to support the *demonstration and evaluation of communications technology*, e.g.: an interactive computerized information system to assist pro se litigants, an electronic mail system and computer-based bulletin board to facilitate information transfer among criminal justice agencies in adjoining local jurisdictions, the effects of telephone conferencing in interstate child support cases, and the use of FAX technology by courts;

*Demonstration and evaluation of records technology*, e.g.: the effects, costs, and benefits of videotape as a technique for making the record of trial court proceedings; an automated microfilm system and an optical disk system for maintaining and retrieving

court records; an automated Statewide records management system; the integration of bar-coding technology with an existing automated case management system, and an on-bench automated system for generating and processing court orders;

*Court technology assistance services*, e.g.: circulation of a court technology bulletin designed to inform judges and court managers about the latest developments in court-related technologies; creation of a court technology laboratory to provide judges and court managers with the opportunity to test automated court-related systems; enhancement of a data base and circulation of reports documenting automated systems currently in use in courts across the country; establishment of a technical information service to respond to specific inquiries concerning court-related technologies; and development of court automation performance standards.

Current grants also are supporting development of a hands-on seminar for judges and court managers in an automated "courtroom of the future", implementation and evaluation of a Statewide automated integrated case docketing and recordkeeping system, and a national assessment of the efforts to develop and implement Statewide automation of trial courts.

g. *Reduction of Litigation Expense and Delay.* This category includes the testing, implementation, and evaluation of innovative programs and procedures designed to reduce substantially the expense and delay in civil, criminal, domestic relations, juvenile or other types of litigation at the trial or appellate level (or both); and the examination of effective methods of limiting the expense and delay arising from the use of discovery procedures.

In previous funding cycles, grants have been awarded to support the examination of the causes of delay and the methods for improving case processing in trial courts in rural jurisdictions, limited jurisdiction urban trial courts, and in intermediate appellate courts. In addition, grant support has been awarded to projects testing or examining the impact of innovative procedures for: screening civil cases, handling medical malpractice cases, and expediting appellate dispositions.

The Institute also has supported studies of case processing in domestic relations cases and the extent of case processing problems caused by discovery, as well as assistance to trial courts in major urban areas and to appellate courts to improve case

processing, adopt and implement time standards, and otherwise reduce litigation delay.

h. *The Use of Juries.* This category includes the examination of legal and administrative issues regarding the fair and effective use of juries. These include, but are not limited to: experiments testing the effect on case outcomes of varying methods of jury selection including use of persons selected from the panel of prospective jurors at random; the use of "blue-ribbon" or specially qualified juries for civil cases involving complex scientific, technical or economic issues; the extent of jury nullification and the characteristics of the cases in which it occurs; the more active participation of juries in the fact-finding process; and innovative methods for preventing attempts to intimidate or influence jurors.

i. *Design of Effective Orders.* This category includes projects that would test and evaluate whether well-designed court orders result in greater compliance in both civil and criminal cases. Such projects could include:

- testing methods of efficiently and reliably obtaining the information judges need to impose effective criminal sanctions (including probation conditions such as offender treatment plans, fines, and restitution), or equitable dispositional orders in juvenile delinquency, neglect and abuse, domestic relations, and mental health cases;
- identifying the types of incentives that facilitate defendants' compliance with orders, or disincentives that inhibit compliance; and
- developing methods such as "plain language" summaries, tape recordings, and other procedures to promote better understanding of, and compliance with the terminology used in court orders, particularly by parties who are illiterate, not fluent in English, or mentally or physically disabled.

j. *Substance Abuse.* This category includes the planning and presentation of seminars or other educational forums for judges, probation officers, caseworkers and other court personnel to: examine court-related issues concerning drug and alcohol abuse; discuss the appropriate role of the courts in addressing the problem of substance abuse; and develop specific plans for how individual courts can respond to the impact of the increasing volume of substance abuse-related criminal, civil, juvenile, and domestic relations cases on their ability to

manage their overall caseloads fairly and efficiently.

In addition, this category includes the development and evaluation of innovative case management techniques for handling the increasing volume of substance abuse-related criminal, civil, juvenile, and domestic relations cases fairly and expeditiously; the development and testing of programs which establish coordinated efforts between local courts and treatment providers; evaluation of innovative programs that minimize or reduce recidivism; and the development, and testing and evaluation of profiles, guides, risk assessment instruments and other tools to assist judges in making release, dispositional, treatment, and sentencing decisions in cases involving substance-abusing persons. In addition to the above, see also Section II.B.2.b.iv.(a) regarding the Institute's interest in supporting a National Conference on the Impact of Substance Abuse Cases on the Courts.

In previous funding cycles, the Institute has supported demonstration projects which are evaluating the effectiveness of court-based alcohol and drug assessment programs; research on effective strategies for coping with increasing caseload pressures; and local education and training programs for judges and other court personnel on substance abuse and its treatment.

k. *Responding to the Court-Related Needs of Victims of Crime and Witnesses.* This category includes the implementation and evaluation of innovative court-based programs and procedures for providing fair treatment to victims of crime and witnesses. Court-based programs are those that are administered directly by the courts or through contracts negotiated between service providers and the courts. Programs and services operating in non-court settings, e.g., prosecutors' offices, ordinarily would not be favorably considered for funding.

Eligible projects may involve civil, criminal, domestic relations, juvenile and other types of cases, including but not limited to:

- Demonstrations and evaluations of innovative court policies and practices to protect victims and witnesses from threats and intimidation, particularly in drug and drug-related cases; and
- Programs and procedures to assure the fair, effective, and efficient handling of domestic violence cases, such as: the appropriate use of court-ordered domestic violence mediation programs; evaluations of innovative court-ordered treatment programs for

offenders and their families; and implementation and evaluation of innovative procedures governing the issuance and enforcement of protective orders.

- Research projects examining, e.g., the impact of procedures designed to assist crime victims on the administration of the courts; and the identification of effective and appropriate approaches that courts may use in developing dispositional orders in cases involving both spousal and child abuse.

With respect to court-related domestic violence issues, SJI grants have previously been awarded to: study the effectiveness of probation as a sanction in child sexual abuse cases; evaluate the use of cognitive questioning of child witnesses; develop a model protocol for handling child victim cases in criminal court; examine the use of alternatives to adjudication in child abuse and neglect cases; determine when and how mediation can be used appropriately in domestic relations cases in which domestic violence is alleged; demonstrate and evaluate the use of domestic violence shelter staff to assist victims in filling out and filing requests for injunctions for protection, thereby alleviating the burden placed on court staff; and develop and evaluate judicial education programs on victimization and domestic violence issues.

Current grants also are supporting an examination of the effects of the terms and duration of protection orders in protecting domestic violence victims and deterring batterers; and the identification and documentation of court-related programs that offer effective responses to problems faced by the courts in handling family violence cases.

1. *Responding to the Court-Related Needs of Elderly and Disabled Persons.* This category includes research, demonstration, and evaluation projects on issues related to the fair and effective handling of cases affecting elderly and physically or mentally disabled persons, and access to the courts by those persons. The issues that may be addressed include but are not limited to:

- the fair and effective consideration of cases concerning the cessation of medical and other services to elderly or disabled persons including the determination of what constitutes clear and convincing evidence of a person's wish not to initiate or continue life-sustaining treatment;
- the impact on the State courts of the Federal Americans with Disability Act of 1990;

- the fair and effective consideration of cases concerning the competency of individuals;
- the design of appropriate guardianship/conservatorship orders and
- the improvement of access to courthouses and court proceedings for litigants, jurors, witnesses, and victims of crime who have mobility or communication impairments.

In previous funding cycles, the Institute has supported: several projects to examine, identify and test procedures to improve the monitoring and enforcement of guardianship orders; a project to develop guidelines for judges in considering cases regarding the withdrawal of life-sustaining treatment; projects to develop training materials on guardianship for judges and potential guardians; projects to develop a benchbook and training materials regarding AIDS for judges, probation officers, and probationers; and a project to develop comprehensive guidelines for courthouse facilities. The Institute also is supporting a national conference on the court-related problems of elderly and disabled persons.

m. *The Relationship Between State and Federal Courts.* This category includes research to develop creative ideas and procedures that could improve the administration of justice in the State courts and at the same time reduce the work burdens of the Federal courts. Such research projects might address innovative State court procedures for:

- Reducing the burdens attendant to Federal habeas corpus cases involving State convictions;
- Handling civil, criminal, domestic relations or other types of cases in which a party also is subject to a Federal bankruptcy proceeding;
- Processing complex multistate litigation in the State courts;
- Facilitating the adjudication of Federal law questions by State courts with appropriate opportunities for review; and
- Otherwise allocating judicial burdens between and among Federal and State courts.

Other possible areas of research include studies examining the impact of the enforcement of selected Federal statutes on the State courts, and the factors that motivate litigants to select the Federal or State courts in cases in which there is concurrent jurisdiction.

See also section II.B.2.b.iv.(b) soliciting proposals for a National Conference on State-Federal Judicial Issues.

*C. Programs Addressing A Critical Need of a Single State or Local Jurisdiction*

1. The Board will set aside up to \$1,000,000 to support projects submitted by State or local courts that address the needs of only the applicant State or local jurisdiction. A project under this section may address any of the topics included in the Special Interest Categories or statutory Program Areas, and may be submitted by a State court system, an appellate court, or a limited or general jurisdiction trial court in an urban, rural or suburban area.

2. Concept papers and applications requesting funds for projects under this section must meet the requirements of sections VI ("Concept Paper Submission Requirements for New Projects") and VII ("Application Requirements"), respectively, and must demonstrate that:

a. The proposed project is essential to meeting a critical need of the jurisdiction; and

b. The need cannot be met solely with State and local resources within the foreseeable future.

3. All awards under this category are subject to the matching requirements set forth in section X.B.1.

**III. Definitions**

The following definitions apply for the purposes of this guideline:

*A. Institute.* The State Justice Institute.

*B. State Supreme Court.* The highest appellate court in a State, unless, for the purposes of the Institute program, a constitutionally or legislatively established judicial council that acts in place of that court. In States having more than one court with final appellate authority, *State Supreme Court* shall mean that court which also has administrative responsibility for the State's judicial system. *State Supreme Court* also includes the office of the court or council, if any, it designates to perform the functions described in this guideline.

*C. Designated Agency or Council.* The office or judicial body which is authorized under State law or by delegation from the State Supreme Court to approve applications for funds and to receive, administer, and be accountable for those funds.

*D. Grantor Agency.* The State Justice Institute.

*E. Grantee.* The organization, entity, or individual to which an award of Institute funds is made. For a grant based on an application from a State or local court, *Grantee* refers to the State Supreme Court.

*F. Subgrantee.* A State or local court which receives Institute funds through the State Supreme Court.

*G. Match.* The portion of project costs not borne by the Institute. Match includes both in-kind and cash contributions. Match does not include project-related income such as tuition or payments for grant products, or time of participants attending an education program.

*H. Renewal Funding.* A grant to support an existing project for an additional period of time. Renewal funding may take the form of a continuation grant or an on-going support grant.

*I. Continuation Grant.* A grant of no more than 24 months to permit completion of activities initiated under an existing Institute grant or enhancement of the programs or services produced or established during the prior grant period.

*J. On-going Support Grant.* A grant of up to 36 months to support a project that is national in scope and that provides the State courts with services, programs or products for which there is a continuing important need.

*K. Human Subjects.* Individuals who are participants in an experimental procedure or who are asked to provide information about themselves, their attitudes, feelings, opinions and/or experiences through an interview, questionnaire, or other data collection technique(s).

**IV. Eligibility for Award**

In awarding funds to accomplish these objectives and purposes, the Institute has been directed by Congress to give priority to State and local courts and their agencies (42 U.S.C. 10705(b)(1)(A)); national nonprofit organizations controlled by, operating in conjunction with, and serving the judicial branches of State governments (42 U.S.C. 10705(b)(1)(B)); and national nonprofit organizations for the education and training of judges and support personnel of the judicial branch of State governments (42 U.S.C. 10705(b)(1)(C)).

An applicant will be considered a "priority" education and training applicant under section 10705(b)(1)(C) if: (1) the principal purpose or activity of the applicant is to provide education and training to State and local judges and court personnel; and (2) the applicant demonstrates a record of substantial experience in the field of judicial education and training.

The Institute also is authorized to make awards to other nonprofit organizations with expertise in judicial administration, institutions of higher education, individuals, partnerships,

firms, corporations, and private agencies with expertise in judicial administration, provided that the objectives of the relevant program area(s) can be served better. In making this judgment, the Institute will consider the likely replicability of the projects' methodology and results in other jurisdictions. For-profit organizations are also eligible for grants and cooperative agreements; however, they must waive their fees.

Finally, the Institute is authorized to make awards to Federal, State or local agencies and institutions other than courts for services that cannot be adequately provided through nongovernmental arrangements.

Each application for funding from a State or local court must be approved, consistent with State law, by the State's Supreme Court or its designated agency or council. The latter shall receive all Institute funds awarded to such courts and be responsible for assuring proper administration of Institute funds, in accordance with section XI.B.2 of this guideline. A list of persons to contact in each State regarding approval of applications from State and local courts and administration of Institute grants to those courts is contained in the Appendix.

**V. Types of Projects and Amounts of Awards**

*A. Types of Projects*

Except as expressly provided in section II.B.2.b. and II.C. above, the Institute has placed no limitation on the overall number of awards or the number of awards in each special interest category. The general types of projects are:

1. Education and training;
2. Research and evaluation;
3. Demonstration; and
4. Technical assistance.

*B. Size of Awards*

1. Except as specified in paragraphs V.B. 2. and 3., concept papers and applications for new projects and applications for continuation grants may request funding in amounts up to \$300,000, although new and continuation awards in excess of \$200,000 are likely to be rare and to be made, if at all, only for highly promising proposals that will have a significant impact nationally.

2. Applications for on-going support grants may request funding in amounts up to \$600,000. At the discretion of the Board, the funds to support ongoing support grants may be awarded either entirely from the Institute's appropriations for the Fiscal Year of the

award or from the Institute's appropriations for successive Fiscal Years beginning with the Fiscal Year of the award. When funds to support the full amount of an ongoing support grant are not awarded from the appropriations for the Fiscal Year of award, funds to support any subsequent years of the grant will be made available upon (1) the satisfactory performance of the project as reflected in the quarterly Progress Reports required to be filed and grant monitoring, and (2) the availability of appropriations for that Fiscal Year.

#### C. Length of Grant Periods

1. Grant periods for all new and continuation projects ordinarily will not exceed 24 months.

2. Grant periods for on-going support grants ordinarily will not exceed 36 months.

#### VI. Concept Paper Submission Requirements for New Projects

Concept papers are an extremely important part of the application process because they enable the Institute to learn the program areas of primary interest to the courts and to explore innovative ideas, without imposing heavy burdens on prospective applicants. The use of concept papers also permits the Institute to better project the nature and amount of grant awards. Because of their importance, the Institute requires all parties requesting financial assistance from the Institute (except those seeking renewal funding pursuant to section IX.) to submit concept papers prior to submitting a formal grant application. This requirement and the submission deadlines for concept papers and applications may be waived by the Board if it determines that time factors or other critical considerations justify the waiver.

#### A. Format and Content

Concept papers must include a cover sheet and a narrative.

1. The cover sheet must contain:
  - a. A title describing the proposed project;
  - b. The name and address of the court, organization or individual submitting the paper; and
  - c. The name, title, address (if different from that in b.), and telephone number of a contact person who can provide further information about the paper.
2. The narrative must be no more than 10 doublespaced pages on 8 1/2 by 11 inch paper. Margins must not be less than 1 inch and no smaller than 12 point type must be used. The narrative should contain:

a. *Program Areas to be Covered.* A statement which lists the program areas set forth in the State Justice Institute Act, and, if appropriate, the Institute's Special Interest program categories that are addressed by the proposed project. Applicants should explain the proposed project's relationship to a Program Area or Special Interest Category only if it is not obvious.

b. An explanation of the need for the project. If the project is to be conducted in a specific location(s), applicants should discuss the particular needs of the project site(s) to be addressed by the project and why those needs are not being met through the use of existing materials, programs, procedures, services or other resources.

If the project is not site specific, applicants should discuss the problems that the proposed project will address, and explain why existing materials, programs, procedures, services or other resources do not adequately resolve those problems.

c. A summary description of the approach to be taken;

d. A summary description of how the project will be evaluated, including the evaluation criteria;

e. A description of the products that will result, the degree to which they will be applicable to courts across the nation, and the manner in which the products and results of the project will be disseminated;

f. An explanation of the expected benefits to be derived from the project;

g. The identity of the key staff (if known) and a summary description of their qualifications;

h. A preliminary budget estimate including the anticipated costs for personnel, fringe benefits, travel, equipment, supplies, contracts, indirect costs, and other anticipated major expenditure categories;

i. The amount, nature (cash or non-cash), and source of match to be provided (see section X.B.); and

j. A statement of whether financial assistance for the project has been or will be sought from other sources.

3. The Institute encourages concept paper applicants to attach letters of cooperation and support from the courts and related agencies that will be involved in or directly affected by the proposed project.

4. The Institute will not accept concept papers exceeding 10 pages. The page limit does not include letters of cooperation or endorsements. Additional material should not be attached unless it is essential to impart a clear understanding of the project.

5. Applicants submitting more than one concept paper may include material

that would be identical in each concept paper in a cover letter, and incorporate that material by reference in each paper. The incorporated material will be counted against the 10-page limit for each paper. A copy of the cover letter should be attached to each copy of each concept paper.

#### B. Selection Criteria

1. All concept papers will be evaluated by the staff on the basis of the following criteria:

- a. The demonstration of need for the project;
- b. The soundness and innovativeness of the approach described;
- c. The benefits to be derived from the project;
- d. The reasonableness of the proposed budget;
- e. The proposed project's relationship to one of the "Special Interest" categories set forth in section II.B; and
- f. The degree to which the findings, procedures, training, technology, or other results of the project can be transferred to other jurisdictions.

2. "Single jurisdiction" concept papers submitted pursuant to section II.C. will be rated on the proposed project's relation to one of the "Special Interest" categories set forth in section II.B., and on the special requirements listed in section II.C.1.

3. In determining which concept papers will be selected for development into full applications, the Institute will also consider the availability of financial assistance from other sources for the project; the amount and nature (cash or in-kind) of the submitter's anticipated match; whether the submitter is a "priority applicant" under the Institute's enabling legislation (see 42 U.S.C. 10705(b)(1) and section IV above); and the extent to which the proposed project would also benefit the Federal courts or help the State courts enforce Federal constitutional and legislative requirements.

#### C. Review Process

Concept papers will be reviewed competitively by the Board of Directors. Institute staff will prepare a narrative summary and a rating sheet assigning points for each relevant selection criterion for those concept papers which fall within the scope of the Institute's funding program and merit serious consideration by the Board. Staff will also prepare a list of those papers that, in the judgment of the Executive Director, propose projects that lie outside the scope of the Institute's funding program or are not likely to merit serious consideration by the

Board. The narrative summaries, rating sheets, and list of non-reviewed papers will be presented to the Board for their review. Committees of the Board will review concept paper summaries within assigned program areas and prepare recommendations for the full Board. The full Board of Directors will then decide which concept paper applicants should be invited to submit formal applications for funding. The decision to invite an application is solely that of the Board of Directors.

#### D. Submission Requirements

An original and three copies of all concept papers submitted for consideration in Fiscal Year 1991 must be sent by first class or overnight mail or by courier no later than December 3, 1990, except for concept papers addressing Special Interest categories b.iv.(a). (Conference on State-Federal Judicial Issues) and d. (The Future and the Courts) which must be sent by October 10, 1990. A postmark or courier receipt will constitute evidence of the submission date. All envelopes containing concept papers should be marked CONCEPT PAPER and should be sent to State Justice Institute, 120 S. Fairfax Street, Alexandria, Virginia 22314.

The Board will meet to review the concept papers and invite applications for the Conference on State-Federal Judicial Issues and on The Future and the Courts on November 29-December 2, 1990. It will meet on March 7-10, 1991 to review concept papers and invite applications on all other topics. The Institute will send written notice to all submitting concept papers of the Board's decisions regarding their papers and of the key issues and questions that arose during the review process. A decision by the Board not to invite an application may not be appealed, but does not prohibit resubmission of the concept paper or a revision thereof in a subsequent round of funding. The Institute will also notify the designated State contact listed in the Appendix when the Board invites applications that are based on concept papers which are submitted by courts within their State or which specify a participating site within their State.

Receipt of each concept paper will be acknowledged in writing. Extensions of the deadline for submission of concept papers will not be granted.

#### VII. Application Requirements for New Projects

Except as specified in section VI., a formal application for a new project is to be submitted only upon invitation of the Board following review of a concept

paper. An application for Institute funding support must include an application form, budget forms (with appropriate documentation), a project abstract and program narrative, and certain certifications and assurances. These documents are described below.

#### A. Forms

1. *Application Form (FORM A)*—The application form requests basic information regarding the proposed project, the applicant, and the amount of funding support requested. It also requires the signature of an individual authorized to certify on behalf of the applicant that the information contained in the application is true and complete, that submission of the application has been authorized by the applicant, and that if funding for the proposed project is approved, the applicant will comply with the requirements and conditions of the award, including the assurances set forth in Form D.

2. *Certificate of State Approval (FORM B)*—An application from a State or local court must include a copy of FORM B signed by the State's Chief Justice or Chief Judge, the director of the designated agency, or the head of the designated council. The signature denotes that the proposed project has been approved by the State's highest court or the agency or council it has designated. It denotes further that if funding for the project is approved by the Institute, the court or designated agency or council will receive, administer, and be accountable for the awarded funds.

3. *Budget Forms (FORM C or Cl)*—Applicants may submit the proposed project budget either in the tabular format of FORM C or in the spreadsheet format of FORM Cl. Applicants requesting more than \$100,000 are encouraged to use the spreadsheet format. If the proposed project period is for more than 12 months, a separate form should be submitted for the portion of the project extending beyond month 12.

In addition to FORM C or Cl, applicants must provide a detailed budget narrative providing an explanation of the basis for the estimates in each budget category. (See Section VII.D.)

If funds from other sources are required to conduct the project, either as match or to support other aspects of the project, the source, current status of the request, and anticipated decision date must be provided.

4. *Assurances (FORM D)*—This form lists the statutory, regulatory, and policy requirements and conditions with which

recipients of Institute funds must comply.

#### B. Project Abstract

The abstract should highlight the purposes, goals, methods and anticipated benefits of the proposed project. It should not exceed one single-spaced page on 8½ by 11 inch paper.

#### C. Program Narrative

The program narrative should not exceed 25 double-spaced pages on 8½ by 11 inch paper. Margins must not be less than 1 inch, and no smaller than 12 point type must be used. The page limit does not include appendices containing resumes and letters of cooperation or endorsement. Additional background material should be attached only if it is essential to obtaining a clear understanding of the proposed project. Numerous and lengthy appendices are strongly discouraged.

The program narrative should address the following topics:

1. *Project Objectives.* A clear, concise statement of what the proposed project is intended to accomplish. In stating the objectives of the project, applicants should focus on the overall programmatic objective (e.g., to enhance understanding and skills regarding a specific subject, or to determine how a certain procedure affects the court and litigants) rather than on operational objectives (e.g., provide training for 32 judges and court managers, or review data from 300 cases).

2. *Program Areas to be Covered.* A statement which lists the program areas set forth in the State Justice Institute Act, and, if appropriate, the Institute's Special Interest program categories that are addressed by the proposed projects. A discussion should be included only if the relationship between the proposed project and the program areas and Special Interest categories is not obvious.

3. *Need for the Project.* If the project is to be conducted in a specific location(s), a discussion of the particular needs of the project site(s) to be addressed by the project and why those needs are not being met through the use of existing materials, programs, procedures, services or other resources.

If the project is not site specific, a discussion of the problems that the proposed project will address, and why existing materials, programs, procedures, services or other resources do not adequately resolve those problems. The discussion should include specific references to the relevant literature and to the experience in the field.

#### 4. Tasks, Methods and Evaluation.

a. *Tasks and Methods.* A delineation of the tasks to be performed in achieving the project objectives and the methods to be used for accomplishing each task. For example:

*For research and evaluation projects,* the data sources, data collection strategies, variables to be examined, and analytic procedures to be used for conducting the research or evaluation and ensuring the validity and general applicability of the results. For projects involving human subjects, the discussion of methods should address the procedures for obtaining respondents' informed consent, ensuring the respondents' privacy and freedom from risk or harm, and the protection of others who are not the subjects of research but would be affected by the research. If the potential exists for risk or harm to the human subjects, a discussion should be included of the value of the proposed research and the methods to be used to minimize or eliminate such risk.

*For education and training projects,* the adult education techniques to be used in designing and presenting the program, including the teaching/learning objectives of the educational design, the teaching methods to be used, and the opportunities for structured interaction among the participants; how faculty will be recruited, selected, and trained; the proposed number and length of the conferences, courses, seminars or workshops to be conducted; the materials to be provided and how they will be developed; and the cost to participants.

*For demonstration projects,* the demonstration sites and the reasons they were selected, or if the sites have not been chosen, how they will be identified and their cooperation obtained; how the program or procedures will be implemented and monitored.

*For technical assistance projects,* the types of assistance that will be provided; the particular issues and problems for which assistance will be provided; how requests will be obtained and the type of assistance determined; how suitable providers will be selected and briefed; how reports will be reviewed; and the cost to recipients.

b. *Evaluation.* Every project design must include an evaluation plan to determine whether the project met its objectives. The evaluation should be designed to provide an objective and independent assessment of the effectiveness of usefulness of the training or services provided; the impact of the procedures, technology or services tested; or the validity and

applicability of the research conducted. In addition, where appropriate, the evaluation process should be designed to provide ongoing or periodic feedback on the effectiveness or utility of particular programs, educational offerings, or achievements which can then be further refined as a result of the evaluation process. The plan should present the qualifications of the evaluator(s); describe the criteria, related to the project's programmatic objectives, that will be used to evaluate the project's effectiveness; explain how the evaluation will be conducted, including the specific data collection and analysis techniques to be used; discuss why this approach is appropriate; and present a schedule for completion of the evaluation within the proposed project period.

The evaluation plan should be appropriate to the type of project proposed. For example, an appropriate evaluation approach for many research projects is reviewed by an advisory panel of the research methodology, data collection instruments, preliminary analyses, and products as they are drafted. The panel should be comprised of independent researchers and practitioners representing the perspectives affected by the proposed project.

The most valuable approaches to evaluating educational or training programs will serve to reinforce the participants' learning experience while providing useful feedback on the impact of the program and possible areas for improvement. One appropriate evaluation approach is to assess the acquisition of new knowledge, skills, attitudes or understanding through participant feedback on the seminar or training event. Such feedback might include a self-assessment on what was learned along with the participant's response to the quality and effectiveness of faculty presentations, the format of sessions, the value or usefulness of the material presented and other relevant factors. Another appropriate approach when an education project involves the development of curricular materials is the use of an advisory panel of relevant experts coupled with a test of the curriculum to obtain the reactions of participants and faculty as indicated above.

The evaluation plan for a demonstration project should encompass an assessment of program effectiveness (e.g., how well did it work?); user satisfaction, if appropriate; the cost effectiveness of the program; a process analysis of the program (e.g., was the program implemented as

designed? did it provide the services intended to the targeted population?); the impact of the program (e.g., what effect did the program have on the court what benefits resulted from the program?); and the replicability of the program or components of the program.

*For technical assistance projects,* applicants should explain how the quality, timeliness, and impact of the assistance provided will be determined, and should develop a mechanism for feedback from both the users and providers of the technical assistance.

5. *Project Management.* A detailed management plan including the starting and completion date for each task; the time commitments to the project of key staff and their responsibilities regarding each project task; and the procedures that will be used to ensure that all tasks are performed on time, within budget, and at the highest level of quality. The management plan must also provide for the submission of Quarterly Progress and Financial Reports within 30 days after the close of each calendar quarter (i.e., no later than January 30, April 30, July 30, and October 30).

6. *Products.* A description of the products to be developed by the project (e.g., monographs, training curricula and materials, videotapes, articles, or handbooks), including when they will be submitted to the Institute. The application must explain how and to whom the products will be disseminated; identify development, production, and dissemination costs covered by the project budget; and present the basis on which products and services developed or provided under the grant will be offered to the courts community and the public at large. Ordinarily, the products of a research, evaluation, or demonstration project should include an article summarizing the project findings that is publishable in a journal serving the courts community nationally, an executive summary that will be disseminated to the project's primary audience, or both. The products developed by education and training projects should be designed for use outside the classroom so that they may be used again by original participants and others in the course of their duties. Twenty copies of all project products, including videotapes, must be submitted to the Institute. In addition, for all wordprocessed products, grantees must submit a diskette of the text in ASCII. For non-text products, a copy of the executive summary or a brief abstract in ASCII must be submitted.

7. *Applicant Status.* An applicant that is not a State or local court and has not received a grant from the Institute

within the past two years should include a statement indicating whether it is requesting "priority status" recognition as either a national non-profit organization controlled by, operating in conjunction with, and serving the judicial branches of State governments; or a national non-profit organization for the education and training of State court judges and support personnel. See section IV. A request for recognition as a priority recipient pursuant to 42 U.S.C. 10705(b) (1)(B) or (1)(C) must set forth the basis for designation as a priority recipient in its application. Non-judicial units of Federal, State, or local government must demonstrate that the proposed services are not available from non-governmental sources.

**8. Staff Capability.** A summary of the training and experience of the key staff members and consultants that qualify them for conducting and managing the proposed project. Resumes of identified staff should be attached to the application. If one or more key staff members and consultants are not known at the time of the application, a description of the criteria that will be used to select persons for these positions should be included.

**9. Organizational Capacity.** Applicants that have not received a grant from the Institute within the past two years should include a statement describing the capacity of the applicant to administer grant funds including the financial systems used to monitor project expenditures (and income, if any), and a summary of the applicant's past experience in administering grants, as well as any resources or capabilities that the applicant has that will particularly assist in the successful completion of the project.

If the applicant is a non-profit organization (other than a university), it must also provide documentation of its 501(c) tax exempt status as determined by the Internal Revenue Service and a copy of a current certified audit report. For purposes of this requirement, "current" means no earlier than two years prior to the current calendar year. If a current audit report is not available, the Institute will require the organization to complete a financial capability questionnaire which must be certified by a Certified Public Accountant. Other applicants may be required to provide a current audit report, a financial capability questionnaire, or both, if specifically requested to do so by the Institute.

Unless requested otherwise, an applicant that has received a grant from the Institute within the past two years should describe only the changes in its organizational capacity, tax status, or

financial capability that may affect its capacity to administer a grant.

**10. Statement of Lobbying Activities.** Applicants must submit a form (to be prepared by the Institute) that states whether they, or another entity that is a part of the same organization as the applicant, have advocated a position before Congress on any issue, and identifies the specific subjects of their lobbying efforts.

**11. Letters of Support for the Project.** If the cooperation of courts, organizations, agencies, or individuals other than the applicant is required to conduct the project, written assurances of cooperation and availability should be attached as an appendix to the application.

#### *D. Budget Narrative*

The budget narrative should provide the basis for the computation of all project-related costs. Additional background or schedules may be attached if they are essential to obtaining a clear understanding of the proposed budget. Numerous and lengthy appendices are strongly discouraged.

The budget narrative should address the items listed below. The costs attributable to the project evaluation should be clearly identified.

**1. Justification of Personnel Compensation.** The applicant should set forth the percentages of time to be devoted by the individuals who will serve as the staff of the proposed project, the annual salary of each of those persons, and the number of work days per year used for calculating the percentages of time or daily rate of those individuals. The applicant should explain any deviations from current rates or established written organization policies.

**2. Fringe Benefit Computation.** The applicant should provide a description of the fringe benefits provided to employees. If percentages are used, the authority for such use should be presented as well as a description of the elements included in the determination of the percentage rate.

**3. Consultant/Contractual Services.** The applicant should describe each type of service to be provided. The basis for compensation rates and the method for selection should also be included. Rates for consultant services must be set in accordance with section XI.H.2.c.

**4. Travel.** Transportation costs and per diem rates must comply with the policies of the applicant organization. If the applicant does not have an established travel policy, then travel rates shall be consistent with those established by the Institute or the Federal Government. (A copy of the

Institute's travel policy is available upon request.) The budget narrative should include an explanation of the rate used, including the components of the per diem rate and the basis for the estimated transportation expenses. The purpose for travel should also be included in the narrative.

**5. Equipment.** Grant funds may be used to purchase or lease only that equipment which is essential to accomplishing the objectives of the project. The applicant should describe the equipment to be purchased or leased and explain why the acquisition of that equipment is essential to accomplish the project's goals and objectives. The narrative should clearly identify which equipment is to be leased and which is to be purchased. The method of procurement should also be described. Purchases for automatic data processing equipment must comply with section XI.H.2.b.

**6. Supplies.** The applicant should provide a general description of the supplies necessary to accomplish the goals and objectives of the grant. In addition, the applicant should provide the details supporting the total requested for this expenditure category.

**7. Construction.** Construction expenses are prohibited except for the limited purposes set forth in section X.G.2. Any allowable construction or renovation expense should be described in detail in the budget narrative.

**8. Telephone.** Applicants should include anticipated telephone charges, distinguishing between monthly charges and long distance charges in the budget narrative. Also, applicants should provide the basis used in developing the monthly and long distance estimates.

**9. Postage.** Anticipated postage costs for project-related mailings should be described in the budget narrative. The cost of special mailings, such as for a survey or for announcing a workshop, should be distinguished from routine operational mailing costs. The bases for all postage estimates should be included in the justification material.

**10. Printing/Photocopying.** Anticipated costs for printing or photocopying should be included in the budget narrative. Applicants should provide the details underlying these estimates in support of the request.

**11. Indirect Costs.** Applicants should describe the indirect cost rates applicable to the grant in detail. These rates must be established in accordance with section XI.H.4. If the applicant has an indirect cost rate or allocation plan approved by any Federal granting agency, a copy of the approved rate

agreement should be attached to the application.

12. *Match.* The applicant should describe the source of any matching contribution and the nature of the match provided. Any additional contributions to the project should be described in this section of the budget narrative as well. If in-kind match is to be provided, the applicant should describe how the amount and value of the time, services or materials actually contributed will be documented. Applicants that do not contemplate making matching contributions continuously throughout the course of the project or on a task-by-task basis must provide a schedule within 30 days after the beginning of the project period indicating at what points during the project period the matching contributions will be made. (See sections III.G., VIII.B., X.B. and XI.D.1.)

#### *E. Submission Requirements*

1. An application package containing the application, an original signature on FORM A (and on FORM B, if the application is from a State or local court), and four photocopies of the application package must be sent by first class or overnight mail, or by courier no later than May 14, 1991. A postmark or courier receipt will constitute evidence of the submission date. Please mark APPLICATION on all application package envelopes and send to: State Justice Institute, 120 S. Fairfax Street, Alexandria, Virginia 22314.

Receipt of each proposal will be acknowledged in writing. Extensions of the deadline for receipt of applications will not be granted.

2. Applicants invited to submit more than one application may include material that would be identical in each application in a cover letter, and incorporate that material by reference in each application. The incorporated material will be counted against the 25-page limit for the program narrative. A copy of the cover letter should be attached to each copy of each application.

### **VIII. Application Review Procedures**

#### *A. Preliminary Inquiries*

The Institute staff will answer inquiries concerning application procedures. The staff contact will be named in the Institute's letter inviting submission of a formal application.

#### *B. Selection Criteria*

1. All applications will be rated on the basis of the criteria set forth below. The Institute will accord the greatest weight to the following criteria:

a. The soundness of the methodology;

b. The appropriateness of the proposed evaluation design;

c. The qualifications of the project's staff;

d. The applicant's management plan and organizational capabilities;

e. The reasonableness of the proposed budget;

f. The demonstration of need for the project;

g. The products and benefits resulting from the project;

h. The demonstration of cooperation and support of other agencies that may be affected by the project;

i. The proposed project's relationship to one of the "Special Interest" categories set forth in section II.B., and

j. The degree to which the findings, procedures, training, technology, or other results of the project can be transferred to other jurisdictions.

2. "Single jurisdiction" applications submitted pursuant to section II.C. will also be rated on the proposed project's relation to one of the "Special Interest" categories set forth in section II.B. and on the special requirements listed in section II.C.1.

3. In determining which applicants to fund, the Institute will also consider the applicant's standing in relation to the statutory priorities discussed in section IV; the availability of financial assistance from other sources for the project; the amount and nature (cash or in-kind) of the applicant's match; and the extent to which the proposed project would also benefit the Federal courts or help the State courts enforce Federal constitutional and legislative requirements.

#### *C. Review and Approval Process*

Applications will be reviewed competitively by the Board of Directors. The Institute staff will prepare a narrative summary of each application, and a rating sheet assigning points for each relevant selection criterion. When necessary, applications may also be reviewed by outside experts. Committees of the Board will review applications within assigned program categories and prepare recommendations to the full Board. The full Board of Directors will then decide which applications to approve for a grant. The decision to award a grant is solely that of the Board of Directors.

Awards approved by the Board will be signed by the Chairman of the Board on behalf of the Institute.

#### *D. Return Policy*

Unless a specific request is made, unsuccessful applications will not be returned. Applicants are advised that Institute records are subject to the

provisions of the Federal Freedom of Information Act, 5 U.S.C. 552.

#### *E. Notification of Board Decision*

The Institute will send written notice to applicants concerning all Board decisions to approve or deny their respective applications and the key issues and questions that arose during the review process. A decision by the Board to deny an application may not be appealed, but does not prohibit resubmission of a concept paper based on that application in a subsequent round of funding. The Institute will also notify the designated State contact listed in Appendix A when grants are approved by the Board to support projects that will be conducted by or involve courts in their State.

#### *F. Response to Notification of Approval*

Applicants have 30 days from the date of the letter notifying them that the Board has approved their application to respond to any revisions requested by the Board. If the requested revisions (or a reasonable schedule for submitting such revisions) has not been submitted to the Institute within 30 days after notification, the approval will be automatically rescinded and the application presented to the Board for reconsideration.

### **IX. Renewal Funding Procedures and Requirements**

The Institute recognizes two types of renewal funding—"continuation grants" and "on-going support grants." Pursuant to the procedures and requirements set forth below, the Board may, in its discretion and subject to the availability of funds, consider requests for renewal funding at times other than those set for new projects in Sections VI. and VII.

#### *A. Continuation Grants*

1. *Purpose and Scope.* "Continuation grants" are intended to support projects with a limited duration that involve the same type of activities as the previous project. They are intended to enhance the specific program or service produced or established during the prior grant period. They may be used, for example, when a project is divided into two or more sequential phases, for secondary analysis of data obtained in an Institute-supported research project, or for more extensive testing of an innovative technology, procedure, or program developed with SJI grant support.

In order for a project to be considered for continuation funding, the grantee must have completed the project tasks and met all grant requirements and conditions in a timely manner, absent

extenuating circumstances or prior Institute approval of changes to the project design. Continuation grants are not intended to provide support for a project for which the grantee has underestimated the amount of time or funds needed to accomplish the project tasks.

**2. Application Procedures—Letters of Intent.** In lieu of a concept paper, a grantee seeking a continuation grant must inform the Institute, by letter, of its intent to submit an application for such funding as soon as the need for renewal funding becomes apparent but no less than 120 days before the end of the current grant period.

a. A letter of intent must be no more than 3 single-spaced pages on 8½ by 11 inch paper and must contain a concise but thorough explanation of the need for continuation; an estimate of the funds to be requested; and a brief description of anticipated changes in scope, focus or audience of the project.

b. Letters of intent will not be reviewed competitively. Institute staff will review the proposed activities for the next project period and, within 30 days of receiving a letter of intent, inform the grantee of specific issues to be addressed in the continuation application and the date by which the application for a continuation grant must be submitted.

**3. Application Format.** An application for a continuation grant must include an application form, budget forms (with appropriate documentation), a project abstract conforming to the format set forth in section VII.B., a program narrative, a budget narrative, and certain certifications and assurances.

The program narrative should conform to the length and format requirements set forth in section VII.C. However, rather than the topics listed in section VII.C., the program narrative of an application for a continuation grant should address:

a. *Need for Continuation.* Explain why continuation of the project is necessary to achieve the goals of the project, and how the continuation will benefit the participating courts or the courts community generally. That is, to what extent will the goals and objectives of the project be unfulfilled if the project is not continued, and conversely, how will the findings or results of the project be enhanced by continuing the project?

b. *Report of Current Project Activities.* Discuss the status of all activities conducted during the previous project period, identify any activities that were not completed, and explain why.

c. *Evaluation Findings.* Describe the key findings or recommendations resulting from the evaluation of the

project, if they are available, and explain how they will be addressed during the proposed continuation. If the findings are not yet available, provide the date by which they will be submitted to the Institute.

d. *Tasks and Methods.* Describe fully any changes in the tasks to be performed, the methods to be used, the products of the project, the assigned staff, or the grantee's organizational capacity.

e. *Task Schedule.* Present a detailed task schedule and time line for the next project period.

f. *Other Sources of Support.* Indicate why other sources of support are inadequate, inappropriate or unavailable.

g. *Budget and Budget Narrative.* Provide a complete budget and budget narrative conforming to the requirements set forth in paragraph VII.D. Changes in the funding level requested should be discussed in terms of corresponding increases or decreases in the scope of activities or services to be rendered.

4. *References to Previously Submitted Material.* An application for a continuation grant should not repeat information contained in a previously approved application or other previously submitted materials, but should provide specific references to such materials where appropriate.

5. *Submission Requirements, Review and Approval Process, and Notification of Decision.* The submission requirements set forth in section VII.E., other than the deadline for mailing, apply to applications for a continuation grant. Such applications will be rated on the selection criteria set forth in section VIII.B. The key findings and recommendations resulting from an evaluation of the project and the proposed response to those findings and recommendations will also be considered. The review and approval process, return policy, and notification procedures are the same as those for new projects set forth in sections VIII.C.—VIII.E.

#### B. On-going Support Grants

1. *Purpose and Scope.* On-going support grants are intended to support projects that are national in scope and that provides the State courts with services, programs or products for which there is a continuing important need. An on-going support grant may also be used to fund longitudinal research that directly benefits the State courts. On-going support grants are subject to the limits on size and duration set forth in V.B.2 and V.C.2. A project is eligible for

consideration for an on-going support grant if:

a. The project is supported by and has been evaluated under a grant from the Institute;

b. The project is national in scope and provides a significant benefit to the State courts;

c. There is a continuing important need for the services, programs or products provided by the project as indicated by the level of use and support by members of the court community;

d. The project is accomplishing its objectives in an effective and efficient manner; and

e. It is likely that the service or program provided by the project would be curtailed or significantly reduced without Institute support.

Each project supported by an on-going support grant must include an evaluation component assessing its effectiveness and operation throughout the grant period. The evaluation should be independent, but may be designed collaboratively by the evaluator and the grantee. The design should call for regular feedback from the evaluator to the grantee throughout the project period concerning recommendations for mid-course corrections or improvement of the project, as well as periodic reports to the Institute at relevant points in the project.

An interim evaluation report must be submitted 18 months into the grant period. The decision to obligate Institute funds to support the third year of the project will be based on the interim evaluation findings and the applicant's response to any deficiencies noted in the report.

A final evaluation assessing the effectiveness, operation of, and continuing need for the project must be submitted 90 days before the end of the three-year project period.

In addition, a detailed annual task schedule must be submitted not later than 45 days before the end of the first and second years of the grant period, along with an explanation of any necessary revisions in the projected costs for the remainder of the project period.

**2. Application Procedures—Letters of Intent.** The Board will consider awarding an on-going support grant for a period of up to 36 months. The total amount of the grant will be fixed at the time of the initial award. Funds ordinarily will be made available in annual increments as specified in section V.B.2.

In lieu of a concept paper, a grantee seeking an ongoing support grant must inform the Institute, by letter, of its

intent to submit an application for such funding as soon as the need for renewal funding becomes apparent but no less than 120 days before the end of the current grant period. The letter of intent should be in the same format as that prescribed for continuation grants in section IX.A.2.a.

3. *Application Procedures and Format.* An application for an on-going support grant must include an application form, budget forms (with appropriate documentation), a project abstract conforming to the format set forth in section VII.B., a program narrative, a budget narrative, and certain certifications and assurances.

The program narrative should conform to the length and format requirements set forth in section VII.C. However, rather than the topics listed in section VII.C., the program narrative of applications for on-going support grants should address:

a. *Description of Need for and Benefits of the Project.* Provide a detailed discussion of the benefits provided by the project to the State courts around the country, including the degree to which State courts, State court judges, or State court managers and personnel are using the services or programs provided by the project.

b. *Demonstration of Court Support.* Demonstrate support for the continuation of the project from the courts community.

c. *Report on Current Project Activities.* Discuss the extent to which the project has met its goals and objectives, identify any activities that have not been completed, and explain why.

d. *Evaluation Findings.* Attach a copy of the final evaluation report regarding the effectiveness and operation of the project, specify the key findings or recommendations resulting from the evaluation, and explain how they will be addressed during the proposed renewal period.

e. *Tasks and Methods.* Describe fully any changes in the tasks to be performed, the methods to be used, the products of the project, the assigned staff, or the grantee's organizational capacity.

f. *Task Schedule.* Present a general schedule for the full proposed project period and a detailed task schedule for the first year of the proposed new project period.

g. *Other Sources of Support.* Indicate why other sources of support are inadequate, inappropriate or unavailable.

h. *Budget and Budget Narrative.* Provide a complete budget and budget narrative conforming to the

requirements set forth in paragraph VII.D. Changes in the funding level requested should be discussed in terms of corresponding increases or decreases in the scope of activities or services to be rendered. A complete budget narrative should be provided for each year, or portion of a year, for which grant support is requested.

4. *References to Previously Submitted Material.* An application for an on-going support grant should not repeat information contained in a previously approved application or other previously submitted materials, but should provide specific references to such materials where appropriate.

5. *Submission Requirements, Review and Approval Process, and Notification of Decision.* The submission requirements set forth in section VII.E., other than the deadline for mailing, apply to applications for an ongoing support grant. Such applications will be rated on the selection criteria set forth in section VIII.B. The key findings and recommendations resulting from an evaluation of the project and the proposed response to those findings and recommendations will also be considered. The review and approval process, return policy, and notification procedures are the same as those for new projects set forth in sections VIII.C.-VIII.E.

#### X. Compliance Requirements

The State Justice Institute Act (Pub. L. 98-620, as amended) contains limitations and conditions on grants, contracts and cooperative agreements of which applicants and recipients should be aware. In addition to eligibility requirements which must be met to be considered for an award from the Institute, all applicants should be aware of and all recipients will be responsible for ensuring compliance with the following:

##### A. State and Local Court Systems

Each application for funding from a State or local court must be approved, consistent with State law, by the State's Supreme Court, or its designated agency or council. The latter shall receive, administer, and be accountable for all funds awarded to such courts. 42 U.S.C. 10705(b)(4). The Appendix to this guideline lists the agencies, councils and contact persons designated to administer Institute awards to the State and local courts.

##### B. Matching Requirements

1. All awards to courts or other units of State or local government (not including publicly supported institutions of higher education) require a match

from private or public sources of not less than 50 percent of the total amount of the Institute's award. For example, if the total cost of a project is anticipated to be \$150,000, a State court or executive branch agency may request up to \$100,000 from the Institute to implement the project. The remaining \$50,000 (50% of the \$100,000 requested from SJI) must be provided as a match. A cash match, non-cash match, or both may be provided, but the Institute will give preference to those applicants who provide a cash match to the Institute's award. (For a further definition of match, see Section III G.)

The requirement to provide match may be waived in exceptionally rare circumstances upon approval of the Chief Justice of the highest court in the State and a majority of the Board of Directors. 42 U.S.C. 10705(d) (as amended).

2. Other eligible recipients of Institute funds are not required to provide a match, but are encouraged to contribute to meeting the costs of the project. In instances where a cash match is proposed, the grantee is responsible for ensuring that the total amount proposed is actually contributed. If a proposed cash match contribution is not fully met, the Institute may reduce the award amount accordingly, in order to maintain the ratio originally provided for in the award agreement (see section VIII.B. above and XI.D.).

##### C. Conflict of Interest

Personnel and other officials connected with Institute-funded programs shall adhere to the following requirements:

1. No official or employee of a recipient court or organization shall participate personally through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise in any proceeding, application, request for a ruling or other determination, contract, grant, cooperative agreement, claim, controversy, or other particular matter in which Institute funds are used, where to his/her knowledge he/she or his/her immediate family, partners, organization other than a public agency in which he/she is serving as officer, director, trustee, partner, or employee or any person or organization with whom he/she is negotiating or has any arrangement concerning prospective employment, has a financial interest.

2. In the use of Institute project funds, an official or employee of a recipient court or organization shall avoid any action which might result in or create the appearance of:

a. Using an official position for private gain; or

b. Affecting adversely the confidence of the public in the integrity of the Institute program.

3. Requests for proposals or invitations for bids issued by a recipient of Institute funds or a subgrantee or subcontractor will provide notice to prospective bidders that the contractors who develop or draft specifications, requirements, statements of work and/or requests for proposals for a proposed procurement will be excluded from bidding on or submitting a proposal to compete for the award of such procurement.

#### D. Lobbying

Funds awarded to recipients by the Institute shall not be used, indirectly or directly, to influence Executive orders or similar promulgations by Federal, State or local agencies, or to influence the passage or defeat of any legislation by Federal, State or local legislative bodies. 42 U.S.C. 10706(a).

It is the policy of the Board of Directors to award funds only to support applications submitted by organizations that would carry out the objectives of their applications in an unbiased manner. Consistent with this policy and the provisions of 42 U.S.C. 10706, the Institute will not knowingly award a grant to an applicant that has, directly or through an entity that is part of the same organization as the applicant, advocated a position before Congress on the specific subject matter of the application.

#### E. Political Activities

No recipient shall contribute or make available Institute funds, program personnel or equipment to any political party or association, or the campaign of any candidate for public or party office. Recipients are also prohibited from using funds in advocating or opposing any ballot measure, initiative, or referendum. Finally, officers and employees of recipients shall not intentionally identify the Institute or recipients with any partisan or nonpartisan political activity associated with a political party or association, or the campaign of any candidate for public or party office. 42 U.S.C. 10706(a).

#### F. Advocacy

No funds made available by the Institute may be used to support or conduct training programs for the purpose of advocating particular nonjudicial public policies or encouraging nonjudicial political activities. 42 U.S.C. 10706(b).

#### G. Supplantation and Construction

To ensure that funds are used to supplement and improve the operation of State courts, rather than to support basic court services, funds shall not be used for the following purposes:

1. To supplant State or local funds supporting a program or activity;

2. To construct court facilities or structures, except to remodel existing facilities or to demonstrate new architectural or technological techniques, or to provide temporary facilities for new personnel or for personnel involved in a demonstration or experimental program; or

3. Solely to purchase equipment.

#### H. Confidentiality of Information

Except as provided by Federal law other than the State Justice Institute Act, no recipient of financial assistance from SJI may use or reveal any research or statistical information furnished under the Act by any person and identifiable to any specific private person for any purpose other than the purpose for which the information was obtained. Such information and copies thereof shall be immune from legal process, and shall not, without the consent of the person furnishing such information, be admitted as evidence or used for any purpose in any action, suit, or other judicial, legislative, or administrative proceedings.

#### I. Reporting Requirements

Recipients of Institute funds shall submit Quarterly Progress and Financial Reports within 30 days of the close of each calendar quarter (that is, no later than January 30, April 30, July 30, and October 30). Two copies of each report must be sent. The Quarterly Progress Reports shall include a narrative description of project activities during the calendar quarter, the relationship between those activities and the task schedule and objectives set forth in the approved application or an approved adjustment thereto, any significant problem areas that have developed and how they will be resolved, and the activities scheduled during the next reporting period.

The quarterly financial status report shall be submitted in accordance with section XI.G.2. of this guideline.

#### J. Audit

Each recipient must provide for an annual fiscal audit. (See section XI.J. of this guideline for the requirements of such audits.)

Accounting principles employed in recording transactions and preparing financial statements must be based

upon generally accepted accounting principles (GAAP).

#### K. Suspension of Funding

After providing a recipient reasonable notice and opportunity to submit written documentation demonstrating why fund termination or suspension should not occur, the Institute may terminate or suspend funding of a project that fails to comply substantially with the Act, Institute guidelines, or the terms and conditions of the award. 42 U.S.C. 10708(a).

#### L. Title to Property

At the conclusion of the project, title to all expendable and nonexpendable personal property purchased with Institute funds shall vest in the recipient court, organization, or individual that purchased the property if certification is made to the Institute that the property will continue to be used for the authorized purposes of the Institute-funded project or other purposes consistent with the State Justice Institute Act, as approved by the Institute. If such certification is not made or the Institute disapproves such certification, title to all such property with an aggregate or individual value of \$1,000 or more shall vest in the Institute, which will direct the disposition of the property.

#### M. Disclaimer

Recipients of Institute funds shall prominently display the following disclaimer on all project-related products developed with Institute funds:

"This [document, film, videotape, etc.] was developed under a [grant, cooperative agreement, contract] from the State Justice Institute. Points of view expressed herein are those of the [author(s), filmmaker(s), etc.] and do not necessarily represent the official position or policies of the State Justice Institute."

#### N. Copyrights

Except as otherwise provided in the terms and conditions of an Institute award, a recipient is free to copyright any books, publications, or other copyrightable materials developed in the course of an Institute-supported project, but the Institute shall reserve a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the materials for purposes consistent with the State Justice Institute Act.

### O. Inventions and Patents.

If any patentable items, patent rights, processes, or inventions are produced in the course of Institute-sponsored work, such fact shall be promptly and fully reported to the Institute. Unless there is a prior agreement between the grantee and the Institute on disposition of such items, the Institute shall determine whether protection of the invention or discovery shall be sought. The Institute will also determine how the rights in the invention or discovery, including rights under any patent issued thereon, shall be allocated and administered in order to protect the public interest consistent with "Government Patent Policy" (President's Memorandum for Heads of Executive Departments and Agencies, August 23, 1971, and statement of Government Patent Policy as printed in 36 FR 16889).

### P. Charges for Grant-Related Products

When Institute funds fully cover the cost of developing, producing, and disseminating a product, e.g., a document or software, the product should be distributed to the field without charge. When Institute funds only partially cover the development, production, and dissemination costs, the grantee may recover its costs for reproducing and disseminating the material to those requesting it.

### Q. Approval of Key Staff

If the qualifications of an employee or consultant assigned to a key project staff position are not described in the application or if there is a change of a person assigned to such a position, a recipient shall submit a description of the qualifications of the newly assigned person to the Institute. Prior written approval of the qualifications of the new person assigned to a key staff position must be received from the Institute before the salary or consulting fee of that person and associated costs may be paid or reimbursed from grant funds.

## XI. Financial Requirements

### A. Accounting Systems and Financial Records

All grantees, subgrantees, contractors and other organizations directly or indirectly receiving Institute funds are required to establish and maintain accounting systems and financial records to accurately account for funds they receive. These records shall include total program costs, including Institute funds, State and local matching shares, and any other fund sources included in the approved project budget.

1. *Purpose.* The purpose of this section is to establish accounting system

requirements and to offer guidance on procedures which will assist all grantees/subgrantees in:

- a. Complying with the statutory requirements for the awarding, disbursement, and accounting of funds;
- b. Complying with regulatory requirements of the Institute for the financial management and disposition of funds;
- c. Generating financial data which can be used in the planning, management and control of programs; and
- d. Facilitating an effective audit of funded programs and projects.

2. *References.* Except where inconsistent with specific provisions of this Guideline, the following regulations, directives and reports are applicable to Institute grants and cooperative agreements. These materials supplement the requirements of this section for accounting systems and financial recordkeeping and provide additional guidance on how these requirements may be satisfied.

a. *Office of Management and Budget (OMB) Circular A-21, Cost Principles for Educational Institutions.*

b. *Office of Management and Budget (OMB) Circular A-87, Cost Principles for State and Local Governments.*

c. *Office of Management and Budget (OMB) Circular A-88 (revised), Indirect Cost Rates, Audit and Audit Followup at Educational Institutions.*

d. *Office of Management and Budget (OMB) Circular A-102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.*

e. *Office of Management and Budget (OMB) Circular A-110, Grants and Agreements with Institutions of Higher Education, Hospitals and other Non-Profit Organizations.*

f. *Office of Management and Budget (OMB) Circular A-128, Audits of State and Local Governments.*

g. *Office of Management and Budget (OMB) Circular A-122, Cost Principles for Non-profit Organizations.*

### B. Supervision and Monitoring Responsibilities

1. *Grantee Responsibilities.* All grantees receiving direct awards from the Institute are responsible for the management and fiscal control of all funds. Responsibilities include the accounting for receipts and expenditures, the maintaining of adequate financial records and the refunding of expenditures disallowed by audits.

2. *Responsibilities of State Supreme Court.* Each application for funding from a State or local court must be approved,

consistent with State law, by the State's Supreme Court, or its designated agency or council.

The State Supreme Court shall receive all Institute funds awarded to such courts and shall be responsible for assuring proper administration of Institute funds. The State Supreme Court is responsible for all aspects of the project, including proper accounting and financial recordkeeping by the subgrantee. The responsibilities include:

a. *Reviewing Financial Operations.* The State Supreme Court should be familiar with, and periodically monitor, its subgrantees' financial operations, records system and procedures. Particular attention should be directed to the maintenance of current financial data.

b. *Recording Financial Activities.* The subgrantee's grant award or contract obligation, as well as cash advances and other financial activities, should be recorded in the financial records of the State Supreme Court in summary form. Subgrantee expenditures should be recorded on the books of the State Supreme Court OR evidenced by report forms duly filed by the subgrantee. Non-Institute contributions applied to projects by subgrantees should likewise be recorded, as should any project income resulting from program operations.

c. *Budgeting and Budget Review.* The State Supreme Court should ensure that each subgrantee prepares an adequate budget as the basis for its award commitment. The detail of each project budget should be maintained on file by the State Supreme Court.

d. *Accounting for Non-Institute Contributions.* The State Supreme Court will ensure, in those instances where subgrantees are required to furnish non-Institute matching funds, that the requirements and limitations of this guideline are applied to such funds.

e. *Audit Requirement.* The State Supreme Court is required to ensure that subgrantees have met the necessary audit requirements as set forth by the Institute (see sections X.J. and XI.J).

f. *Reporting Irregularities.* The State Supreme Court and its subgrantees are responsible for promptly reporting to the Institute the nature and circumstances surrounding any financial irregularities discovered.

### C. Accounting System

The grantee is responsible for establishing and maintaining an adequate system of accounting and internal controls for itself and for ensuring that an adequate system exists for each of its subgrantees and

contractors. An acceptable and adequate accounting system is considered to be one which:

1. Properly accounts for receipt of funds under each grant awarded and the expenditure of funds for each grant by category of expenditure (including matching contributions and project income);

2. Assures that expended funds are applied to the appropriate budget category included within the approved grant;

3. Presents and classifies historical costs of the grant as required for budgetary and evaluation purposes;

4. Provides cost and property controls to assure optimal use of grant funds;

5. Is integrated with a system of internal controls adequate to safeguard the funds and assets covered, check the accuracy and reliability of the accounting data, promote operational efficiency, and assure conformance with any general or special conditions of the grant;

6. Meets the prescribed requirements for periodic financial reporting of operations; and

7. Provides financial data for planning, control, measurement, and evaluation of direct and indirect costs.

#### D. Total Cost Budgeting and Accounting

Accounting for all funds awarded by the Institute shall be structured and executed on a "total project cost" basis. That is, total project costs, including Institute funds, State and local matching shares, and any other fund sources included in the approved project budget shall be the foundation for fiscal administration and accounting. Grant applications and financial reports require budget and cost estimates on the basis of total costs.

1. *Timing of Matching Contributions.* Matching contributions need not be applied at the exact time of the obligation of Institute funds. However, the full matching share must be obligated by the end of the period for which the Institute funds have been made available for obligation under an approved project. Grantees that do not contemplate making matching contributions continuously throughout the course of a project or on a task-by-task basis, are required to submit a schedule within 30 days after the beginning of the project period indicating at what points during the project period the matching contributions will be made. In instances where a proposed cash match is not fully met, the Institute may reduce the award amount accordingly, in order to maintain the ratio originally provided for in the award agreement.

2. *Records for Match.* All grantees must maintain records which clearly show the source, amount, and timing of all matching contributions. In addition, if a project has included, within its approved budget, contributions which exceed the required matching portion, the grantee must maintain records of those contributions in the same manner as it does the Institute funds and required matching shares. For all grants made to State and local courts, the State Supreme Court has primary responsibility for grantee/subgrantee compliance with the requirements of this section. (See Section XI.B.2.)

#### E. Maintenance and Retention of Records

All financial records, supporting documents, statistical records and all other records pertinent to grants, subgrants, cooperative agreements or contracts under grants shall be retained by each organization participating in a project for at least three years for purposes of examination and audit. State Supreme Courts may impose record retention and maintenance requirements in addition to those prescribed in this chapter.

1. *Coverage.* The retention requirement extends to books of original entry, source documents supporting accounting transactions, the general ledger, subsidiary ledgers, personnel and payroll records, cancelled checks, and related documents and records. Source documents include copies of all grant and subgrant awards, applications, and required grantee/subgrantee financial and narrative reports. Personnel and payroll records shall include the time and attendance reports for all individuals reimbursed under a grant, subgrant or contract, whether they are employed full-time or part-time. Time and effort reports will be required for consultants.

2. *Retention Period.* The three-year retention period starts from the date of the submission of the final expenditure report or, for grants which are renewed annually, from the date of submission of the annual expenditure report.

3. *Maintenance.* Grantees and subgrantees are expected to see that records of different fiscal years are separately identified and maintained so that requested information can be readily located. Grantees and subgrantees are also obligated to protect records adequately against fire or other damage. When records are stored away from the grantee's/subgrantee's principal office, a written index of the location of stored records should be on hand, and ready access should be assured.

#### F. Project-Related Income

Records of the receipt and disposition of project-related income must be maintained by the grantee in the same manner as required for the project funds that gave rise to the income. The policies governing the disposition of the various types of project-related income are listed below.

1. *Interest.* A State and any agency or instrumentality of a State including State institutions of higher education and State hospitals, shall not be held accountable for interest earned on advances of project funds. When funds are awarded to subgrantees through a State, the subgrantees are not held accountable for interest earned on advances of project funds. Local units of government and nonprofit organizations that are direct grantees must refund any interest earned. Grantees shall so order their affairs to ensure minimum balances in their respective grant cash accounts.

2. *Royalties.* The grantee/subgrantee may retain all royalties received from copyrights or other works developed under projects or from patents and inventions, unless the terms and conditions of the project provide otherwise.

3. *Registration and tuition fees.* Registration and tuition fees shall be used to pay project-related costs not covered by the grant, or to reduce the amount of grant funds needed to support the project. Registration and tuition fees may be used for other purposes only with the prior written approval of the Institute.

4. *Other.* Other project income shall be treated in accordance with disposition instructions set forth in the project's terms and conditions.

#### G. Payments and Financial Reporting Requirements.

1. *Payment of Grant Funds.* The procedures and regulations set forth below are applicable to all Institute grant funds and grantees.

a. *Request for Advance or Reimbursement of Funds.* Grantees will receive funds on a "Check-Issued" basis. Upon receipt, review, and approval of a Request for Advance or Reimbursement by the Institute, a check will be issued directly to the grantee or its designated fiscal agent. A request must be limited to the grantee's immediate cash needs. The Request for Advance or Reimbursement, along with the instructions for its preparation, will be included in the official Institute award package.

b. *Termination of Advance Funding.* When a grantee organization receiving cash advances from the Institute:

i. Demonstrates an unwillingness or inability to attain program or project goals, or to establish procedures that will minimize the time elapsing between cash advances and disbursements, or cannot adhere to guideline requirements or special conditions;

ii. Engages in the improper award and administration of subgrants or contracts; or

iii. Is unable to submit reliable and/or timely reports,

The Institute may terminate advance financing and require the grantee organization to finance its operations with its own working capital. Payments to the grantee shall then be made by the use of the Institute check method to reimburse the grantee for actual cash disbursements. In the event the grantee continues to be deficient, the Institute reserves the right to suspend payments until the deficiencies are corrected.

c. *Principle of Minimum Cash on Hand.* Recipient organizations should request funds based upon immediate disbursement requirements. Grantees should time their requests to ensure that cash on hand is the minimum needed for disbursements to be made immediately or within a few days. Idle funds in the hands of subgrantees will impair the goals of good cash management.

2. *Financial Reporting.* In order to obtain financial information concerning the use of funds, the Institute requires that grantees/subgrantees of these funds submit timely reports for review.

Two copies of the Financial Status Report are required from all grantees for each active quarter on a calendar-quarter basis. This report is due within 30 days after the close of the calendar quarter. It is designed to provide financial information relating to Institute funds, State and local matching shares, and any other fund sources included in the approved project budget. The report contains information on obligations as well as outlays. A copy of the Financial Status Report, along with instructions for its preparation, will be included in the official Institute Award package. In the circumstances where an organization requests substantial payments for a project prior to the completion of a given quarter, the Institute may request a brief summary of the amount requested, by object class, in support of the Request for Advance or Reimbursement.

3. *Consequences of Non-Compliance with Submission Requirements.* Failure of the grantee organization to submit required financial and program reports

may result in a suspension of grant payments.

#### H. Allowability of Costs

1. *General.* Except as may be otherwise provided in the conditions of a particular grant, cost allowability shall be determined in accordance with the principles set forth in *OMB Circulars A-87, Cost Principles for State and Local Governments; A-21, Cost Principles Applicable to Grants and Contracts with Educational Institutions; and A-122, Cost Principles for Non-Profit Organizations.* No costs may be recovered to liquidate obligations which are incurred after the approved grant period.

##### 2. *Costs Requiring Prior Approval:*

a. *Preagreement Costs.* The written prior approval of the Institute is required for costs which are considered necessary to the project but occur prior to the starting date of the grant period.

b. *Equipment.* Grant funds may be used to purchase or lease only that equipment which is essential to accomplishing the goals and objectives of the project. The written prior approval of the Institute is required when the amount of automated data processing (ADP) equipment to be purchased or leased exceeds \$10,000 or the software to be purchased exceeds \$3,000.

c. *Consultants.* The written prior approval of the Institute is required when the rate of compensation to be paid a consultant exceeds \$300 a day.

3. *Travel Costs.* Transportation and per diem rates must comply with the policies of the applicant organization. If the applicant does not have an established written travel policy, then travel rates shall be consistent with those established by the Institute or the Federal Government. Institute funds shall not be used to cover the transportation or per diem costs of a member of a national organization to attend an annual or other regular meeting of that organization.

4. *Indirect Costs.* These are costs of an organization that are not readily assignable to a particular project, but are necessary to the operation of the organization and the performance of the project. The cost of operating and maintaining facilities, depreciation, and administrative salaries are examples of the types of costs that are usually treated as indirect costs. It is the policy of the Institute that all costs should be budgeted directly; however, if a recipient has an indirect cost rate approved by a Federal agency as set forth below, the Institute will accept that rate.

##### a. *Approved Plan Available.*

(i) The Institute will accept an indirect cost rate or allocation plan approved for a grantee during the preceding two years by any Federal granting agency on the basis of allocation methods substantially in accord with those set forth in the applicable cost circulars. A copy of the approved rate agreement must be submitted to the Institute.

(ii) Where flat rates are accepted in lieu of actual indirect costs, grantees may not also charge expenses normally included in overhead pools, e.g., accounting services, legal services, building occupancy and maintenance, etc., as direct costs.

(iii) Organizations with an approved indirect cost rate, utilizing total direct costs as the base, usually exclude contracts under grants from any overhead recovery. The negotiation agreement will stipulate that contracts are excluded from the base for overhead recovery.

b. *Establishment of Indirect Cost Rates.* In order to be reimbursed for indirect costs, a grantee or organization must first establish an appropriate indirect cost rate. To do this, the grantee must prepare an indirect cost rate proposal and submit it to the Institute. The proposal must be submitted in a timely manner (within three months after the start of the grant period) to assure recovery of the full amount of allowable indirect costs, and it must be developed in accordance with principles and procedures appropriate to the type of grantee institution involved.

c. *No Approved Plan.* If an indirect cost proposal for recovery of actual indirect costs is not submitted to the Institute within three months after the start of the grant period, indirect costs will be irrevocably disallowed for all months prior to the month that the indirect cost proposal is received. This policy is effective for all grant awards.

#### I. Procurement and Property Management Standards

1. *Procurement Standards.* For State and local governments, the Institute is adopting the standards set forth in Attachment O of *OMB Circular A-102.* Institutions of higher education, hospitals, and other non-profit organizations will be governed by the standards set forth in Attachment O of *OMB Circular A-110.*

2. *Property Management Standards.* The property management standards as prescribed in Attachment N of *OMB Circulars A-102 and A-110* shall be applicable to all grantees and subgrantees of Institute funds except as provided in subsection b. below.

a. *Acquisition.* All grantees/subgrantees are required to be prudent in the acquisition and management of property with grant funds. If suitable property required for the successful execution of projects is already available within the grantee or subgrantee organization, expenditures of grant funds for the acquisition of new property will be considered unnecessary.

b. *Title to Property.* At the conclusion of the project, title to all expendable and nonexpendable personal property purchased with Institute funds shall vest in the court, organization, or individual that purchased the property if certification is made to the Institute that the property will continue to be used for the authorized purposes of the Institute-funded project or other purposes consistent with the State Justice Institute Act, as approved by the Institute. If such certification is not received, or the Institute disapproves such certification, title to all such property with an aggregate or individual value of \$1,000 or more shall vest in the Institute, which will direct the disposition of the property.

#### J. Audit Requirements

1. *Audit Objectives.* Grants and other agreements are awarded subject to conditions of fiscal, program and general administration to which the recipient expressly agrees. Accordingly, the audit objective is to review the grantee's or subgrantee's administration of grant funds and required non-Institute contributions for the purpose of determining whether the recipient has:

a. Established an accounting system integrated with adequate internal fiscal and management controls to provide full accountability for revenues, expenditures, assets, and liabilities;

b. Prepared financial statements which are presented fairly, in accordance with generally accepted accounting principles;

c. Prepared Institute financial reports (including Financial Status Reports, Cash Reports, and Requests for Advances and Reimbursements) which contain accurate and reliable financial data, and are presented in accordance with prescribed procedures; and

d. Expended Institute funds in accordance with the terms of applicable agreements and those provisions of Federal law or Institute regulations that could have a material effect on the financial statements or on the awards tested.

2. *Implementation.* Each grantee (including a State or local court receiving a subgrant from the State Supreme Court) shall provide for an

annual fiscal audit. The audit may be of the entire grantee organization (e.g., a university) or of the specific project funded by the Institute. The audit shall be conducted by an independent Certified Public Accountant, or a State or local agency authorized to audit government agencies. The audit shall be conducted in compliance with generally accepted auditing standards established by the American Institute of Certified Public Accountants. A written report shall be prepared upon completion of the audit. Grantees are responsible for submitting copies of the reports to the Institute within thirty days after the acceptance of the report by the grantee, for each year that there is financial activity involving Institute funds.

Grantees who receive funds from a Federal agency and who satisfy audit requirements of the cognizant Federal agency, should submit a copy of the audit report prepared for that Federal agency to the Institute in order to satisfy the provisions of this section. Cognizant Federal agencies do not send reports to the Institute. Therefore, each grantee must send this report directly to the Institute.

Audit reports from nonprofit organizations which do not receive Federal funds, and which decide to perform an audit of the entire organization, shall include a supplemental schedule depicting a project-by-project summary of Institute grant activity for the audit period. At a minimum, this summary should include the grant award number, project title, award amount, payments received, expenditures made and balances remaining. The auditors should also conduct adequate tests to ensure that the audit objectives listed in sections XI.J.1.c. and d. above have been satisfied.

3. *Resolution and Clearance of Audit Reports.* Timely action on recommendations by responsible management officials is an integral part of the effectiveness of an audit. Each grant recipient shall have policies and procedures for acting on audit recommendations by designating officials responsible for: follow-up, maintaining a record of the actions taken on recommendations and time schedules, responding to and acting on audit recommendations, and submitting periodic reports to the Institute on recommendations and actions taken.

4. *Consequences of Non-Resolution of Audit Issues.* It is the general policy of the State Justice Institute not to make new grant awards to an applicant having an unresolved audit report involving Institute awards. Failure of the grantee organization to resolve audit

questions may also result in the suspension of payments for active Institute grants to that organization.

#### K. Close-Out of Grants

1. *Definition.* Close-out is a process by which the Institute determines that all applicable administrative and financial actions and all required work of the grant have been completed by both the grantee and the Institute.

2. *Grantee Close-Out Requirements.* Within 90 days after the end date of the grant or any approved extension thereof (revised end date), the following documents must be submitted by the grantee to the Institute.

a. *Financial Status Report.* The final report of expenditures must have no unliquidated obligations and must indicate the exact balance of unobligated funds. Any unobligated/unexpended funds will be deobligated from the award by the Institute. Grantees on a check-issued basis, who have drawn down funds in excess of their obligations/expenditures, must return any unused funds as soon as it is determined that the funds are not required. In no case should any unused funds remain with the grantee beyond the submission date of the final financial status report.

b. *Final Progress Report.* This report should describe the project activities during the final calendar quarter of the project and the closeout period, including to whom project products have been disseminated; specify whether all the objectives set forth in the approved application or an approved adjustment thereto have been met; and, if any of the objectives have not been met explain the reasons therefor.

#### XII. Grant Adjustments

All requests for program or budget adjustments requiring Institute approval must be submitted in a timely manner by the project director. All requests for changes from the approved application will be carefully reviewed for both consistency with this guideline and the enhancement of grant goals and objectives.

##### A. Grant Adjustments Requiring Prior Written Approval

There are several types of grant adjustments which require the prior written approval of the Institute. Examples of these adjustments include:

1. Budget revisions among direct cost categories which exceed or are expected to exceed 5 percent of the approved budget.

2. A change in the scope of work to be performed or the objectives of the project (see section XII.D.).

3. A change in the project site.

4. A change in the project period, such as an extension of the grant period and/or extension of the final financial or progress report deadline (see section XII.E.).

5. Satisfaction of special conditions, if required.

6. A change in or temporary absence of the project director (see sections XII.F. and G.).

7. The assignment of an employee or consultant to a key staff position whose qualifications were not described in the application, or a change of a person assigned to a key project staff position (see section X.Q.).

8. A successor in interest or name change agreements.

9. A transfer or contracting out of grant-supported activities (see section XII.H.).

10. A transfer of the grant to another recipient.

11. Preagreement costs, the purchase of automated data processing equipment and software, and consultant rates, as specified in section XI.H.2.

#### *B. Request for Grant Adjustments*

All grantees and subgrantees must promptly notify the SJI program managers, in writing, of events or proposed changes which may require an adjustment from the approved application. In requesting an adjustment, the grantee must set forth the reasons and basis for the proposed adjustment and any other information the SJI program managers determine would help the Institute's review.

#### *C. Notification of Approval/Disapproval*

If the request is approved, the grantee will be sent a Grant Adjustment signed by the Executive Director or his/her designee. If the request is denied, the grantee will be sent a written explanation of the reasons for the denial.

#### *D. Changes in the Scope of the Grant*

A grantee/sub-grantee may make minor changes in methodology, approach, or other aspects of the grant to expedite achievement of the grant's objectives with subsequent notification of the SJI program manager. Major changes in scope, duration, training methodology, or other significant areas must be approved in advance by the Institute.

#### *E. Date Changes*

A request to change or extend the grant period must be made 30 days in

advance of the end date of the grant. A request to change or extend the deadline for the final financial report or final progress report must be made 30 days in advance of the report deadline (see section XI.K.2.).

#### *F. Temporary Absence of the Project Director*

Whenever absence of the project director is expected to exceed a continuous period of one month, the plans for the conduct of the project director's duties during such absence must be approved in advance by the Institute. This information must be provided in a letter signed by an authorized representative of the grantee/subgrantee at least 30 days before the departure of the project director, or as soon as it is known that the project director will be absent. The grant may be terminated if arrangements are not approved in advance by the Institute.

#### *G. Withdrawal of/Change in Project Director*

If the project director relinquishes or expects to relinquish active direction of the project, the Institute must be notified immediately. In such cases, if the grantee/subgrantee wishes to terminate the project, the Institute will forward procedural instructions upon notification of such intent. If the grantee wishes to continue the project under the direction of another individual, a statement of the candidate's qualifications should be sent to the Institute for review and approval. The grant may be terminated if the qualifications of the proposed individual are not approved in advance by the Institute.

#### *H. Transferring or Contracting Out of Grant-Supported Activities*

A principal activity of the grant-supported project shall not be transferred or contracted out to another organization without specific prior approval by the Institute. All such arrangements should be formalized in a contract or other written agreement between the parties involved. Copies of the proposed contract or agreement must be submitted for prior approval at the earliest possible time. The contract or agreement must state, at a minimum, the activities to be performed, the time schedule, the policies and procedures to be followed, the dollar limitation of the agreement, and the cost principles to be followed in determining what costs, both direct and indirect, are to be allowed. The contract or other written agreement must not affect the grantee's overall responsibility for the direction of

the project and accountability to the Institute.

#### **State Justice Institute Board of Directors**

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Vivi L. Dilweg, Judge, Brown County Circuit Court, Green Bay, Wisconsin

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Keith McNamara, Esq., McNamara and McNamara, Columbus, Ohio

Daniel J. Meador, Professor of Law, University of Virginia Law School, Charlottesville, Virginia

Sandra A. O'Connor, States Attorney of Baltimore County, Towson, Maryland

David I. Tevelin, Executive Director (ex officio)

#### **Appendix—List of State Contacts Regarding Administration of Institute Grants to State and Local Courts**

Mr. Allen L. Tapley, Administrative Director, Administrative Office of the Courts, 817 South Court Street, Montgomery, Alabama 36130, (205) 834-7990

Mr. Arthur H. Snowden II, Administrative Director, Alaska Court System, 303 K Street, Anchorage, Alaska 99501, (907) 264-0547

Mr. William L. McDonald, Administrative Director, Supreme Court of Arizona, 1314 North 3rd Street, Suite 200, Phoenix, Arizona 85004, (602) 255-4359

Mr. James D. Gingerich, Executive Secretary, Arkansas Judicial Department, Justice Building, Little Rock, Arkansas 72201, (501) 371-2295

Mr. William E. Davis, Administrative Director, State Building, 350 McAllister Street, Room 3154, San Francisco, California 94102, (415) 557-1581

Mr. James D. Thomas, State Court Administrator, Colorado Judicial Department, 1301 Pennsylvania Street, Suite 300, Denver, Colorado 80203-2416, (303) 861-1111, ext. 585

Ms. Faith A. Mandell, Director, External Affairs, Office of the Chief Court Administrator, Drawer N, Station A, Hartford, Connecticut 06106, (203) 566-8210

Mr. Lowell Groundland, Director, Administrative Office of the Courts, Carvel State Office Building, 820 N. French Street, Wilmington, Delaware 19801, (302) 571-2480

Mr. Ulysses Hammond, Executive Officer, Courts of the District of Columbia, 500 Indiana Avenue, N.W., Washington, D.C. 20001, (202) 879-1700

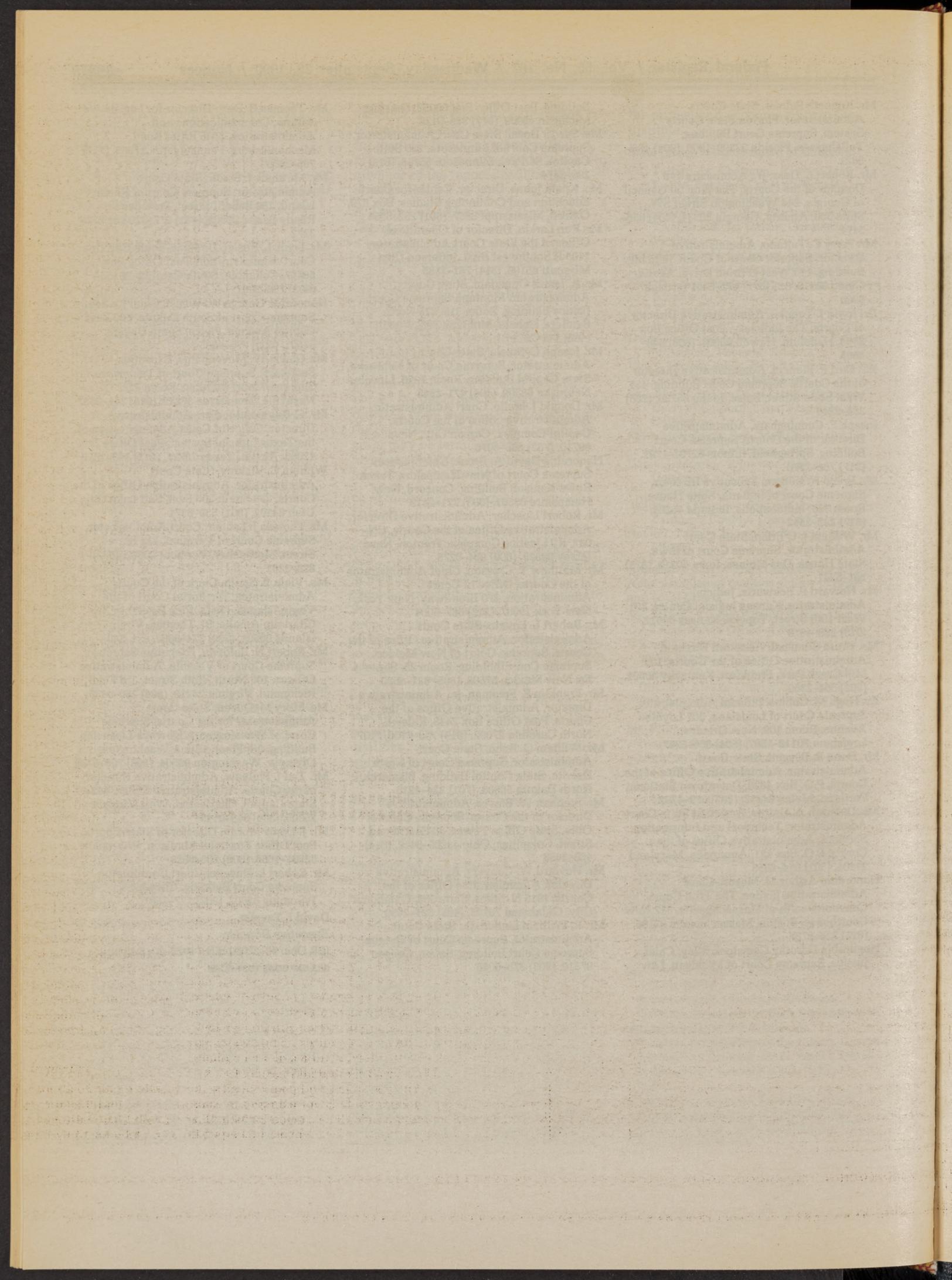
- Mr. Kenneth Palmer, State Courts Administrator, Florida State Courts System, Supreme Court Building, Tallahassee, Florida 32399-1900, (904) 488-8621
- Mr. Robert L. Doss, Jr., Administrative Director of the Courts, The Judicial Council of Georgia, 244 Washington Street SW., Suite 500, Atlanta, Georgia 30334, (404) 656-5171
- Mr. Perry C. Taitano, Administrative Director, Superior Court of Guam, Judiciary Building, 110 West O'Brien Drive, Agana, Guam 96910, 011 (671) 472-8961 through 8968
- Dr. Irwin I. Tanaka, Administrative Director of Courts, The Judiciary, Post Office Box 2560, Honolulu, Hawaii 96804, (808) 548-4605
- Mr. Carl F. Bianchi, Administrative Director of the Courts, Supreme Court Building, 451 West State Street, Boise, Idaho 83720, (208) 334-2246
- Joseph F. Cunningham, Administrative Director of the Courts, Supreme Court Building, Springfield, Illinois 62701-1791, (217) 782-7770
- Mr. Bruce A. Kotzan, Executive Director, Supreme Court of Indiana, State House, Room 323, Indianapolis, Indiana 46204, (317) 232-2542
- Mr. William J. O'Brien, State Court Administrator, Supreme Court of Iowa, State House, Des Moines, Iowa 50319, (515) 281-5241
- Mr. Howard P. Schwartz, Judicial Administrator, Kansas Judicial Center, 301 West 10th Street, Topeka, Kansas 66612, (913) 296-4873
- Ms. Laura Stammel, Assistant Director, Administrative Office of the Courts, 100 Mill Creek Park, Frankfort, Kentucky 40601, (502) 564-2350
- Dr. Hugh M. Collins, Judicial Administrator, Supreme Court of Louisiana, 301 Loyola Avenue, Room 109, New Orleans, Louisiana 70112-1887, (504) 568-5747
- Mr. Dana R. Baggett, State Court Administrator, Administrative Office of the Courts, P.O. Box 4820, Downtown Station, Portland, Maine 04112, (207) 879-4792
- Ms. Deborah A. Unitus, Assistant State Court Administrator, Technical and Information Services, Administrative Office of the Courts, P.O. Box 431, Annapolis, Maryland 21404, (301) 974-2353
- Honorable Arthur M. Mason, Chief Administrative Justice, The Trial Court, Commonwealth of Massachusetts, 317 New Courthouse, Boston, Massachusetts 02108, (617) 725-8787
- Honorable Dorothy Comstock Riley, Chief Justice, Supreme Court of Michigan, Law Building, Post Office Box 30052, Lansing, Michigan 48909, (517) 373-0128
- Ms. Sue K. Dosal, State Court Administrator, Supreme Court of Minnesota, 230 State Capitol, St. Paul, Minnesota 55155, (617) 296-2474
- Ms. Krista Johns, Director, Center for Court Education and Continuing Studies, Box 879, Oxford, Mississippi 3867, (601) 232-5955
- Mr. Ron Larkin, Director of Operations, Office of the State Court Administrator, 1105 R Southwest Blvd, Jefferson City, Missouri 65109, (314) 751-3585
- Mr. R. James Oppedahl, State Court Administrator, Montana Supreme Court, Justice Building, Room 315, 215 North Sanders, Helena, Montana 59620-3001, (406) 444-2621
- Mr. Joseph C. Steele, State Court Administrator, Supreme Court of Nebraska, State Capitol Building, Room 1220, Lincoln, Nebraska 68509, (404) 471-2643
- Mr. Donald J. Mello, Court Administrator, Administrative Office of the Courts, Capitol Complex, Carson City, Nevada 89710, (702) 885-5076
- Honorable David A. Brock, Chief Justice, Supreme Court of New Hampshire, Frank Rowe Kenison Building, Concord, New Hampshire 03301, (603) 271-2419
- Mr. Robert Lipscher, Administrative Director, Administrative Office of the Courts, CN-037, RJH Justice Complex, Trenton, New Jersey 08625, (609) 984-0275
- Mr. Matthew T. Crosson, Chief Administrator of the Courts, Office of Court Administration, 270 Broadway, New York, New York 10007, (212) 587-2004
- Mr. Robert L. Lovato, State Court Administrator, Administrative Office of the Courts, Supreme Court of New Mexico, Supreme Court Building, Room 25, Sante Fe, New Mexico 87503, (505) 827-4800
- Mr. Franklin E. Freeman, Jr., Administrative Director, Administrative Office of the Courts, Post Office Box 2448, Raleigh, North Carolina 27602, (919) 733-7106/7107
- Mr. William G. Bohn, State Court Administrator, Supreme Court of North Dakota, State Capitol Building, Bismarck, North Dakota 58505, (701) 224-4216
- Mr. Stephan W. Stover, Administrative Director of the Courts, Supreme Court of Ohio, State Office Tower, 30 East Broad Street, Columbus, Ohio 43266-0419, (614) 486-2653
- Mr. Howard W. Conyers, Administrative Director, Administrative Office of the Courts, 1915 N. Stiles, Suite 305, Oklahoma City, Oklahoma 73105, (405) 521-2450
- Mr. R. William Linden, Jr., State Court Administrator, Supreme Court of Oregon, Supreme Court Building, Salem, Oregon 97310, (503) 378-6046
- Mr. Thomas B. Darr, Director for Legislative Affairs, Communications and Administration, 5035 Ritter Road, Mechanicsburg, Pennsylvania 17055, (717) 795-2000
- Mr. Matthew J. Smith, State Court Administrator, Supreme Court of Rhode Island, 250 Benefit Street, Providence, Rhode Island 02903, (401) 277-3263 or 277-3272
- Mr. Louis L. Rosen, Director, South Carolina Court Administration, Post Office Box 50447, Columbia, South Carolina 29250, (803) 758-2961
- Honorable George W. Wuest, Chief Justice, Supreme Court of South Dakota, 500 East Capitol Avenue, Pierre, South Dakota 57501, (605) 773-4885
- Mr. Cletus W. McWilliams, Executive Secretary, Supreme Court of Tennessee, Supreme Court Building, Room 422, Nashville, Tennessee 37219, (615) 741-2687
- Mr. C. Raymond Justice, Administrative Director, Office of Court Administration of the Texas Judicial System, Post Office Box 12068, Austin, Texas 78711, (512) 463-1625
- William C. Vickrey, State Court Administrator, Administrative Office of the Courts, 230 South 500 East, Salt Lake City, Utah 84102, (801) 533-6371
- Mr. Thomas J. Lehner, Court Administrator, Supreme Court of Vermont, 111 State Street, Montpelier, Vermont 05602, (802) 828-3281
- Ms. Viola E. Smith, Clerk of the Court/Administrator, Territorial Court of the Virgin Islands, Post Office Box 70, Charlotte Amalie, St. Thomas, Virgin Islands 00801, (809) 774-6680, ext. 248
- Mr. Robert N. Baldwin, Executive Secretary, Supreme Court of Virginia, Administrative Offices, 100 North Ninth Street, 3rd Floor, Richmond, Virginia 23219, (804) 786-6455
- Ms. Mary McQueen, State Court Administrator for the Courts, Supreme Court of Washington, Highways-Licensing Building, 6th Floor, 12th & Washington, Olympia, Washington 98504, (206) 753-5780
- Mr. Ted J. Philyaw, Administrative Director of the Courts, Administrative Office, 402-E State Capitol, Charleston, West Virginia 25305, (304) 348-0145
- Mr. J. Denis Moran, Director of State Courts, Post Office Box 1688, Madison, Wisconsin 53701-1688, (608) 266-6828
- Mr. Robert L. Duncan, Court Coordinator, Supreme Court Building, Cheyenne, Wyoming 82002, (307) 777-7561

David I. Tevelin,

Executive Director.

[FR Doc. 90-22700 File:1 9-25-90; 8:45 am]

BILLING CODE 6820-SC-M



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Wednesday  
September 26, 1990

**Environmental  
Protection Agency**

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**Part III**

**Environmental  
Protection Agency**

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**Solicitations for Research Grant  
Proposals—1991; Notice**

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-3827-1]

### Solicitation for Research Grant Proposals—1991

**AGENCY:** Environmental Protection Agency.

**ACTION:** Solicitation for Research Grant Proposals—1991 Exploratory Research Grants.

**SUMMARY:** The U.S. Environmental Protection Agency (EPA), through its Office of Exploratory Research (OER), is seeking grant applications to conduct exploratory environmental research in biology, health, chemistry, physics, engineering, or socioeconomics. Investigations are sought in these research disciplines which focus on any aspect of pollution identification, characterization, abatement or control, or address the effects of pollutants on human health or the environment. In addition, research is sought on environmental policy and its social and economic consequences.

**DATES:** See Table 1 under "Supplementary Information" in this Solicitation.

**ADDRESSES:** See "General Grant Program" in this Solicitation.

**FOR FURTHER INFORMATION CONTACT:** Appropriate individual(s) listed in Table 1 of this Solicitation.

**SUPPLEMENTARY INFORMATION:** This solicitation only concerns the research grants administered by EPA's Office of Exploratory Research, and outlines procedures for receiving grant assistance from that office.

In addition to this general annual solicitation, applications are sought periodically through more narrowly defined proposal requests, referred to as Requests for Applications (RFA). While this document does not contain any RFA solicitations, it does provide a preannouncement of tentative RFA titles and approximate issue dates for each proposed RFA.

#### Application Procedures

##### General Grants Program

Application forms, instructions, and other pertinent information for assistance programs are available in the EPA Research Grants Application/Information Kit. Interested investigators should review the materials in this kit before preparing an application for assistance. The kits are available from: Grants Operations Branch, Grants Administration Division (PM-216F), U.S. Environmental Protection

Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-5266

or

Office of Exploratory Research (RD-675), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-7445.

Proposed projects must be investigative research. Proposals will not be accepted that are state-of-the-art or market surveys, development of proven concepts, or the preparation of materials and documents, including process designs or instruction manuals.

Fully developed research grant applications, prepared in accordance with instructions in the Application for Federal Assistance Form SF-424, should be sent to the Grants Operations Branch at the above address. One copy of the application with original signatures plus eight copies are required. Informal, incomplete or unsigned proposals will not be considered.

The following special instructions apply to all applicants responding to this solicitation:

Applications must be identified by printing "OER-91" in the upper right hand corner of Application Form SF-424. The absence of this identifier from an application may lead to delayed processing or misassignment of the application.

The project narrative section of the application must not exceed twenty-five 8½ x 11 inch, consecutively numbered pages of standard type (10-12 characters per inch), including tables, graphs and figures. For purposes of this limitation, the "project narrative section" of the application consists of the following items in the Application/Information Kit:

- (1) Description of Project
- (2) Objectives
- (3) Results or Benefits Expected
- (4) Approach
- (5) General Project Information
- (6) Quality Assurance (if needed)

Attachments and appendices for the narrative section in excess of the 25 page limitation will not be forwarded to reviewers. The SF-424 and other forms, itemized budget, resumes, and abstract are not included in the 25 page limitation.

Resumes must not exceed two pages for each principal investigator and should focus on education, positions held and most recent or related publications.

A one page abstract should be included with the application.

While applications responding to this solicitation may be received by EPA at any time, they are evaluated on specific dates which are different for each

disciplinary area. Closing dates and appropriate contacts within EPA are listed in Table 1. Generally, all funding decisions on applications are made within 6 months of the application's closing date.

Applicants should contact the appropriate individuals identified in Table 1 for further information on schedules and review procedures. Their address and phone number are: Office of Exploratory Research (RD-675), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-7445.

TABLE 1.—Closing Dates and Contacts—General Solicitation

Discipline	Application closing dates	Contact
Biology	Mar. 15, 1991 Sept. 13, 1991	Clyde Bishop
Health	Oct. 19, 1990 Apr. 12, 1991	Clyde Bishop
Chem/Physics, Air	Feb. 15, 1991 Aug. 16, 1991	Deran Pashayan
Chem/Physics, Water/Soil	Jan. 18, 1991 July 19, 1991	Louis Swaby
Engineering	Feb. 8, 1991 Aug. 23, 1991	Louis Swaby
Socio- economics	Mar. 22, 1991 Sept. 20, 1991	Robert Papetti

#### Targeted Grants Program

The Office of Exploratory Research addresses specific research topics which appear to merit extra emphasis or special attention by issuing a separate RFA for each such topic. The RFA is a mechanism by which a formal announcement is released describing a high priority initiative in well defined scientific areas.

Applicants are invited to submit research applications for a one-time competition using the standard Application for Federal Assistance Form SF-424 and other forms described in the Grant Application Kit. One copy of the application with original signatures plus eight copies should be mailed directly to the Grants Operations Branch at the above address.

The deadline for receipt of applications is identified in the RFA announcement.

As in the case of the general grants program, an application for a targeted grant is only considered when a fully developed proposal is submitted. Special guidelines and limitations tailored to each RFA will be published in the individual RFA announcements.

In FY-1991, OER expects to issue four RFA's. Tentative titles and other information relevant to each RFA are provided in Table 2. However, the

number of RFA's that will be issued is subject to the availability of funds in OER's FY-1991 budget for research grants.

Unless otherwise identified in individual RFAs, procedures, guidelines and limitations are the same for grants issued under the general and targeted grants programs.

This document does not constitute an RFA for any of the topics listed here. The RFAs will be published in the Federal Register in November 1990.

TABLE 2—TENTATIVE RFA TITLES

RFA title	Approximate issue date	Contact
Innovative Technologies for Removal of Heavy Metals at Superfund Sites	Nov. 1990.....	Louis Swaby
Improved Pump and Treat Processes for Remediation of Superfund Sites	Nov. 1990.....	Louis Swaby
Identification of Endpoints and Indicators of Terrestrial Ecosystem Stress	Nov. 1990.....	Clyde Bishop
Chemical Microsensors for Environmental Applications (All Media)	Nov. 1990.....	Louis Swaby

#### Guidelines and Limitations for the General Solicitation

The typical grant issued by OER is for approximately \$100,000 per year for two or three years. Funding levels range from a minimum of about \$40,000 to approximately \$150,000 per year. All budget costs and justifications, particularly requests for equipment will be carefully reviewed. The maximum project period is three years; shorter periods are encouraged. Subcontracts for research to be conducted under the grant should not exceed approximately 40% of the total cost of the grant for each

year in which the subcontract was awarded.

#### Eligibility

The following eligibility requirements apply to both general and targeted grants:

Nonprofit and educational institutions, and state or local governments are eligible under all existing authorizations. Profit-making firms are eligible only under certain laws, and then under restrictive conditions, including the absence of any profit from the project.

Potential applicants who are uncertain of their eligibility should study the restrictive language of the law governing the area of research interest or contact EPA's Grants Operations Branch at (202) 382-5266.

Federal agencies and federal employees are not eligible to participate in this program.

Investigators at minority institutions or those who have not previously received support are encouraged to submit applications.

#### Funding Mechanisms

For all general and targeted grants, the funding mechanism will consist of a grant agreement between EPA and the recipient.

Federal grant regulation 40 CFR 30.307 requires that all recipients provide a minimum of 5% of the total project cost, which may not be taken from Federal sources. OER will not support a request for a deviation from this requirement for any grant supported by its Research Grants Program.

#### Review Process

All general and targeted grant applications are initially reviewed by the Agency to determine their legal and administrative acceptability.

Acceptable applications are then reviewed by an appropriate peer review panel. This review is designed to evaluate and rank each proposal

according to its scientific merit and utility as a basis for recommending Agency approval or disapproval. Each peer review panel is composed primarily of non-EPA scientists and engineers who are experts in their respective disciplines.

The panels use the following criteria in their reviews:

- Quality of the research plan (including theoretical and/or experimental design, originality, and creativity)
- Qualifications of the principal investigator and staff including knowledge of subject area
- Utility of the research including potential contribution to scientific knowledge
- Availability and adequacy of facilities and equipment
- Budgetary justification—in particular justification and cost requests for equipment will be carefully reviewed.

A summary of the scientific review and recommendation of the panel is provided to each applicant.

#### Minority Institutions Assistance

Preapplication assistance is available upon request from potential investigators representing institutions identified by the Secretary of the Department of Education as Historically Black Colleges or Universities (HBCU's), or the Hispanic Association of Colleges or Universities (HACU's).

The application Form SF-424, instructions, subject areas, and review procedures are the same as those for the general grants program.

For further information, contact: Virginia Broadway, U.S. Environmental Protection Agency (RD-675), 401 M Street, SW., Washington, DC 20460, (202) 382-7445.

Roger S. Cortesi,

Director, Office Exploratory Research.

[FR Doc. 90-20730 Filed 9-25-90; 8:45 am]

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# Federal Register

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Wednesday  
September 26, 1990

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## Part IV

### The President

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Proclamation 6186—National Hispanic  
Heritage Month, 1990

Executive Order 12729—Educational  
Excellence for Hispanic Americans

# The President

Part IV

Production 4184 - 1972

Executive Order 11719

Executive Order 11720

Executive Order 11721

Executive Order 11722

Executive Order 11723

Executive Order 11724

Executive Order 11725

Executive Order 11726

Executive Order 11727

Executive Order 11728

Executive Order 11729

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**Presidential Documents**

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Title 3—

Proclamation 6186 of September 24, 1990

The President

National Hispanic Heritage Month, 1990

By the President of the United States of America

**A Proclamation**

Each year, we pause during National Hispanic Heritage Month to recognize the many contributions that men and women of Spanish and Latin American descent have made to our country's history and culture.

Journeying to the New World nearly half a millennium ago, Spanish conquistadors were among the first Europeans to explore and establish settlements in what is now U.S. territory. In 1513, Ponce de León was the first European to discover Florida; in 1528, Álvar Núñez Cabeza de Vaca became the first Spaniard to land on Texas soil; by 1565—more than 25 years before British colonists landed at Jamestown—the Spanish had established a permanent settlement at St. Augustine. By that time, other Spaniards, including Franciscan missionaries, had begun to explore the Southwest. During the second half of the 18th century, the Franciscans established a chain of missions along the California coast. These early mission sites, known as "El Camino Real," grew into the thriving cities of San Diego, Los Angeles, and San Francisco. Centuries after men such as Coronado and Father Junipero Serra journeyed into the vast, uncharted territory of the New World, the influence of the Spanish colonial empire remains evident in communities throughout the southern and western United States.

The rich legacy we celebrate during National Hispanic Heritage Month is not limited, however, to the magnificent architecture and fascinating history and folklore of the American Southwest. Over the years, Hispanic Americans have made their mark across the country and in virtually every aspect of American life.

Time and again throughout our Nation's history, Hispanic Americans—many of whom have come to this country in search of the freedom denied to them by repressive regimes in their ancestral homelands—have demonstrated their dedication to the ideals upon which the United States is founded. In peacetime, as well as in times of conflict and peril, they have faithfully defended the principles of freedom and representative government. They have worked for the advancement of human rights and democratic ideals around the world, and they have helped to support many of our neighbors in Central and South America and the Caribbean in their own struggles for liberty and self-determination.

With faith and hard work, Hispanic Americans have reaped the blessings of freedom and opportunity, building strong families and proud communities and earning positions of leadership in business, education, sports, science, and the arts. Hispanic Americans have also excelled in government, serving as councilmen, mayors, governors, and as members of State legislatures, the Congress, and the Cabinet.

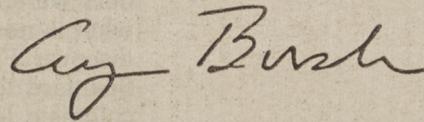
In December of 1989, to help ensure that young Hispanic Americans have ample opportunities to develop and demonstrate their great talent and potential, I directed my Secretary of Education, Dr. Lauro Cavazos, to form the Domestic Policy Council Task Force on Hispanic Education. The Task Force has worked to find ways to improve Federal education programs that serve Hispanic Americans. By enhancing the educational opportunities available to

Americans of Spanish and Latin American descent, we can help to promote their continued social and economic advancement.

In recognition of the outstanding achievements of Hispanic Americans, the Congress, by Joint Resolution approved September 17, 1968, as amended by Public Law 100-402, has authorized and requested the President to issue annually a proclamation designating the month beginning September 15 and ending October 15 as "National Hispanic Heritage Month."

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the month beginning September 15, 1990, and ending October 15, 1990, as National Hispanic Heritage Month. I call upon the people of the United States to observe this month with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fourth day of September, in the year of our Lord nineteen hundred and ninety, and of the Independence of the United States of America the two hundred and fiftieth.



[FR Doc. 90-22964

Filed 9-25-90; 11:15 am]

Billing code 3195-01-M

**Editorial note:** For the President's remarks of Sept. 24, 1990, on signing Proclamation 6186, see the *Weekly Compilation of Presidential Documents* (vol. 26, no. 39).

## Presidential Documents

Executive Order 12729 of September 24, 1990

### Educational Excellence for Hispanic Americans

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to advance the development of human potential, to strengthen the capacity to provide quality education, and to increase opportunities for Hispanic Americans to participate in and benefit from Federal programs, it is hereby ordered as follows:

**Section 1.** There shall be established, in the Department of Education, the President's Advisory Commission on Educational Excellence for Hispanic Americans. The members of the Commission shall be appointed by the President and shall report to the Secretary of Education. The Commission shall comprise representatives of educational, business, professional, and civic organizations that are committed to improving education, including organizations representing Hispanic Americans, as well as other persons deemed appropriate by the President.

**Sec. 2.** The Commission shall provide advice to the Secretary of Education on the progress of Hispanic Americans toward achievement of national education goals and on such other aspects of the educational status of Hispanic Americans as it considers appropriate.

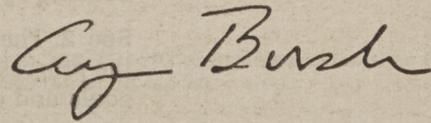
**Sec. 3.** The Secretary of Education shall establish the White House Initiative ("Initiative") on Educational Excellence for Hispanic Americans. The Initiative shall be housed in, staffed, and supported by the Department of Education. The Initiative shall assist the Commission and the Secretary of Education in their activities to establish linkages between the Department of Education, Hispanic Americans, and the education and business community. The Initiative shall also assist the Secretary of Education in carrying out the Secretary's responsibilities under this order.

**Sec. 4.** To the extent permitted by law, the Commission shall provide advice to the Secretary of Education as the Secretary develops and monitors Federal efforts to promote quality education for Hispanic Americans. Particular emphasis shall be given to: enhancing parental involvement; promoting early childhood education; removing barriers to success in education and work, particularly limited proficiency in the English language; and, helping students to achieve their potential at all educational levels. The Commission will also provide advice on ways to increase private sector and community involvement in improving education.

**Sec. 5.** The Secretary of Education shall periodically report to the President on the progress achieved by Hispanic American students toward national education goals. The reports shall identify efforts of executive departments and agencies to improve the quality of education for Hispanic Americans and shall include data available on the participation of Hispanic Americans in Federal education programs. The reports shall also include any advice of the Commission and appropriate recommendations for improving Federal education programs.

**Sec. 6.** To the extent permitted by law, executive departments and agencies shall be actively involved in helping advance educational opportunities for Hispanic Americans, including working with individuals and educational, business, and community groups serving Hispanic Americans. Executive departments and agencies, to the extent feasible, shall collect data on the participation of Hispanic Americans in Federal education programs. Executive departments and agencies, to the extent permitted by law, shall cooperate with the Secretary of Education in the preparation of the reports. The White House Office of National Service shall highlight and encourage the efforts of volunteers and the private sector to improve the quality of education for Hispanic Americans.

**Sec. 7.** The Secretary of Education is directed to establish an Advisory Commission entitled the President's Advisory Commission on Educational Excellence for Hispanic Americans. As provided in Section 1 of this order, the members of the Commission shall be appointed by the President. Notwithstanding any other executive order, the functions of the President under the Federal Advisory Committee Act, as amended (5 U.S.C. App.), except that of reporting to the Congress, which are applicable to the Advisory Commission to be established by this order, shall be performed by the Secretary of Education, in accordance with the guidelines and procedures established by the Administrator of General Services.



THE WHITE HOUSE,  
September 24, 1990.

[FR Doc. 90-22965

Filed 9-25-90, 11:14 am]

Billing code 3195-01-M

# Reader Aids

Federal Register

Vol. 55, No. 187

Wednesday, September 26, 1990

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**H.J. Res. 568/Pub. L. 101-385**

Designating the week beginning September 16, 1990, as "Emergency Medical Services Week". (Sept. 20, 1990; 104 Stat. 738; 1 page) Price: \$1.00

**S. 2597/Pub. L. 101-386**

To amend the Act of June 20, 1910, to clarify in the State of New Mexico authority to exchange lands granted by the United States in trust, and to validate prior land exchanges. (Sept. 20, 1990; 104 Stat. 739; 2 pages) Price: \$1.00

**S.J. Res. 265/Pub. L. 101-387**

To designate the period commencing September 9, 1990, and ending on September 15, 1990, as "National Historically Black Colleges Week". (Sept. 20, 1990; 104 Stat. 741; 1 page) Price: \$1.00

**S.J. Res. 289/Pub. L. 101-388**

To designate October 1990 as "Polish American Heritage Month". (Sept. 20, 1990; 104 Stat. 742; 2 pages) Price: \$1.00

**S.J. Res. 309/Pub. L. 101-389**

Designating the month of October 1990 as "Crime Prevention Month". (Sept. 20, 1990; 104 Stat. 744; 1 page) Price: \$1.00

**S.J. Res. 279/Pub. L. 101-390**

To designate the week of September 16, 1990, through September 22, 1990, as "National Rehabilitation Week". (Sept. 21, 1990; 104 Stat. 745; 2 pages) Price: \$1.00

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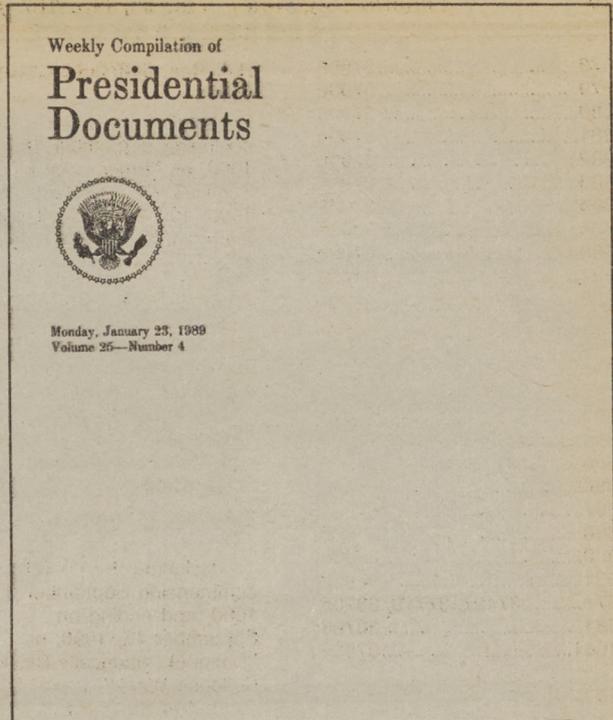
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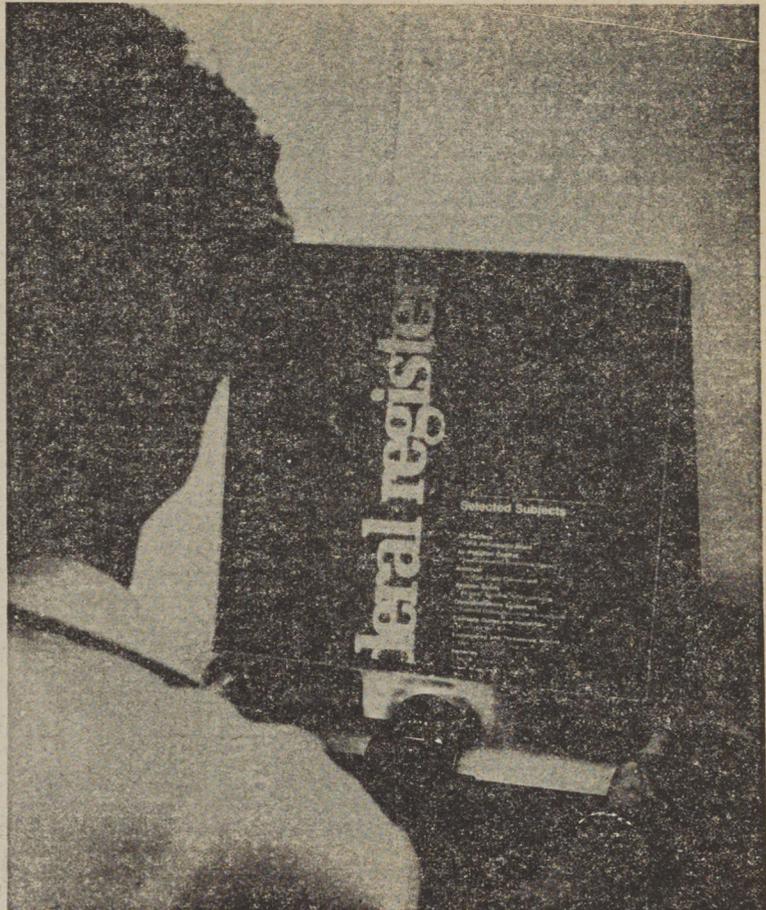
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